

Article - Insurance

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§14–139.

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

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

(2) willfully misrepresent or conceal a material fact in a statement, report, record, or communication provided to the Commissioner;

(3) willfully misrepresent or conceal a material fact to the board of directors;

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

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

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

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

(b) An officer, director, or trustee of a corporation operating under this subtitle may not receive any immediate or future remuneration as the result of an acquisition or proposed acquisition, as defined under § 6.5-101 of the State Government Article, except in the form of compensation paid for continued employment with the company or acquiring entity.

(c) A director, trustee, officer, executive, or employee of a corporation operating under this subtitle may only approve or receive from the assets of the corporation fair and reasonable compensation in the form of salary, bonuses, or perquisites for work actually performed for the benefit of the corporation.

(d) (1) The compensation committee of the board shall:

(i) identify nonprofit health service plans in the United States that are similar in size and scope to the nonprofit health service plan managed by the board; and

(ii) develop proposed guidelines, for approval by the board:

1. for compensation, including salary, bonuses, and

perquisites, of all officers and executives that is reasonable in comparison to compensation for officers and executives of similar nonprofit health service plans; and

2. for compensation for board members that is reasonable in comparison to compensation for board members of similar nonprofit health service plans.

(2) The board shall review the proposed guidelines at least annually.

(3) The board shall:

(i) provide a copy of the approved guidelines:

1. to each officer and executive of the nonprofit health service plan;

2. to each candidate for an officer or executive position with the nonprofit health service plan;

3. to each board member of the nonprofit health service plan; and

4. on or before September 1, 2004, and annually thereafter, to the Commissioner; and

(ii) adhere to the approved guidelines in compensating the officers, executives, and board members of the nonprofit health service plan.

(4) On an annual basis, the Commissioner shall review:

(i) the compensation paid by the nonprofit health service plan to each officer and executive; and

(ii) the base compensation and compensation for attendance at meetings paid by the nonprofit health service plan to board members.

(5) If the Commissioner finds that the compensation exceeds the amount authorized under the approved guidelines, the Commissioner shall issue an order prohibiting payment of the excess amount.

(e) The approval or receipt of remuneration in violation of an order issued under subsection (d)(5) of this section is a violation of § 14-115(c) of this subtitle and shall be considered an unsound or unsafe business practice under § 14-116 of this subtitle.

(f) (1) Except for an employee under subsection (c) of this section, a person that violates subsection (a) or (c) of this section is subject to a civil penalty not exceeding \$10,000 for each violation.

(2) Instead of or in addition to imposing a civil penalty, the Commissioner

may require the violator to make restitution to any person that has suffered financial injury as a result of the violation.

(g) In determining the amount of financial penalty to be imposed, the Commissioner shall consider:

- (1) the seriousness of the violation;
- (2) the good faith of the violator;
- (3) the violator's history of previous violations;
- (4) the deleterious effect of the violation on the public and the nonprofit health service industry; and
- (5) the assets of the violator.

(h) (1) Before assessing a civil penalty or restitution, the Commissioner shall serve by certified mail, return receipt requested, on the person to be charged a notice that contains:

- (i) the specifications of the charge; and
- (ii) the time and place of a hearing to be held on the charges.

(2) The Commissioner shall hold a hearing on the charges at least 20 days after the date of mailing the notice.

(3) The Commissioner or designee of the Commissioner shall conduct a hearing on the charges in accordance with Title 2, Subtitle 2 of this article.

(4) Subject to Title 2, Subtitle 2 of this article, an appeal may be taken from a final order of the Commissioner to the Circuit Court for Baltimore City.

(i) In addition to any other penalty or remedy under this section, a person that is found to have gained financially from a violation of a provision of this article or a regulation adopted by the Commissioner shall forfeit the gain.

(j) This section does not prevent a person damaged by a director, officer, manager, employee, or agent of a corporation subject to this subtitle from bringing a separate action in a court of competent jurisdiction.

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