



SPONSOR: Sen. Blevins & Rep. B. Short
Sen. Simpson; Reps. Gilligan, Hocker & D. Short

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 146

AN ACT TO AMEND TITLES 18 AND 29 RELATING TO NOT FOR PROFIT HEALTH CARE CONVERSIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §2531(1)c., Title 29 of the Delaware Code by striking §2531(1)c. in its entirety and replacing
2 it with the following:

3 “c. A substantial change or amendment to a certificate of incorporation which materially affects a not-for-profit
4 healthcare entity's charitable or public benefit intent, or the disposition of reserves or control of a not-for-profit healthcare
5 entity to an entity or a person other than a charity or not-for-profit entity.”

6 Section 2. Amend Subchapter III, Chapter 25, Title 29 of the Delaware Code by adding a new §2534 to read as
7 follows:

8 “§2534. Annual Report to Secretary of State.

9 In the event of a Not-for-profit healthcare conversion transaction, the new owner shall submit an annual report to
10 the Delaware Secretary of State providing the status of reserves, the amount and source of funding received, and the amount
11 and purpose of expenditures.”

12 Section 3. Amend Chapter 63, Title 18 of the Delaware Code by adding a new §6310 to read as follows:

13 “§ 6310. Acquisitions of Control.

14 In the event that a health service corporation proposes to enter into a transaction through which it will become
15 controlled by another entity, which transaction is not a not-for-profit healthcare conversion transaction under Subchapter III
16 of Chapter 25 of Title 29, any approval of the change of control shall be conditioned upon appropriate measures designed to
17 preserve the surplus or reserves of the health service corporation for the use of said health service corporation for the
18 benefit of said health service corporation's subscribers.”

19 Section 4. This legislation shall be applicable to all transactions that shall close on and after the effective date.

SYNOPSIS

This bill corrects certain flaws in Delaware's Not-for-profit Healthcare Conversion Act (the “Act”) enacted in 2004. The bill clarifies the General Assembly's intent that the Act does not consider a Delaware not-for-profit healthcare entity affiliation with another not-for-profit entity to be a “not for profit healthcare conversion.” The Act has recently been interpreted by the Delaware Attorney General as requiring that result in a specific transaction involving a not-for-profit

Delaware health service corporation seeking to affiliate with another not-for-profit company, where both entities will retain their not-for-profit status post affiliation. The bill corrects language in the Act that on its face requires the same result for any not-for-profit entity or charity that decides to dispose of its reserves or control by charter change or otherwise, even if it is not a health care-related entity, and even if the change involves another not-for-profit entity.

In the event of a Not-for-profit conversion, the bill requires an annual financial report to the Secretary of State. Also, this bill adds a new §6310 to Title 18 that ensures that change of control transactions involving Delaware health service corporations do not result in the dissipation or improper use of the reserves or surplus of such health service corporation.

Author: Senator Blevins