**Fact Sheet: CareFirst Conversion**

**BACKGROUND**In 2001, it was proposed that CareFirst, a Maryland health insurance program, go from non-profit to for-profit status and be sold for 1.3 billion dollars.  In 2002, Jane Hellawell prepared a report on legislation affecting the sale. Many public meetings were held in the fall of 2002 and early 2003. LWVMD joined the coalition *Maryland Cares*, which produced a Statement of Principles about the sale. On 5 March 2003, the Maryland Insurance Commissioner condemned the sale, and Jane Hellawell wrote a final report.

**Legislation on CareFirst**

Action and turmoil on health legislation in the 2002 General Assembly session focused on the CareFirst proposal to become a for-profit health plan and then sell itself for 1.3 billion dollars. While the first reaction of legislators included a view that 1.3 would go a long way to solving looming budget crunches, it didn't take too long for that view to change to one of outrage - aimed at CareFirst's gradually revealed plan for conversion - thus replacing any rosy financial scenarios which legislators may have entertained.

Concerned that a conversion would eliminate the state's last and largest remaining nonprofit health insurance entity and would, as a result, have stockholders replace subscribers as the company's major interest - and shocked at the negotiated terms of sale between CareFirst and WellPoint (the California for-profit health plan), attitudes began to change, significantly. Perhaps the most galling item of the negotiated sale included bonuses over $33 million to be awarded executives and directors of CareFirst as well as a penalty fee of over $37 million which would be paid to WellPoint if the deal failed to be completed. Legislators in both houses let loose with a barrage of bills to halt both the sale and the conversion.

First out of the gate was HB 2. This bill shifted the burden of proof that a conversion would be in the public interest from the state's insurance Commissioner to CareFirst. It and the companion bill in the Senate passed without a whisper of opposition - not even from CareFirst. More bills followed - some of which drew heavy opposition from CareFirst (without success) and some of which died along the way by being too narrowly focused, too prone to challenge in the courts or too hastily drawn to withstand detailed scrutiny of implementation.

Over the course of the three month session, original outrage was gradually replaced by a more reasoned approach. Several aspects began to emerge:

1. Maryland has a statutory procedure to consider and investigate a proposal by a nonprofit entity to convert to profit. The Insurance Commissioner is directed under statute to conduct this process and he has been doing so since before the end of last year. Hearings were held around the state with CareFirst and the public able to present their positions; CareFirst has appeared before the commissioner in public to answer his questions about the terms of the conversion. As the days progressed, members of the Assembly began to express their opinion the legislation should not cut off this process.

2. Outrage remained, however, regarding a few of the aspects of the proposal, and in the last few days of the session, the legislators scurried about amending and voting on bills which would take care of the items they considered most egregious and at the same time would let the Commissioner proceed on course. They also provided that the General Assembly would have a last chance to approve or disapprove the Commissioner's decision within 90 days of that decision. The statute as originally written gave the Commissioner the final decision--able to be challenged only in the courts.

And so the process of the proposed conversion and sale of CareFirst will proceed under many newly enacted conditions imposed by the legislature. The *Baltimore Sun* of 12 April 2002 quoted CareFirst officials as saying that are not giving up - ignoring their previously oft stated assertions that proposed actions by the Legislature were "deal killers". Opposing organizations/coalitions as well as individual citizens are not giving up either. The months to come - which may well stretch into the next session of the Legislature - are worth watching.

**Summer 2002**

Three major bills impacting CareFirst/BlueCross/BlueShield were passed by the legislature and signed by the governor in 2002:

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1. The burden of proof that conversion is in the public interest was shifted from the Insurance Commissioner to CareFirst;
2. New requirements for a conversion—i.e., an all-cash sale, no remuneration to directors and executives beyond regular salary;
3. The General Assembly is given 90 days after the Insurance Commissioner’s decision to accept or reject that decision;
4. A new state health insurance plan authorized to cover the otherwise uninsurable, eliminating the SAAC program and providing certain low-income seniors with prescription drug coverage.

During and after the Session, the Insurance Commissioner conducted his statutory assignment to oversee a nonprofit insurance plan’s effort to become for-profit.  He completed a series of public hearings and also held sessions, open to the public, with CareFirst and WellPoint, questioning their executives closely on the application to convert as well as the terms and conditions of the sale of CareFirst to WellPoint.

The next step for him was the hiring of expert consultants to help determine the following:

1. Is $1.3 billion a fair price for CareFirst;
2. Was due diligence exercised by the directors and executives of CareFirst in the decision to convert and sell;
3. Will the proposed transaction create a significant adverse effect on the availability and accessibility of health care services;
4. How have other states handled the establishment of foundations resulting from conversions.

Three of the four consulting firms have begun their work.  The Blackstone Group of New York, which is handling the fair price issue, has been put on “fast track” and should submit its report in mid-August.  Although chosen by the Insurance Commissioner, the cost of the experts will be borne by WellPoint and may exceed $4 million.

Two decisions by the Insurance Commissioner vis-à-vis CareFirst were announced in the latter part of June:
1) A premium rate increase requested by CareFirst, for a 1.5% to 17% rise, was denied because as a nonprofit, state-subsidized health insurance plan, CareFirst must spend 75% of every premium dollar income on health care.  CareFirst failed to do that for three years, falling as low as 57% in 1999.

2)  The Insurance commissioner has objected to the transfer of Maryland enrollees to the District of Columbia health plan owned by CareFirst.  This has been a dispute of some months duration and has involved not only CareFirst but also the D.C. Insurance Commissioner.  The implication of such transfers has a direct connection with the allocation of assets, should a conversion and subsequent sale take place.

House Speaker Casper Taylor, in late June, brought forth his own plan to cover a greater number of Maryland’s uninsured.  Not yet fully fleshed out, the plan proposes in part to:

* raise the income level for Medicaid coverage,
* eliminate some Medicaid benefits, revise some insurance requirements (including existing requirements of basic coverage),
* cut back on state funds already directed to higher education and the environment,
* and charge HMOs the same premium as presently charged to non-HMO health plans.

He reports that his plan has the support of the House leadership.

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**What’s ahead?**Reports from the consultants are due in the latter part of October at the latest.  They will be made public and the Insurance Commissioner will hold another set of hearings to get input from the public.  His decision on conversion will probably be issued in the beginning of January.  At that point, as mentioned above, the General Assembly may either accept or reject his decision.

**QUESTIONS TO CONSIDER**

***Q. What should the community consider in a conversion?***

*A. There are many issues to look out for, but the most important ones are*

* *whether the conversion is in the public interest generally,*
* *whether critical health services are preserved,*
* *what impact the conversion will have on the region's health delivery system, and*
* *whether the charitable assets are preserved.*

*Legal doctrines require that a non-profit corporation's assets or charitable assets [see below], including all revenues, gifts and donations generated by the corporation, continue to fulfill the non-profit's charitable mission even if the corporation converts to a for-profit. When it converts and no longer continues to use those assets for the same charitable mission, the charitable assets must be removed from the non-profit and preserved in a separate non-profit entity.*

*If a conversion does occur, it is essential to obtain an accurate valuation of the full value of the non-profit so those assets can be preserved for the people of Maryland, and the monies remain dedicated to serving the community's health needs with community members having direct input in how they are managed.*

***CHARITABLE******ASSETS:***

*The following quotation from the report authored by Carl Schramm (11/2001), commissioned by the Abell Foundation, sheds some light on the subject of charitable assets as it pertains to Maryland:*

*"...State and federal governments have granted significant support to Blue Cross in direct and indirect ways over many years. The most obvious support has come in the form of two important State tax exemptions. Commercial insurers, including mutual companies, are taxed on all health premium income; Blue Cross is not. Similarly, Maryland does not treat Blue Cross corporate income as taxable. Until 1987, all Blue plans nationwide also were exempt from federal income tax. These concessions have had a direct impact on the plan's costs of doing business and have contributed to its ability to build reserves and surplus.*

*"The Maryland Blue plan also has enjoyed a particular benefit in the form of more direct support through two significant discounts granted to it by the HSCRC [Health Services Cost Review Commission]. Early in its history, the HSCRC awarded Blue Cross a discount for prompt payment and non-contest of hospital bills. In 1974, the agency established the SAAC [substantial, available, and affordable coverage] rate differential, which permitted the Maryland plan to pay less than a hospital's approved reimbursement rate and apply those savings to subsidize the Maryland Blue's provision of affordable coverage for individuals and small groups in the State.*

*"The magnitude of these direct and indirect subsidies is significant. It is estimated that the premium tax exemption exceeded $13 million in 2000, and that the income tax exemption resulted in a revenue loss to the State of at least $5.8 million. The net SAAC discount was estimated at $31 million for 2000. The Maryland plan's 2000 fiscal year net earnings were in excess of $63 million, of which more than $55 million derived from investment income from its accumulated reserves [estimated to be over 500% of the required minimum]. The case can be made that the plan operates at a positive margin only because of public support and investment income of reserves that may be, in part, excessive.*

*"Thus, the founding hospitals, hospitals that granted discounts to Blue Cross, employers and customers who paid premiums, and the State and federal governments all have provided significant financial support to Maryland Blue Cross across a span of nearly 70 years. Although complex, the calculations of the present value of such past economic capital contributions and tax expenditures could be accomplished. It there is to be a conversion, those who made the investment in Blue Cross of Maryland should benefit from the returns."*

**MARYLAND CITIZENS CONCERNED ABOUT THE PROPOSED CONVERSION TO FOR-PROFIT STATUS AND/OR SALE OF CAREFIRST:**

**A STATEMENT OF PRINCIPLES**

*We, the undersigned, are Maryland Citizens who share a commitment to enhancing access to health service, obtaining quality health care for all residents, including the indigent and umnsured and getting good value for health premium and tax dollars. We believe in strengthening public oversight of the proposed conversion to for-profit status and/or sale of CareFirst, particularly with regard to the conunuinitys charitable health dollars to assure the protection of taxpayers, consumers, and other stakeholders The undersigned endorse the following principles as essential to reaching a decision regarding a conversion proposal submitted by CareFirst or any non-profit health insurer.*

***THE CONVERSION MUST BENEFIT MARYLAND CITIZENS TO MERIT APPROVAL BY THE MARYLAND INSURANCE ADMINISTRATION:****CareFirst must prove the conversion benefits cost, access, and quality of health care in Maryland, Local control and local accountability over our health care resources in Maryland must be maintained.*

***THE CONVERSION MUST BE CONDUCTED OUT IN THE OPEN WITH FULL COMMUNITY INVOLVEMENT AT EVERY STEP OF THE REVIEW PROCESS:****The charitable assets accrued during the many years of tax-exempt status that have supported CareFirst and other non-profit health plans are significant and must be safeguarded; To flulfill this responsibility, CareFirst policyholders, insureds and the public must be involved in the planning and decision-making process at every stage.*

***THE STATE REGULATORY OFFICIALS SHOULD WORK VIGOROUSLY TO OBTAIN ANY AND AlL DOCUMENTS NI~CESSARY TO EVALUATE THE PROPOSED CONVERSION;****They must disclose and make accessible all docunients and proposed terms in a timely manner for community and consumer groups to respond, Well-publicized hearings, held in every part of the state, should be scheduled early in the review process after providing all relevant documents to community and consumer groups.*

***TO ENABLE THE PUBLIC TO FULFILL A SIGNIFICANT ROLE IN SAFEGUARDING CHARITABLE DOLLARS, THE FOLLOWING REQUIREMENTS SHOULD BE MET****:*

* *A clear set of criteria must be used by the Maryland State regulatory officials, and the very highest standards must be applied by them in determining approval of the conversion/sale;*
* *A comprehensive and understandable description of any new products to be sold in the Maryland Market by the proposed entity should be made available, because such products will greatly affect access to health care;*
* *The Attorney General should maintain oversight of the charitable assets dedicated to heath care in the future.*

*Be it further resolved that the undersigned organization will educate it members and to its ability the general public and opinion leaders, about the potential ramifications to Maryland Citizens of a conversion to for-profit and sale of CareFirst and other non-profit health plans*

*Organization Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Date. \_\_\_\_\_\_\_\_\_\_\_\_\_*

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**THE INSURANCE COMMISSIONER
SAYS NO**

April 2003
<http://www.lwvmd.org/ELib/lwv-md.html>

In bland and official language, the long awaited decision by Steven B. Larsen, MIA Commissioner, regarding the conversion/sale of CareFirst was made public on March 5. The League had hoped that his original decision date of 2/20, when Mr. Larsen spoke at our Legislative Day luncheon, would have held, but it became another victim of the blizzard which closed Administration offices for three days. Nevertheless, disappointment was mitigated by the stunning and sweeping details of the decision put forth in a lengthy document and at a press conference.

In extraordinarily strong and critical language, Commissioner Larsen condemned the CareFirst Board of Directors, its CEO, Mr. Jews, and other top executives for their overriding interest in personal gain (increment) and their lack of consideration of the original BlueCross BlueShield mission in any of their discussions and/or negotiations -- a mission calling for affordable and accessible health insurance. And that is only part of the CareFirst's behavior which led to the turndown by the Commissioner.

Commissioner Larsen conducted a lengthy and exhaustive consideration of the CareFirst application to convert -- some of it required by statute; some of it in the interest of a complete investigation of evidence indicating possible misconduct. Starting in February 2002, six regional forums for public comment were held around the state. In March and April 2002 two more public hearings were held at which both the public and the principal players in the proposed conversion were heard. In December 2002 and January 2003 two more hearings were held -- each consisting of several days. **The League was present at five of these hearings and gave testimony at three.**

In addition to the hearings, 85,911 pages of documents were received from CareFirst and Wellpoint and reviewed, 219 exhibits were introduced into the public record, 10 subpoenas for testimony and documents were issued.

So after 14 months of uncertainty, startling revelations, and unprecedented legislative outrage (evidenced in the 2002 GA session by bills aimed at making conversion difficult), the Commissioner has spoken. And he has spoken with a thoroughness and authority resulting from his long investigation. The question now goes to the General Assembly which has 90 days to either accept or reject the Commissioner's decision.

It is widely held that the GA will not dispute the Commissioner's decision. However, CareFirst and Wellpoint have the right to appeal his decision in court. They have 30 days in which to decide one way or the other. There has only been one other instance of a BC/BS entity endeavoring to convert and sell and which was opposed by the state. That was in Kansas. The insurance commissioner there ruled against the sale (she was elected governor of Kansas last November), but her decision was appealed and is still in the courts.

**At the moment in Maryland, there are efforts to draft legislation which would revise the mission statement of CareFirst** to be more precise as well as to restructure the governance of CareFirst and require closer oversight. Time is short but the determination of many is strong both in and outside of the legislature. The biggest unknown is Governor Ehrlich. Would he veto such a bill? We do know that he refused to commit himself during his campaign as to whether he opposed or supported the conversion and sale of CareFirst.

Anyone wishing to have complete information about the procedure and decision of Commissioner Larsen may go to[www.mdinsurance.state.md.us](http://www.mdinsurance.state.md.us/%22%20%5Ct%20%22_blank). **The MIA is to be commended for the extensive information they have made available to the public.**