§ 1399.71. Submission of public benefit program

(a) Any nonprofit health care service plan that intends to restructure its activities as defined in subdivision (d) shall, prior to restructuring, secure approval from the director.

(b) Every nonprofit health care service plan that applies to the department to restructure its activities shall submit for approval by the department a public benefit program that identifies activities to be undertaken by the nonprofit health care service plan following restructuring to continue to meet its nonprofit public benefit obligations. The program shall include all information required pursuant to subdivisions (b) and (c) of Section 1399.70.

(c) The director shall apply the requirements of Section 1399.72 to the public benefit program submitted for approval as part of a restructuring proposal submitted pursuant to subdivision (b) of this section. The set-aside requirement in paragraph (1) of subdivision (c) of Section 1399.72 shall apply only to the fair value of the portion of the nonprofit health care service plan involved in the restructuring, as determined by the director.

(d)(1) For the purposes of this section, a "restructuring" or "restructure" by a nonprofit health care service plan means the sale, lease, conveyance, exchange, transfer, or other similar disposition of a substantial amount of a nonprofit health care service plan's assets, as determined by the director, to a business or entity carried on for profit. Nothing in this section shall be construed to prohibit the director from consolidating actions taken by a plan for the purpose of treating the consolidated actions as a restructuring or restructure of the plan.

(2) For the purposes of this section, a "restructuring" or "restructure" by a nonprofit health care service plan shall not include any sales or purchases undertaken in the normal and ordinary course of plan business. The director may request information from the plan to verify that transactions qualify as occurring in the normal and ordinary course of plan business, and are not subject to the requirements of subdivision (e).

(e) Notwithstanding that a transaction or consolidated transactions involve a substantial amount of a nonprofit health care service plan's assets and are not in the normal and ordinary course of plan business, a "restructuring" or "restructure" by a nonprofit health care service plan shall not include any of the following transactions:

(1) Investments in a wholly owned subsidiary of the nonprofit health care service plan in which all of the following occur:

(A) Any profit from the investment will not inure to the benefit of any individual.

(B) The investment is fundamentally consistent with and advances the public benefit, charitable, or mutual benefit purpose of the plan.

(C) The investment does not adversely impact the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(D) No officer or director of the plan has any financial interest constituting a conflict of interest in the investments.

(E) The investment results in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups.

(2) Sales or purchases of plan assets, including interests in wholly owned subsidiaries and in joint ventures, partnerships, and other investments in for-profit entities, in which all of the following occur:

(A) Any profit from the sale will not inure to the benefit of any individual.

(B) The sale or purchase is fundamentally consistent with and advances the public benefit, charitable, or mutual benefit purposes of the plan.

(C) The plan receives all proceeds from the sale.

(D) No officer or director of the plan has any financial interest constituting a conflict of interest in the sale or purchase.

(E) The transaction is conducted at arm's length and for fair market value.

(F) The sale or purchase does not adversely impact the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(3) Investments in or joint ventures and partnerships with a for-profit entity in which all of the following occur:

(A) Any profit will not inure to the benefit of any individual.

(B) The mission or purpose of the investment, joint venture, or partnership is fundamentally consistent with the public benefit, charitable, or mutual benefit purposes of the plan.

(C) No officer or director of the plan has any financial interest constituting a conflict of interest in the investment, joint venture, or partnership.

(D) The transaction is conducted at arm's length and for fair market value.

(E) The investment, joint venture, or partnership furthers the plan's ability to fulfill its public benefit, charitable, or mutual benefit purposes.

(F) The investment, joint venture, or partnership results in the provision of services, goods, or insurance to or for the benefit of the plan or its members, enrollees, or groups.

The sharing of profits or earnings upon a reasonable and equitable basis reflecting the contribution of other participants to the investment, joint venture, or partnership or the success thereof shall not constitute private inurement.

(f) All transactions subject to the exemptions listed in subdivision (e) may not be executed by the plan without the written prior approval of the director. In the application for material modification seeking approval, the plan shall demonstrate that the proposed transaction meets all of the relevant conditions for exemption required by subdivision (e).

(g) Prior to issuing a decision to approve an application for a material modification involving a transaction that is exempt pursuant to subdivision (e), the director shall issue a public notice of the filing of the application and may seek public review and comment on the director's determination that the transaction is exempt under subdivision (e).

(h) The director may approve or deny the material modification request, or approve the request with conditions necessary to satisfy the requirements of

this section, taking into consideration any public comments submitted to the director.

HISTORY:
Added Stats 1995 ch 792 § 1 (SB 445). Amended Stats 1999 ch 525 § 159 (AB 78), effective January 1, 2000, operative July 1, 2000.

§ 1399.72. Approval for conversion from nonprofit to for-profit status

(a) Any health care service plan that intends to convert from nonprofit to for-profit status, as defined in subdivision (b), shall, prior to the conversion, secure approval from the director.

(b) For the purposes of this section, a "conversion" or "convert" by a nonprofit health care service plan means the transformation of the plan from nonprofit to for-profit status, as determined by the director.

(c) Prior to approving a conversion, the director shall find that the conversion proposal meets all of the following charitable trust requirements:

(1) The fair market value of the nonprofit plan is set aside for appropriate charitable purposes. In determining fair market value, the director shall consider, but not be bound by, any market-based information available concerning the plan.

(2) The set-aside shall be dedicated and transferred to one or more existing or new tax-exempt charitable organizations operating pursuant to Section 501(c)(3) (26 U.S.C. Sec. 501(c)(3)) of the federal Internal Revenue Code. The director shall consider requiring that a portion of the set-aside include equity ownership in the plan. Further, the director may authorize the use of a federal Internal Revenue Code Section 501(c)(4) organization (26 U.S.C. Sec. 501(c)(4)) if, in the director's view, it is necessary to ensure effective management and monetization of equity ownership in the plan and if the plan agrees that the Section 501(c)(4) organization will be limited exclusively to these functions, that funds generated by the monetization shall be transferred to the Section 501(c)(3) organization except to the extent necessary to fund the level of activity of the Section 501(c)(4) organization as may be necessary to preserve the organization's tax status, that no funds or other resources controlled by the Section 501(c)(4) organization shall be expended for campaign contributions, lobbying, or other political activities, and that the Section 501(c)(4) organization shall comply with reporting requirements that are applicable to Section 501(c)(3) organizations, and that the 501(c)(4) organization shall be subject to any other requirements imposed upon 501(c)(3) organizations that the director determines to be appropriate.

(3) Each 501(c)(3) or 501(c)(4) organization receiving a set-aside, its directors and officers, and its assets including any plan stock, shall be independent of any influence or control by the health care service plan and its directors, officers, subsidiaries, or affiliates.

(4) The charitable mission and grant-making functions of the charitable organization receiving any set-aside shall be dedicated to serving the health care needs of the people of California.

(5) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall have in place procedures and policies to prohibit

conflicts of interest, including those associated with grant-making activities that may benefit the plan, including the directors, officers, subsidiaries, or affiliates of the plan.

(6) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall demonstrate that its directors and officers have sufficient experience and judgment to administer grant-making and other charitable activities to serve the state's health care needs.

(7) Every 501(c)(3) or 501(c)(4) organization that receives a set-aside under this section shall provide the director and the Attorney General with an annual report that includes a detailed description of its grant-making and other charitable activities related to its use of the set-aside received from the health care service plan. The annual report shall be made available by the director and the Attorney General for public inspection, notwithstanding the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code Title 1 of the Government Code). Each organization shall submit the annual report for its immediately preceding fiscal year within 120 days after the close of that fiscal year. When requested by the director or the Attorney General, the organization shall promptly supplement the report to include any additional information that the director or the Attorney General deems necessary to ascertain compliance with this article.

(8) The plan has satisfied the requirements of this chapter, and a disciplinary action pursuant to Section 1386 is not warranted against the plan.

(d) The plan shall not file any forms or documents required by the Secretary of State in connection with any conversion or restructuring until the plan has received an order of the director approving the conversion or restructuring, or unless authorized to do so by the director.

HISTORY:

Added Stats 1995 ch 792 § 1 (SB 445). Amended Stats 1999 ch 525 § 160 (AB 78), operative July 1, 2000; Stats 2021 ch 615 § 230 (AB 474), effective January 1, 2022, operative January 1, 2023.