SB 400 Fav.pdf
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 7th, 2024
The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 400: *Corporations and Associations – Definitions, Emergencies, and Outstanding Stock – Revisions*

Dear Chairman Smith and Members of the Committee,

Senate Bill 400 is the annual bill to clean up and tweak Maryland's corporation laws. As usual, it is brought to us by the Business Law Section of the Maryland State Bar Association. As we have in years past, Senators Waldstreicher and I are pleased to sponsor the bill this year.

Senate Bill 400 has four components. By far the most important component addresses the situation that could arise when a "catastrophic" event occurs which makes it impossible for a quorum of the board of directors of a corporation to be readily assembled. New language is added to the Corporations and Associations Article that addresses three scenarios.

First, the bill authorizes bylaws to be enacted in advance of an emergency containing provisions necessary for managing the company during the emergency and states that any corporate acts taken in good faith during the emergency in accordance with the emergency provisions will bind the corporation and will protect the directors and officers of the corporation from lawsuits premised on the contention that they acted beyond the scope of their authority.

Second, the bill addresses situations in which emergency bylaws had not been enacted prior to the emergency and provides for meetings of the directors and stockholders to be convened with whatever directors and stockholders can be assembled. Once again, the bill states that corporate acts taken in good faith in such circumstances will bind the corporation.

The other three components of the bill are minor technical tweaks to the existing law. The bill clarifies the timing of when shares of stock are no longer deemed to be outstanding. It permits a limited partnership to serve as a resident agent for Maryland business entities. Finally, it clarifies the requirements for principal offices of limited liability companies and limited partnerships.

I appreciate the Committee's consideration of Senate Bill 400 and will be happy to answer any questions the Committee may have.

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2024 REPORT OF THE COMMITTEE ON CORPORATION LAW
OF THE SECTION ON BUSINESS LAW OF THE MARYLAND STATE BAR ASSOCIATION
WITH RESPECT TO

SENATE BILL 400
"CORPORATIONS AND ASSOCIATIONS – DEFINITIONS, EMERGENCIES, AND OUTSTANDING STOCK - REVISIONS"

I. INTRODUCTION AND BACKGROUND

The Committee on Corporation Law of the Section on Business Law of the Maryland State Bar Association monitors the Maryland General Corporation Law, the Maryland REIT Law, and the application and utility of other Maryland business-related laws. To that end, the Committee on Corporation Law regularly proposes "Miscellaneous" Bills relating to corporations and REITs and, on occasion, Bills on specific topics to the General Assembly of the State of Maryland.

This Session's "MGCL-Miscellaneous" Bill, SB 400, the "Corporations and Associations – Definitions, Emergencies, and Outstanding Stock – Revisions" Bill, which has been cross-filed in the House as HB 749, addresses several revisions and clarifications.

OUR COMMITTEE IS <u>FAVORABLE</u> IN SUPPORT OF SB 400.

II. "CORPORATIONS AND ASSOCIATIONS - REVISIONS" PROPOSALS

<u>Authorizing that a Corporation May Adopt Emergency Bylaw Provisions</u>

New Section 2-116 would provide statutory authority to adopt bylaw provisions to be effective during an emergency that exists because of a catastrophic event[1]. Notwithstanding the absence of explicit statutory authority to do so prior to new Section 2-116[2], many Maryland corporations and Title 8 REITs include emergency bylaw provisions in their existing bylaws in order

[1] Consistent with the Model Business Corporation Act, the term "catastrophic event" is intentionally not defined in new Sections 2-116, 2-117 or 2-118. The Committee proposes that the legislative history include guidance that a "catastrophic event" could be of a widespread or company-specific nature, such as a nuclear or atomic disaster, a cyberattack, an epidemic or pandemic, a mass-casualty event, or an event that gives rise to a declaration of a state of emergency by the United States or by a state government.

[2] Maryland corporations with existing emergency bylaw provisions rely on the language in Section 2-110 of the MGCL stating that bylaws may contain any provisions not inconsistent with law or the charter of the corporation.

to ensure continuity of responsibility and functioning of boards of directors during an emergency whereby it may be more difficult to call meetings of the board, achieve quorum requirements for a meeting, or otherwise meet approval thresholds for board action.

The emergency bylaw provisions may, for example, provide for the designation of officers or other persons to be designated as directors during the emergency. To encourage corporations to adopt emergency bylaw provisions, new Section 2-116(d) broadly validates all corporate actions taken "in good faith" pursuant to the emergency bylaw provisions and immunizes all directors, officers, employees, and agents of the corporation from liability as a result of such actions.

The phrase "corporate act taken in good faith and in accordance with the emergency bylaw provisions" intentionally lessens the standard of conduct for directors set forth in Section 2-405.1 of the MGCL to a more easily understood and applied "good faith" standard. The Committee on Corporation Law feels that directors, officers, employees, and agents may be more willing to act during an emergency, and with more expediency, if they are immune from liability as a result of such actions, by simply acting in good faith. Notwithstanding the lessened standard, new Section 2-116(e) permits a corporation to apply the heightened Section 2-405.1 standard of conduct on directors that may act pursuant to the emergency bylaw provisions by including an affirmative statement in the emergency bylaw provisions stating that such standard shall apply to directors during an emergency.

A corporation that does not adopt emergency bylaw provisions under new Section 2-116 may nevertheless exercise the powers described in new Sections 2-117 and 2-118 in the event of an emergency.

Authorizing that a Corporation May Exercise
Certain Powers During an Emergency

New Sections 2-117 and 2-118, which should be read in conjunction with new Section 2-116, would provide statutory power for limited corporate acts during an emergency even though a corporation may not have adopted emergency bylaw provisions.

New Section 2-117(b) provides that, during an emergency, notice of a meeting of the board of directors may be given in any practicable manner, to only those directors whom it is practicable to reach in the circumstances, and with shorter advance notice as is reasonable in the circumstances. New Sections 2-118(b) and (c) provide further relief during an emergency for meetings of stockholders with respect to notice requirements, attendance by remote communication, and postponement of a meeting of stockholders.

Similar to new Section 2-116(d), new Sections 2-117(c) and 2-118(d) broadly validate all corporate actions taken "in good faith" during an emergency and in accordance with new Sections 2-117 and 2-118 and immunizes all directors, officers, employees, and agents of the corporation from liability as a result of such actions.

New Sections 2-116, 2-117, and 2-118 do not limit powers that otherwise exist in the absence of an emergency.

The amendment to Section 8-601.1 of Title 8 (which applies to real estate investment trusts) provides that new Sections 2-116, 2-117, and 2-118 would also apply to Title 8 REITs.

Clarifying When Stock Being Redeemed or Repurchased by a Corporation Shall No Longer Be Outstanding

By adding new Section 2-310(a)(4), the Committee on Corporation Law desires to clarify the timing of when shares of stock are no longer deemed to be outstanding following a redemption or repurchase of the shares of stock by a corporation. Under new Section 2-310(a)(4), unless the charter of a corporation provides otherwise, once the corporation has either paid for the shares of stock or set aside sufficient funds for the benefit of the holder of the shares of stock in accordance with a redemption right set forth in the charter of the corporation or pursuant to a duly adopted repurchase plan binding on the stockholder, the shares of stock redeemed or repurchased by the corporation cease to be outstanding. Current Section 2-310(a) permits a corporation to acquire its shares of stock and provides that when so acquired shares of stock become authorized but unissued shares. However, the MGCL does not currently expressly provide for the timing of when shares of stock acquired by a corporation are deemed to no longer be outstanding. Similar provisions are often included in charters of Maryland corporations and, to the extent an existing charter provision differs from new Section 2-310(a)(4), the existing charter provision would control. In addition, a similar provision is currently included in Section 160(d) of the Delaware General Corporation Law.

Other Clarifications and Changes

SB 400 also provide several other clarifications and changes, including the following:

- Permitting a limited partnership to also serve as a resident agent for a Maryland corporation and other Maryland entities.
- Clarifying the requirements for principal offices for limited liability companies and limited liability partnerships, which are addressed in title 4A and in Title 9, but not in the existing definition in Section 1-101(w).

Respectfully submitted,

MSBA Section of Business Law, Committee on Corporation Law

William E. Carlson, Chair
Scott R. Wilson, Vice Chair

February 6, 2024

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Uploaded by: Jason Caplan
Position: INFO

February 8, 2024

The Honorable Chair Joseline A. Peña-Melnyk ,
Chair, Health and Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401

RE: House Bill 400-Maryland Medical Assistance Program and Health Insurance - Annual Behavioral Health Wellness Visits - Coverage and Reimbursement – Letter of Information

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of information for House Bill (HB) 400 - Maryland Medical Assistance Program and Health Insurance - Annual Behavioral Health Wellness Visits - Coverage and Reimbursement.

HB 400 will require the Maryland Medical Assistance Program (Medicaid) including Managed Care Organizations (MCOs), Insurers and Non-Profit Health Service Plans, and Health Maintenance Organizations to provide coverage for annual behavioral health wellness visits beginning in July 1, 2025, and to provide the same reimbursement irrespective of whether the assessment results in a behavioral health diagnosis.

More than one in five US adults live with a mental illness.[1] Currently, in Maryland, 23 out of 24 jurisdictions are wholly or partly designated as Geographic or Population-Based Health Professional Shortage Areas for Mental Health, meaning there is a lack of health care providers to meet the health care needs of that population.[2] Screening in adults (including pregnant and postpartum women), older adults, and children for behavioral health conditions is recommended by the United States Preventive Services Task Force.[3] Primary care providers can play a crucial role in behavioral health screening as a first point of contact and trusted provider, thereby improving quality of life, reducing complications from co-occurring behavioral health and medical comorbidities, and reducing stigma.[4][5]

In Maryland, Medicaid covers primary behavioral health services through its HealthChoice MCOs, as required in Code of Maryland Regulations (COMAR) 10.67.06.26. Periodic behavioral health screenings

[1] Centers for Disease Control and Prevention. (2023). Mental Health: Data and Publications. Retrieved from https://www.cdc.gov/mentalhealth/learn/index.htm

[2] Health Workforce Shortage Areas (2024). Internet website accessed February 6, 2024: https://data.hrsa.gov/topics/health-workforce/shortage-areas

[3] United States Preventive Services Task Force (2023). Recommendations. Internet website accessed January 30, 2024.https://www.uspreventiveservicestaskforce.org/uspstf/topic_search_results?topic_status=P&category%5B%5D=17&type%5B%5D=5&searchterm=

[4] Mulvaney-Day N, Marshall T, Downey Piscopo K, Korsen N, Lynch S, Karnell LH, Moran GE, Daniels AS, Ghose SS. Screening for Behavioral Health Conditions in Primary Care Settings: A Systematic Review of the Literature. J Gen Intern Med. 2018 Mar;33(3):335-346. doi: 10.1007/s11606-017-4181-0. Epub 2017 Sep 25.

[5] Celli E. Horstman, Sara Federman, and Reginald D. Williams II, "Integrating Primary Care and Behavioral Health to Address the Behavioral Health Crisis" (explainer), Commonwealth Fund, Sept. 15, 2022. **https://doi.org/10.26099/eatz-wb65**

are required for children through age 20 as part of the Early and Periodic Screening, Diagnostic, and Treatment guidelines. Early and periodic screening in Maryland's Healthy Kids Program is reimbursed by the MCOs and Fee-For-Service for assessment and referral purposes. When a screening identifies a behavioral health need that may require specialty care, a referral to specialty mental health or substance use disorder services may occur as a result.

Screening, Brief Intervention, and Referral to Treatment (SBIRT) services are also covered by Maryland Medicaid as a primary behavioral health service. SBIRT services aim to identify and provide brief treatment to individuals with non-dependent substance use prior to the development of a substance use disorder. The Department reimburses separately for the screening and intervention components of SBIRT based on the time needed by the provider. This compensation model was requested by stakeholders as part of meetings with the Department in 2016.

Additionally, Senate Bill 101 (2023), expanded coverage for evidence-based collaborative care model services to all Medicaid participants. Primary care provider led teams of qualified professionals are eligible to receive reimbursement for collaborative care model services. These teams include a primary care provider, a behavioral health care manager, and a psychiatric consultant. The collaborative care model is a patient-centered, evidence based approach for integrating physical and behavioral health services in primary care settings that includes care coordination and management; regular, systematic monitoring and treatment using a validated clinical rating scale; and regular, systematic psychiatric caseload reviews and consultation for patients who do not show clinical improvement.

In short, Maryland Medicaid currently provides coverage for behavioral health screenings in a variety of ways and in a variety of settings.

If you have any further questions, please contact Sarah Case-Herron, Director, Office of Governmental Affairs at sarah.case-herron@maryland.gov.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary