

HOUSE BILL 341

Unofficial Copy
C3

2004 Regular Session
(4r0377)

ENROLLED BILL

-- Health and Government Operations/Finance --

Introduced by **Delegate Hurson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 257

1 AN ACT concerning

2 **Regulation and Acquisition of Nonprofit Health ~~Service Plans~~ Entities**

3 FOR the purpose of extending the statute of limitations for a certain time period for
4 certain criminal violations under the Insurance Article; altering the purpose of
5 certain provisions of law relating to nonprofit health service plans; altering
6 certain provisions of law relating to the regulation and acquisition of certain
7 nonprofit health ~~service plans~~; entities; altering the mission of a nonprofit
8 health service plan; altering the manner in which a nonprofit health service
9 plan must develop certain goals, objectives, and strategies; providing that ~~the~~
10 ~~charters, a certain charter and the laws, rules, and regulations of the~~
11 jurisdiction of domicile of a certain ~~entities~~ entity supercede and take precedence
12 over certain requirements under certain circumstances; altering the standards
13 the Maryland Insurance Commissioner must use to issue a certificate of
14 authority; requiring the Commissioner to consider a certain entity's inability to
15 comply with certain requirements in ~~deciding~~ determining whether to issue or
16 renew the certificate of authority of a nonprofit health service plan; altering the
17 applicability of certain statutory requirements for a board of directors of a

1 nonprofit health service plan; requiring certain board members of a nonprofit
 2 health service plan to act in a certain manner ~~consistent with~~ in furtherance of
 3 the mission of a nonprofit health service plan; altering the manner of selecting
 4 board members of certain nonprofit health service plans; altering the actions for
 5 which board approval is required; requiring the Commissioner to adopt certain
 6 regulations; prohibiting certain board members and officers from receiving
 7 certain personal or financial enrichment to the detriment of the nonprofit health
 8 service plan or its mission; including as a principal function of a board of a
 9 nonprofit health service plan the consideration of an independent valuation of a
 10 nonprofit health service plan prior to making a certain other consideration;
 11 specifying the manner in which certain officers of a nonprofit health service
 12 plan must act; providing that a violation of certain provisions of this Act is an
 13 unsound and unsafe business practice; altering a certain provision of law
 14 relating to unsound and unsafe business practices; authorizing the ~~Insurance~~
 15 Commissioner to impose a certain civil penalty against certain officers or
 16 directors who fail to take appropriate action in response to a certain warning;
 17 altering certain provisions of law relating to certain actions by an officer,
 18 director, or employee of a nonprofit health service plan; requiring that an
 19 application for acquisition of a nonprofit health entity include a certain
 20 valuation of the nonprofit health entity and a certain antitrust analysis;
 21 specifying that a certain acquisition is not in the public interest unless certain
 22 steps are taken to ensure that certain assets are spent in a certain manner;
 23 prohibiting a certain regulating entity from making a certain determination
 24 unless certain ~~considerations are made~~ nonprofit health entities have
 25 considered certain risks; defining a certain term; authorizing certain directors of
 26 a certain nonprofit health service plan to serve for a certain additional term until
 27 a certain date; and generally relating to the regulation and acquisition of
 28 nonprofit health service plans certain nonprofit health entities.

29 BY repealing and reenacting, without amendments,
 30 Article - Courts and Judicial Proceedings
 31 Section 5-106(a)
 32 Annotated Code of Maryland
 33 (2002 Replacement Volume and 2003 Supplement)

34 BY adding to
 35 Article - Courts and Judicial Proceedings
 36 Section 5-106(z)
 37 Annotated Code of Maryland
 38 (2002 Replacement Volume and 2003 Supplement)

39 BY repealing and reenacting, with amendments,
 40 Article - Insurance
 41 Section ~~14-115(e)~~ 14-102(a), (c), (d), and (f), 14-110, 14-115(b), (c), and ~~(d)(1),~~
 42 ~~(2), (d)(2) and (11),~~ 14-116(a) and (b), and 14-139(a)
 43 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Insurance

4 Section 14-102(b) and (e) and 14-115(d)(1)

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

7 BY adding to

8 Article - Insurance

9 Section 14-115.1

10 Annotated Code of Maryland

11 (2002 Replacement Volume and 2003 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article - State Government

14 Section 6.5-201(b) and 6.5-301(b) and (e)

15 Annotated Code of Maryland

16 (1999 Replacement Volume and 2003 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 5-106.

21 (a) Except as provided by this section, a prosecution for a misdemeanor shall
22 be instituted within 1 year after the offense was committed.

23 (Z) A PROSECUTION FOR A MISDEMEANOR OFFENSE UNDER TITLE 14 OF THE
24 INSURANCE ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE OFFENSE
25 WAS COMMITTED.

26 **Article - Insurance**

27 14-102.

28 (a) The purpose of this subtitle is:

29 (1) to regulate the formation and operation of nonprofit health service
30 plans in the State; and

31 (2) to promote the formation and existence of nonprofit health service
32 plans in the State that:

33 (i) are committed to a nonprofit corporate structure;

1 (ii) seek to provide individuals, businesses, and other groups with
2 affordable and accessible health insurance; and

3 (iii) recognize a responsibility to contribute to the improvement of
4 the overall health status of [Maryland residents] THE RESIDENTS OF THE
5 JURISDICTIONS IN WHICH THE NONPROFIT HEALTH SERVICE PLANS OPERATE.

6 (b) A nonprofit health service plan that complies with the provisions of this
7 subtitle is declared to be a public benefit corporation that is exempt from taxation as
8 provided by law.

9 (c) The mission of a nonprofit health service plan shall be, IN ACCORDANCE
10 WITH THE CHARTER OF THE NONPROFIT HEALTH SERVICE PLAN, to:

11 (1) provide affordable and accessible health insurance to the plan's
12 insureds and those persons insured or issued health benefit plans by affiliates or
13 subsidiaries of the plan;

14 (2) assist and support public and private health care initiatives for
15 individuals without health insurance; and

16 (3) promote the integration of a [statewide] health care system that
17 meets the health care needs of all [Maryland residents] THE RESIDENTS OF THE
18 JURISDICTIONS IN WHICH THE NONPROFIT HEALTH SERVICE PLAN OPERATES.

19 (d) A nonprofit health service plan:

20 (1) shall develop goals, objectives, and strategies for carrying out, IN
21 ACCORDANCE WITH THE CHARTER OF THE NONPROFIT HEALTH SERVICE PLAN, its
22 statutory mission;

23 (2) beginning on December 1, 2003, and continuing through June 30,
24 2005, shall report quarterly, for the preceding quarter, to the Joint Nonprofit Health
25 Service Plan Oversight Committee on the nonprofit health service plan's compliance
26 with the provisions of this subtitle; and

27 (3) shall provide to the Joint Nonprofit Health Service Plan Oversight
28 Committee any other information necessary for the Committee to meet the goals
29 outlined under § 2-10A-08 of the State Government Article.

30 (e) On or before December 1, 2005, and annually thereafter, the Commissioner
31 shall report to the Governor and, in accordance with § 2-1246 of the State
32 Government Article, the Senate Finance Committee and the House Health and
33 Government Operations Committee, on the compliance of a nonprofit health service
34 plan subject to § 14-115(d) of this subtitle with the provisions of this subtitle.

35 (f) (1) [This] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS
36 section applies to:

1 [(1)] (I) a nonprofit health service plan that is issued a certificate of
 2 authority in the State, whether or not organized under the laws of the State; and

3 [(2)] (II) an insurer or a health maintenance organization, whether or
 4 not organized as a nonprofit corporation, that is wholly owned or controlled by a
 5 nonprofit health service plan that:

6 1. is issued a certificate of authority in the State; AND

7 2. DOES BUSINESS IN THE STATE.

8 (2) TO THE EXTENT THAT THE LEGISLATIVELY ENACTED CHARTER OF
 9 AN ENTITY SUBJECT TO THIS SECTION, OR THE LAWS OR ADMINISTRATIVE RULES OR
 10 REGULATIONS OF THE JURISDICTION OF DOMICILE OF AN ENTITY SUBJECT TO THIS
 11 SECTION, PROHIBIT THE ENTITY FROM COMPLYING WITH A REQUIREMENT OF
 12 SUBSECTION (C) OF THIS SECTION, THE LEGISLATIVELY ENACTED CHARTER, LAWS,
 13 AND ADMINISTRATIVE RULES AND REGULATIONS OF THE JURISDICTION OF
 14 DOMICILE SHALL SUPERCEDE AND TAKE PRECEDENCE OVER THE REQUIREMENT OF
 15 SUBSECTION (C) OF THIS SECTION.

16 14-110.

17 (a) The Commissioner shall issue a certificate of authority to an applicant if:

18 (1) the applicant has paid the applicable fee required by § 2-112 of this
 19 article; and

20 (2) the Commissioner is satisfied:

21 (i) that the applicant has been organized in good faith for the
 22 purpose of establishing, maintaining, and operating a nonprofit health service plan
 23 that:

24 1. is committed to a nonprofit corporate structure;

25 2. in accordance with the charter of the nonprofit health
 26 service plan, seeks to provide affordable and accessible health insurance; and

27 3. IN ACCORDANCE WITH THE CHARTER OF THE NONPROFIT
 28 HEALTH SERVICE PLAN, recognizes a responsibility to contribute to the improvement
 29 of the overall health status of [Maryland residents] THE RESIDENTS OF THE
 30 JURISDICTIONS IN WHICH IT OPERATES;

31 (ii) that:

32 1. each contract executed or proposed to be executed by the
 33 applicant and a health care provider to furnish health care services to subscribers to
 34 the nonprofit health service plan, obligates or, when executed, will obligate each
 35 health care provider party to the contract to render the health care services to which

1 (2) (I) The board and its individual members are fiduciaries and shall
2 act:

3 [(i)] 1. in good faith;

4 [(ii)] 2. in a manner that is reasonably believed to be in the best
5 interests of the corporation and its controlled affiliates or subsidiaries that offer
6 health benefit plans;

7 [(iii)] 3. [in a manner that is reasonably believed to be in
8 furtherance of the corporation's nonprofit mission] IN A MANNER THAT IS
9 ~~CONSISTENT WITH THE MISSION OF~~ REASONABLY BELIEVED TO BE IN
10 FURTHERANCE OF THE MISSION OF THE CORPORATION AS A NONPROFIT HEALTH
11 SERVICE PLAN AS REQUIRED UNDER § 14-102(C) OF THIS SUBTITLE; and

12 [(iv)] 4. with the care that an ordinarily prudent person in a like
13 position would use under similar circumstances.

14 (II) ~~EXCEPT IN CONFORMITY WITH THIS SECTION,~~ THE BOARD AND
15 ITS INDIVIDUAL MEMBERS MAY NOT USE BOARD MEMBERSHIP FOR PERSONAL OR
16 FINANCIAL ENRICHMENT TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE
17 PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.

18 (3) The principal functions of the board shall include:

19 (i) ensuring that the corporation effectively carries out the
20 nonprofit mission established under § 14-102(c) of this subtitle;

21 (ii) selecting corporate management and evaluating its
22 performance;

23 (iii) ensuring to the extent practicable that human resources and
24 other resources are sufficient to meet corporate objectives;

25 (iv) subject to the provisions of subsection (d) of this section,
26 nominating and selecting suitable candidates for the board; [and]

27 (v) establishing a system of governance at the board level,
28 including an annual evaluation of board performance; AND

29 (VI) BEFORE CONSIDERING ANY BID OR OFFER TO ACQUIRE THE
30 NONPROFIT HEALTH SERVICE PLAN AND TO CONVERT TO A FOR-PROFIT ENTITY
31 UNDER TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE, ENSURING THAT ADEQUATE
32 CONSIDERATION IS GIVEN TO AN INDEPENDENT VALUATION OF THE NONPROFIT
33 HEALTH SERVICE PLAN.

34 (4) Each member of the board shall demonstrate a commitment to the
35 mission of the nonprofit health service plan AS REQUIRED BY § 14-102(C) OF THIS
36 SUBTITLE.

1 (5) An officer or employee of a nonprofit health service plan or any of its
2 affiliates or subsidiaries may not be appointed or elected to the board.

3 (6) A nonprofit health service plan is subject to the provisions of § 2-419
4 of the Corporations and Associations Article.

5 (d) (1) This subsection applies to a corporation that is:

6 (i) issued a certificate of authority as a nonprofit health service
7 plan; and

8 (ii) the sole member of a corporation issued a certificate of
9 authority as a nonprofit health service plan.

10 (2) The board shall be composed of no more than 23 members, including:

11 (i) one nonvoting member, who is not a member of the Maryland
12 General Assembly, appointed by and serving at the pleasure of the President of the
13 Senate of Maryland;

14 (ii) one nonvoting member, who is not a member of the Maryland
15 General Assembly, appointed by and serving at the pleasure of the Speaker of the
16 House of Delegates; and

17 (iii) 21 members selected by the board, IN ACCORDANCE WITH THE
18 BYLAWS OF THE CORPORATION, including two consumer members, who satisfy the
19 requirements of paragraphs (13), (14), and (15) of this subsection.

20 (11) (i) [Board approval is required for] THE BOARD SHALL APPROVE
21 IN ADVANCE any action by the nonprofit health service plan, a corporation for which
22 the plan is the sole member, or any affiliate or subsidiary of the nonprofit health
23 service plan to:

24 ~~1.~~ modify benefit levels;

25 ~~2.~~ materially modify provider networks or provider
26 reimbursement;

27 ~~3.~~ modify underwriting guidelines;

28 ~~4.~~ modify rates or rating plans;

29 ~~5.~~ withdraw a product or withdraw from a line or type of
30 business or geographic region; or

31 ~~6.~~ impact the availability or affordability of health care in
32 the State.

33 ~~1.~~ MATERIALLY MODIFY OPTIONS AVAILABLE IN BENEFIT
34 PLANS MARKETED IN THE STATE;

1 ~~2. MATERIALLY MODIFY MARYLAND PROVIDER NETWORKS~~
 2 ~~OR MARYLAND PROVIDER REIMBURSEMENT LEVELS;~~

3 ~~3. MATERIALLY MODIFY UNDERWRITING GUIDELINES FOR~~
 4 ~~PRODUCTS MARKETED IN THE STATE;~~

5 ~~4. MATERIALLY MODIFY RATES OR RATING PLANS THAT ARE~~
 6 ~~REQUIRED TO BE APPROVED BY THE COMMISSIONER;~~

7 ~~5. WITHDRAW:~~

8 ~~A. A PRODUCT FROM THE MARYLAND MARKET;~~

9 ~~B. FROM A LINE OR TYPE OF BUSINESS; OR~~

10 ~~C. FROM A GEOGRAPHIC REGION IN THE STATE;~~

11 ~~6. MATERIALLY MODIFY MARKETING GOALS AND~~
 12 ~~OBJECTIVES IN THE STATE; OR~~

13 ~~7. MATERIALLY IMPACT THE AVAILABILITY OR~~
 14 ~~AFFORDABILITY OF HEALTH CARE IN THE STATE.~~

15 ~~1. [modify benefit levels] MATERIALLY MODIFY OPTIONS~~
 16 ~~AVAILABLE IN BENEFIT PLANS MARKETED IN THE STATE;~~

17 ~~2. materially modify MARYLAND provider networks or~~
 18 ~~MARYLAND provider reimbursement LEVELS;~~

19 ~~3. MATERIALLY modify underwriting guidelines FOR~~
 20 ~~PRODUCTS MARKETED IN THE STATE;~~

21 ~~4. MATERIALLY modify rates or rating plans THAT ARE~~
 22 ~~REQUIRED TO BE APPROVED BY THE COMMISSIONER;~~

23 ~~5. ADD A PRODUCT TO OR withdraw a product FROM THE~~
 24 ~~MARYLAND MARKET, [or] withdraw from a line or type of business IN THE STATE, or~~
 25 ~~WITHDRAW FROM A geographic region IN THE STATE; [or]~~

26 ~~6. MATERIALLY MODIFY MARKETING GOALS AND~~
 27 ~~OBJECTIVES IN THE STATE; OR~~

28 ~~[6.] 7. MATERIALLY impact the availability or affordability~~
 29 ~~of health care in the State.~~

30 ~~(II) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT~~
 31 ~~DEFINE "MATERIAL" FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.~~

32 ~~[(ii)] (III) A decision by the board to convert to a for profit entity~~
 33 ~~under Title 6.5 of the State Government Article may be rejected by any three~~
 34 ~~members of the board.~~

1 [(iii)] (IV) The board may delegate approval for the actions listed in
 2 subparagraph (i) of this paragraph to a standing committee of the board.

3 14-115.1.

4 (A) IN THIS SECTION, "OFFICER" MEANS ANY OFFICER THAT A MARYLAND
 5 CORPORATION IS REQUIRED OR PERMITTED TO HAVE UNDER § 2-412 OF THE
 6 CORPORATIONS AND ASSOCIATIONS ARTICLE.

7 (B) (1) AN OFFICER OF A NONPROFIT HEALTH SERVICE PLAN SHALL ACT:

8 (I) IN GOOD FAITH;

9 (II) IN A MANNER THAT IS REASONABLY BELIEVED TO BE IN THE
 10 BEST INTERESTS OF THE CORPORATION AND ITS CONTROLLED AFFILIATES OR
 11 SUBSIDIARIES THAT OFFER HEALTH BENEFIT PLANS;

12 (III) IN A MANNER THAT IS CONSISTENT WITH THE MISSION OF A
 13 NONPROFIT HEALTH SERVICE PLAN AS REQUIRED UNDER § 14-102(C) OF THIS
 14 SUBTITLE; AND

15 (IV) WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A
 16 LIKE POSITION WOULD USE UNDER SIMILAR CIRCUMSTANCES.

17 (2) EXCEPT FOR THE RECEIPT OF REASONABLE REMUNERATION IN
 18 CONFORMITY WITH § 14-139 OF THIS SUBTITLE, AN OFFICER OF A NONPROFIT
 19 HEALTH SERVICE PLAN MAY NOT USE THE POSITION OF OFFICER FOR PERSONAL OR
 20 FINANCIAL ENRICHMENT ~~TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE~~
 21 ~~PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.~~

22 (3) A VIOLATION OF THIS SUBSECTION SHALL BE CONSIDERED AN
 23 UNSOUND OR UNSAFE BUSINESS PRACTICE UNDER § 14-116 OF THIS SUBTITLE.

24 14-116.

25 (a) (1) In this section, "unsound or unsafe business practice" means a
 26 business practice that:

27 (i) is detrimental to the financial condition of a nonprofit health
 28 service plan and does not conform to sound industry practice;

29 (ii) impairs the ability of a nonprofit health service plan to pay
 30 subscriber benefits; or

31 (iii) violates § 14-102, § 14-115, ~~14-115.1~~ § 14-115.1, or § [14-139(c)]
 32 14-139(A), (B), OR (C) of this subtitle.

33 (2) "Unsound or unsafe business practice" includes:

34 (i) failing to comply with the notice requirements of § 14-119 of
 35 this subtitle;

1 (ii) willfully hindering an examination of a nonprofit health service
2 plan or its affiliates or subsidiaries; and

3 (iii) failure of a director to attend at least 65% of the meetings of the
4 board during a period of 12 consecutive months.

5 (b) (1) If the Commissioner believes that an officer or director of a nonprofit
6 health service plan has engaged in an unsound or unsafe business practice, the
7 Commissioner shall send a warning to that individual.

8 (2) IF THE COMMISSIONER BELIEVES THAT AN OFFICER OR DIRECTOR
9 OF A NONPROFIT HEALTH SERVICE PLAN HAS FAILED TO TAKE APPROPRIATE
10 ACTION IN RESPONSE TO A WARNING RECEIVED UNDER PARAGRAPH (1) OF THIS
11 SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING
12 \$125,000 FOR EACH WARNING.

13 [(2)] (3) The Commissioner shall send a copy of the warning OR, IF A
14 CIVIL PENALTY IS IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COPY OF
15 THE ORDER:

16 (i) by certified mail, return receipt requested, bearing a postmark
17 from the United States Postal Service, to each director of the nonprofit health service
18 plan; and

19 (ii) if the nonprofit health service plan is a corporation incorporated
20 in a state other than this State, to the insurance commissioner of the state in which
21 the corporation is incorporated.

22 14-139.

23 (a) An officer, director, or employee of a corporation operating under this
24 subtitle may not:

25 (1) willfully violate a provision of this article or a regulation adopted
26 under this article;

27 (2) willfully misrepresent or conceal a material fact in a statement,
28 report, record, or communication [submitted] PROVIDED to the Commissioner;

29 (3) willfully misrepresent OR CONCEAL a material fact to the board of
30 directors;

31 (4) misappropriate or fail to account properly for money that belongs to
32 the corporation, an insurer, insurance producer, subscriber, or certificate holder;

33 (5) engage in fraudulent or dishonest practices in connection with the
34 provision or administration of a health service plan;

35 (6) willfully fail to produce records or allow an examination under §
36 14-125 of this subtitle; or

1 (7) willfully fail to comply with a lawful order of the Commissioner.

2 **Article - State Government**

3 6.5-201.

4 (b) An application shall include:

5 (1) the name of the transferor;

6 (2) the name of the transferee;

7 (3) the names of any other parties to the acquisition agreement;

8 (4) the terms of the proposed acquisition, including the sale price;

9 (5) a copy of the acquisition agreement;

10 (6) a financial and community impact analysis report from an
11 independent expert or consultant that addresses the criteria in § 6.5-301 of this title;
12 [and]

13 (7) AN INDEPENDENT VALUATION OF THE NONPROFIT HEALTH
14 ~~SERVICE PLAN ENTITY~~ THAT WAS OBTAINED PRIOR TO THE CONSIDERATION OF ANY
15 BID OR OFFER TO ACQUIRE THE ~~HEALTH CARE~~ NONPROFIT HEALTH ENTITY;

16 (8) AN ANTITRUST ANALYSIS PREPARED BY AN APPROPRIATE EXPERT;
17 AND

18 [(7)] (9) any other documents related to the acquisition.

19 6.5-301.

20 (b) An acquisition is not in the public interest unless appropriate steps have
21 been taken to:

22 (1) ensure that the value of public or charitable assets is safeguarded;

23 (2) ENSURE THAT THE VALUE OF PUBLIC OR CHARITABLE ASSETS IS
24 SPENT IN A MANNER THAT CORRESPONDS WITH THE POTENTIAL RISK ASSOCIATED
25 WITH ~~AN~~ THE ACQUISITION;

26 [(2)] (3) ensure that:

27 (i) the fair value of the public or charitable assets of a nonprofit
28 health service plan or a health maintenance organization will be distributed to the
29 Maryland Health Care Foundation that was established in § 20-502 of the Health -
30 General Article; or

1 (ii) 1. 40% of the fair value of the public or charitable assets of a
2 nonprofit hospital will be distributed to the Maryland Health Care Foundation that
3 was established in § 20-502 of the Health - General Article; and

4 2. 60% of the fair value of the public or charitable assets of a
5 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
6 that is:

7 A. dedicated to serving the unmet health care needs of the
8 affected community;

9 B. dedicated to promoting access to health care in the
10 affected community;

11 C. dedicated to improving the quality of health care in the
12 affected community; and

13 D. independent of the transferee;

14 [(3)] (4) ensure that no part of the public or charitable assets of the
15 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
16 health entity; and

17 [(4)] (5) ensure that no officer, director, or trustee of the nonprofit
18 health entity receives any immediate or future remuneration as the result of an
19 acquisition or proposed acquisition except in the form of compensation paid for
20 continued employment with the acquiring entity.

21 (e) (1) In determining whether an acquisition is in the public interest, the
22 appropriate regulating entity shall consider:

23 [(1)] (I) whether the transferor exercised due diligence in deciding to
24 engage in an acquisition, selecting the transferee, and negotiating the terms and
25 conditions of the acquisition;

26 [(2)] (II) the procedures the transferor used in making the decision,
27 including whether appropriate expert assistance was used;

28 [(3)] (III) whether any conflicts of interest were disclosed, including
29 conflicts of interest of board members, executives, and experts retained by the
30 transferor, transferee, or any other parties to the acquisition;

31 [(4)] (IV) whether the transferor will receive fair value for its public or
32 charitable assets;

33 [(5)] (V) whether public or charitable assets are placed at unreasonable
34 risk if the acquisition is financed in part by the transferor;

1 [(6)] (VI) whether the acquisition has the likelihood of creating a
 2 significant adverse effect on the availability or accessibility of health care services in
 3 the affected community;

4 [(7)] (VII) whether the acquisition includes sufficient safeguards to ensure
 5 that the affected community will have continued access to affordable health care; and

6 [(8)] (VIII) whether any management contract under the acquisition is for
 7 fair value.

8 (2) IN DETERMINING WHETHER A ~~HEALTH CARE NONPROFIT HEALTH~~
 9 ENTITY HAS EXERCISED DUE DILIGENCE AS REQUIRED UNDER PARAGRAPH (1)(I) OF
 10 THIS SUBSECTION, THE APPROPRIATE REGULATING ENTITY MAY NOT DETERMINE
 11 THAT DUE DILIGENCE WAS EXERCISED UNLESS THE ~~HEALTH CARE NONPROFIT~~
 12 HEALTH ENTITY CONSIDERED THE RISKS OF AN ACQUISITION, INCLUDING
 13 WHETHER AN ACQUISITION:

14 (I) WOULD RESULT IN DISECONOMIES OF SCALE; OR

15 (II) WOULD VIOLATE FEDERAL OR STATE ANTITRUST LAWS.

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (a) notwithstanding the term limitations established under § 14-115(e)(6) of
 18 the Insurance Article, an individual who is a Class I director of a board of a domestic
 19 nonprofit health service plan that is subject to § 14-115 of the Insurance Article and
 20 who was appointed to the board prior to December 31, 2003 and subsequently
 21 reappointed to the board for a 1-year term on January 1, 2004 as the representative of
 22 a foreign nonprofit health service plan of which the domestic nonprofit health service
 23 plan is the sole member, may serve on the board of the domestic nonprofit health
 24 service plan for an additional 1-year term until December 31, 2005;

25 (b) any replacement of a Class I director described in subsection (a) of this
 26 section, and any other individual who is elected to the board of a domestic nonprofit
 27 health service plan that is subject to § 14-115 of the Insurance Article, shall be subject
 28 to the term limitations established under § 14-115(e)(6) of the Insurance Article; and

29 (c) the provisions of subsection (a) of this section shall be limited to and affect
 30 no more than two of the Class I directors described in subsection (a) of this section.

31 ~~SECTION 2. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
 32 effect June 1, 2004.

