

CF 7r0692

By: Delegates Morhaim, Hurson, and Hammen

Introduced and read first time: January 31, 1997

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Acquisition of Nonprofit Health Entities**

3 FOR the purpose of prohibiting a person from engaging in an acquisition of a nonprofit
4 health entity without the approval of certain regulating entities; requiring the
5 person to submit certain applications; requiring the Department of Health and
6 Mental Hygiene, the Maryland Insurance Administration, and the Attorney
7 General to adopt certain regulations; requiring certain regulating entities to provide
8 certain notice and hold certain public hearings; establishing criteria by which
9 certain regulating entities must evaluate an acquisition; authorizing certain
10 regulating entities to revoke or suspend certain licenses under certain
11 circumstances; establishing a Maryland Health Care Foundation; establishing a
12 Board of Trustees for the Foundation; providing for the membership of the Board;
13 specifying the purposes, powers, and duties of the Foundation; requiring the
14 Foundation to deposit or invest certain money in a certain manner; exempting the
15 Foundation from certain provisions of law; defining certain terms; providing for the
16 application of this Act; and generally relating to the acquisition of nonprofit health
17 entities and the establishment of the Maryland Health Care Foundation.

18 BY adding to

19 Article 41 - Governor - Executive and Administrative Departments
20 Section 20-101 through 20-410 to be under the new title "Title 20. Acquisition of
21 Nonprofit Health Entities"
22 Annotated Code of Maryland
23 (1993 Replacement Volume and 1996 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article - Health - General
26 Section 19-327
27 Annotated Code of Maryland
28 (1996 Replacement Volume and 1996 Supplement)

29 BY adding to

30 Article - Health - General
31 Section 19-706(n)
32 Annotated Code of Maryland

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1 (1996 Replacement Volume and 1996 Supplement)

2 BY repealing

3 Article - Health - General

4 Section 19-711.1

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 1996 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Insurance

9 Section 4-113(b)

10 Annotated Code of Maryland

11 (1995 Volume and 1996 Supplement)

12 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995)

13 BY repealing and reenacting, with amendments,

14 Article - Insurance

15 Section 14-112

16 Annotated Code of Maryland

17 (1995 Volume and 1996 Supplement)

18 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of

19 1997)

20 BY repealing

21 Article - Insurance

22 Section 14-131

23 Annotated Code of Maryland

24 (1995 Volume and 1996 Supplement)

25 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of

26 1997)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

28 MARYLAND, That the Laws of Maryland read as follows:

29 **Article 41 - Governor - Executive and Administrative Departments**

30 TITLE 20. ACQUISITION OF NONPROFIT HEALTH ENTITIES.

31 SUBTITLE 1. DEFINITIONS AND GENERAL PROVISIONS.

32 20-101.

33 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

34 (B) (1) "ACQUISITION" MEANS THE TRANSFER OF AN OWNERSHIP OR

35 CONTROLLING INTEREST IN A NONPROFIT HEALTH ENTITY THAT RESULTS IN:

3

1 (I) A CHANGE OF OWNERSHIP OR CONTROL OF A 20% OR
2 GREATER INTEREST OR CONTROL IN THE NONPROFIT HEALTH ENTITY; OR

3 (II) A TRANSFEREE HOLDING A 50% OR GREATER INTEREST IN
4 THE OWNERSHIP OR CONTROL OF A NONPROFIT HEALTH ENTITY.

5 (2) "ACQUISITION" INCLUDES A PUBLIC OFFERING OF STOCK.

6 (3) "ACQUISITION" DOES NOT INCLUDE THE TRANSFER OF AN
7 OWNERSHIP OR CONTROLLING INTEREST IN A NONPROFIT HEALTH ENTITY IF THE
8 TRANSFEREE:

9 (I) IS EXEMPT FROM FEDERAL INCOME TAXATION UNDER §
10 501(C)(3) OF THE INTERNAL REVENUE CODE OR AS A GOVERNMENTAL ENTITY;

11 (II) WILL MAINTAIN REPRESENTATION FROM THE AFFECTED
12 COMMUNITY ON THE LOCAL BOARD; AND

13 (III) 1. IS A NONPROFIT CORPORATION HAVING A
14 SUBSTANTIALLY SIMILAR CHARITABLE HEALTH CARE PURPOSE AS THE
15 TRANSFEROR; OR

16 2. IS A GOVERNMENTAL ENTITY.

17 (C) "ADMINISTRATION" MEANS THE MARYLAND INSURANCE
18 ADMINISTRATION.

19 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL
20 HYGIENE.

21 (E) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN
22 § 19-701 OF THE HEALTH - GENERAL ARTICLE.

23 (F) "HEALTH SYSTEM" MEANS A CORPORATION THAT OWNS OR OPERATES:

24 (1) AT LEAST ONE HOSPITAL; AND

25 (2) OTHER BUSINESSES THAT MAY OR MAY NOT BE RELATED TO THE
26 DELIVERY OF HEALTH CARE.

27 (G) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH -
28 GENERAL ARTICLE.

29 (H) "NONPROFIT HEALTH ENTITY" MEANS A:

30 (1) NONPROFIT HOSPITAL;

31 (2) NONPROFIT HEALTH SYSTEM;

32 (3) NONPROFIT HEALTH SERVICE PLAN; AND

33 (4) NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

34 (I) "NONPROFIT HEALTH SERVICE PLAN" MEANS A CORPORATION WITHOUT
35 CAPITAL STOCK WITH A CERTIFICATE OF AUTHORITY FROM THE INSURANCE
36 COMMISSIONER TO OPERATE AS A NONPROFIT HEALTH SERVICE PLAN.

4

1 (J) "REGULATING ENTITY" MEANS:

2 (1) FOR AN ACQUISITION OF A NONPROFIT HOSPITAL OR NONPROFIT
3 HEALTH SYSTEM, THE ATTORNEY GENERAL AND THE DEPARTMENT;

4 (2) FOR AN ACQUISITION OF A NONPROFIT HEALTH SERVICE PLAN, THE
5 ATTORNEY GENERAL AND THE ADMINISTRATION; AND

6 (3) FOR AN ACQUISITION OF A NONPROFIT HEALTH MAINTENANCE
7 ORGANIZATION, THE ATTORNEY GENERAL, THE DEPARTMENT, AND THE
8 ADMINISTRATION.

9 (K) "TRANSFEREE" MEANS THE PERSON IN AN ACQUISITION THAT RECEIVES
10 THE OWNERSHIP OR CONTROL OF THE NONPROFIT HEALTH ENTITY THAT IS THE
11 SUBJECT OF THE ACQUISITION.

12 (L) "TRANSFEROR" MEANS THE NONPROFIT HEALTH ENTITY THAT IS THE
13 SUBJECT OF THE ACQUISITION, OR THE CORPORATION THAT OWNS THE NONPROFIT
14 HEALTH ENTITY THAT IS THE SUBJECT OF THE ACQUISITION.

15 20-102.

16 A PERSON MAY NOT ENGAGE IN AN ACQUISITION OF A NONPROFIT HEALTH
17 ENTITY UNLESS THE TRANSFEROR AND THE TRANSFEREE RECEIVE THE APPROVAL
18 OF EACH APPLICABLE REGULATING ENTITY.

19 20-103.

20 (A) THE ATTORNEY GENERAL, THE DEPARTMENT, AND THE
21 ADMINISTRATION SHALL ADOPT REGULATIONS TO CARRY OUT THIS TITLE.

22 (B) THE ATTORNEY GENERAL, THE DEPARTMENT, AND THE
23 ADMINISTRATION SHALL JOINTLY ADOPT REGULATIONS ESTABLISHING
24 PROCEDURES BY WHICH ANY INTERESTED PARTY MAY APPEAL A FINAL DECISION
25 REGARDING AN ACQUISITION OF A NONPROFIT HEALTH ENTITY.

26 SUBTITLE 2. APPLICATION PROCESS.

27 20-201.

28 (A) A PERSON WHO SEEKS TO ENGAGE IN AN ACQUISITION OF A NONPROFIT
29 HEALTH ENTITY SHALL SUBMIT AN APPLICATION TO EACH APPLICABLE
30 REGULATING ENTITY.

31 (B) AN APPLICATION SHALL INCLUDE:

32 (1) THE NAME OF THE TRANSFEROR;

33 (2) THE NAME OF THE TRANSFEREE;

34 (3) THE NAMES OF ANY OTHER PARTIES TO THE ACQUISITION
35 AGREEMENT;

36 (4) THE TERMS OF THE PROPOSED ACQUISITION, INCLUDING THE SALE
37 PRICE;

5

1 (5) A COPY OF THE ACQUISITION AGREEMENT;

2 (6) A FINANCIAL AND ECONOMIC ANALYSIS REPORT FROM AN
3 INDEPENDENT EXPERT OR CONSULTANT THAT ADDRESSES THE CRITERIA IN §
4 20-301 OF THIS TITLE; AND

5 (7) ANY OTHER DOCUMENTS RELATED TO THE ACQUISITION.

6 (C) AN APPLICATION AND ITS RELATED DOCUMENTS ARE CONSIDERED A
7 PUBLIC RECORD IN ACCORDANCE WITH TITLE 10, SUBTITLE 6 OF THE STATE
8 GOVERNMENT ARTICLE.

9 20-202.

10 (A) WITHIN 5 WORKING DAYS AFTER RECEIVING AN APPLICATION, THE
11 APPLICABLE REGULATING ENTITIES SHALL JOINTLY:

12 (1) PUBLISH NOTICE OF THE APPLICATION IN A NEWSPAPER OF
13 GENERAL CIRCULATION IN THE COUNTY WHERE THE NONPROFIT HEALTH ENTITY
14 IS LOCATED; AND

15 (2) NOTIFY BY FIRST-CLASS MAIL ANY PERSON WHO HAS REQUESTED
16 NOTICE OF THE FILING OF AN APPLICATION.

17 (B) THE NOTICE UNDER SUBSECTION (A) OF THIS SECTION SHALL:

18 (1) STATE THAT AN APPLICATION HAS BEEN RECEIVED;

19 (2) STATE THE NAMES OF THE PARTIES TO THE ACQUISITION;

20 (3) DESCRIBE THE CONTENTS OF THE APPLICATION;

21 (4) STATE THE DATE BY WHICH A PERSON MUST SUBMIT WRITTEN
22 COMMENTS ON THE APPLICATION; AND

23 (5) GIVE NOTICE OF EACH PUBLIC HEARING ON THE ACQUISITION.

24 20-203.

25 (A) WITHIN 30 DAYS AFTER RECEIVING AN APPLICATION, EACH APPLICABLE
26 REGULATING ENTITY SHALL HOLD A PUBLIC HEARING.

27 (B) ANY PERSON MAY FILE WRITTEN COMMENTS AND EXHIBITS OR MAKE A
28 STATEMENT AT A PUBLIC HEARING.

29 (C) EACH REGULATING ENTITY MAY:

30 (1) SUBPOENA INFORMATION AND WITNESSES;

31 (2) REQUIRE SWORN STATEMENTS;

32 (3) TAKE DEPOSITIONS; AND

33 (4) USE RELATED DISCOVERY PROCEDURES.

34 (D) (1) EACH REGULATING ENTITY MAY EMPLOY EXPERT ASSISTANCE AS
35 REASONABLY NECESSARY TO DETERMINE WHETHER TO APPROVE AN ACQUISITION.

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1 (2) IF A REGULATING ENTITY EMPLOYS EXPERT ASSISTANCE UNDER
2 PARAGRAPH (1) OF THIS SUBSECTION, THE TRANSFEREE SHALL PAY THE COST OF
3 THE EXPERT ASSISTANCE.

4 (E) WITHIN 60 DAYS AFTER RECEIVING AN APPLICATION, EACH APPLICABLE
5 REGULATING ENTITY SHALL:

6 (1) APPROVE THE ACQUISITION, WITH OR WITHOUT MODIFICATIONS;
7 OR

8 (2) DISAPPROVE THE ACQUISITION.

9 (F) IF AN APPLICATION IS NOT ACTED ON WITHIN 60 DAYS AFTER ITS
10 RECEIPT, THE APPLICATION SHALL BE DEEMED APPROVED.

11 SUBTITLE 3. REVIEW CRITERIA AND PENALTIES.

12 20-301.

13 (A) EACH APPLICABLE REGULATING ENTITY SHALL APPROVE AN
14 ACQUISITION UNLESS IT FINDS THE ACQUISITION IS NOT IN THE PUBLIC INTEREST.

15 (B) AN ACQUISITION IS IN THE PUBLIC INTEREST IF APPROPRIATE STEPS
16 HAVE BEEN TAKEN TO:

17 (1) SAFEGUARD THE VALUE OF CHARITABLE ASSETS;

18 (2) ENSURE THAT THE PROCEEDS OF THE ACQUISITION ARE
19 TRANSFERRED TO THE MARYLAND HEALTH CARE FOUNDATION; AND

20 (3) ENSURE THAT NO PART OF THE PROCEEDS OF THE ACQUISITION
21 INURE DIRECTLY OR INDIRECTLY TO AN OFFICER, DIRECTOR, OR TRUSTEE OF A
22 NONPROFIT HEALTH ENTITY.

23 (C) IN DETERMINING WHETHER AN ACQUISITION IS IN THE PUBLIC
24 INTEREST, EACH APPLICABLE REGULATING ENTITY SHALL CONSIDER:

25 (1) WHETHER THE TRANSFEROR EXERCISED DUE DILIGENCE IN
26 DECIDING TO ENGAGE IN AN ACQUISITION, SELECTING THE TRANSFEREE, AND
27 NEGOTIATING THE TERMS AND CONDITIONS OF THE ACQUISITION;

28 (2) THE PROCEDURES THE TRANSFEROR USED IN MAKING ITS
29 DECISION, INCLUDING WHETHER APPROPRIATE EXPERT ASSISTANCE WAS USED;

30 (3) WHETHER ANY CONFLICTS OF INTEREST WERE DISCLOSED,
31 INCLUDING CONFLICTS OF INTEREST OF BOARD MEMBERS, EXECUTIVES, AND
32 EXPERTS RETAINED BY THE TRANSFEROR, TRANSFEREE, OR ANY OTHER PARTIES
33 TO THE ACQUISITION;

34 (4) WHETHER THE TRANSFEROR WILL RECEIVE FAIR MARKET VALUE
35 FOR ITS ASSETS;

36 (5) WHETHER CHARITABLE FUNDS ARE PLACED AT UNREASONABLE
37 RISK IF THE ACQUISITION IS FINANCED IN PART BY THE TRANSFEROR;

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1 (6) WHETHER ANY MANAGEMENT CONTRACT UNDER THE
2 ACQUISITION IS FOR FAIR MARKET VALUE; AND

3 (7) WHETHER A RIGHT OF FIRST REFUSAL TO REPURCHASE THE
4 ASSETS HAS BEEN RETAINED BY THE EMPLOYEES OF THE TRANSFEROR OR BY A
5 SUCCESSOR NONPROFIT CORPORATION IF THE NONPROFIT HEALTH ENTITY IS
6 SUBSEQUENTLY SOLD TO, ACQUIRED BY, OR MERGED WITH ANOTHER ENTITY.

7 20-302.

8 IN DETERMINING WHETHER TO APPROVE AN ACQUISITION, THE DEPARTMENT
9 SHALL CONSIDER:

10 (1) THE CRITERIA LISTED IN § 20-301 OF THIS SUBTITLE; AND

11 (2) WHETHER THE AFFECTED COMMUNITY WILL HAVE CONTINUED
12 ACCESS TO AFFORDABLE HEALTH CARE.

13 20-303.

14 IN DETERMINING WHETHER TO APPROVE AN ACQUISITION, THE
15 ADMINISTRATION SHALL CONSIDER:

16 (1) THE CRITERIA LISTED IN § 20-301 OF THIS SUBTITLE; AND

17 (2) WHETHER THE ACQUISITION:

18 (I) IS EQUITABLE TO ENROLLEES, SHAREHOLDERS, AND
19 CERTIFICATE HOLDERS, IF ANY, OF THE TRANSFEROR;

20 (II) IS IN COMPLIANCE WITH TITLE 2, SUBTITLE 6 OF THE
21 CORPORATIONS AND ASSOCIATIONS ARTICLE;

22 (III) IS APPROVED BY AT LEAST TWO-THIRDS OF THE
23 TRANSFEROR'S CERTIFICATE HOLDERS WHO HAVE VOTED ON THE ACQUISITION:

24 1. IN PERSON, BY PROXY, OR BY MAIL; AND

25 2. PURSUANT TO THE REQUIREMENTS ADOPTED BY THE
26 COMMISSIONER REGARDING NOTICE AND PROCEDURE; AND

27 (IV) ENSURES THAT THE TRANSFEREE WILL POSSESS SURPLUS IN
28 AN AMOUNT SUFFICIENT TO:

29 1. COMPLY WITH THE SURPLUS REQUIRED UNDER LAW;

30 AND

31 2. PROVIDE FOR THE SECURITY OF THE TRANSFEREE'S
32 CERTIFICATE HOLDERS AND POLICYHOLDERS.

33 20-304.

34 (A) A CORPORATION THAT BECOMES A FOR-PROFIT HEALTH ENTITY UNDER
35 THIS TITLE MAY NOT BE DEEMED TO HAVE ABANDONED ITS CORPORATE STATUS
36 BY VIRTUE OF AN ACQUISITION UNLESS THE ACQUISITION PROVIDES SPECIFICALLY
37 TO THE CONTRARY.

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1 (B) A CERTIFICATE OF AUTHORITY, AGENT APPOINTMENT, LICENSE, FORMS,
2 AND ANY OTHER FILINGS IN EXISTENCE AT THE TIME OF AN ACQUISITION SHALL
3 CONTINUE IN FULL FORCE AND EFFECT UPON AN ACQUISITION IF A CORPORATION
4 AT ALL TIMES REMAINS QUALIFIED TO ENGAGE IN BUSINESS IN THE STATE.

5 (C) ALL OUTSTANDING CONTRACTS OF A TRANSFEROR SHALL REMAIN IN
6 FULL FORCE AND EFFECT AND NEED NOT BE OTHERWISE ENDORSED UNLESS
7 ORDERED BY THE ADMINISTRATION.

8 20-305.

9 (A) THE SECRETARY OF HEALTH AND MENTAL HYGIENE MAY REVOKE OR
10 SUSPEND A LICENSE TO OPERATE A HOSPITAL IN ACCORDANCE WITH § 19-327 OF
11 THE HEALTH - GENERAL ARTICLE IF AN ACQUISITION OCCURS WITHOUT THE
12 APPROVAL OF THE DEPARTMENT OR THE ATTORNEY GENERAL.

13 (B) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
14 CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN IN
15 ACCORDANCE WITH TITLE 14, SUBTITLE 1 OF THE INSURANCE ARTICLE IF AN
16 ACQUISITION OF THE NONPROFIT HEALTH SERVICE PLAN OCCURS WITHOUT THE
17 APPROVAL OF THE ADMINISTRATION OR THE ATTORNEY GENERAL.

18 (C) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
19 CERTIFICATE OF AUTHORITY TO OPERATE A HEALTH MAINTENANCE
20 ORGANIZATION IN ACCORDANCE WITH TITLE 19, SUBTITLE 7 OF THE HEALTH -
21 GENERAL ARTICLE IF AN ACQUISITION OF A NONPROFIT HEALTH MAINTENANCE
22 ORGANIZATION OCCURS WITHOUT THE APPROVAL OF THE ADMINISTRATION, THE
23 DEPARTMENT, OR THE ATTORNEY GENERAL.

24 SUBTITLE 4. MARYLAND HEALTH CARE FOUNDATION.

25 20-401.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) "FOUNDATION" MEANS THE MARYLAND HEALTH CARE FOUNDATION.

29 (C) (1) "HEALTH CARE PROVIDER" MEANS:

30 (I) A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE
31 AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH
32 CARE IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION OR
33 IN AN APPROVED EDUCATION OR TRAINING PROGRAM; OR

34 (II) A FACILITY IN WHICH HEALTH CARE IS PROVIDED TO
35 PATIENTS OR RECIPIENTS, INCLUDING A FACILITY AS DEFINED IN § 10-101 OF THE
36 HEALTH - GENERAL ARTICLE, A HOSPITAL AS DEFINED IN § 19-301 OF THE HEALTH -
37 GENERAL ARTICLE, A RELATED INSTITUTION AS DEFINED IN § 19-301 OF THE
38 HEALTH - GENERAL ARTICLE, A HEALTH MAINTENANCE ORGANIZATION AS
39 DEFINED IN § 19-701 OF THE HEALTH - GENERAL ARTICLE, AN OUTPATIENT CLINIC,
40 AND A MEDICAL LABORATORY.

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1 (2) "HEALTH CARE PROVIDER" INCLUDES THE AGENTS AND
2 EMPLOYEES OF A FACILITY WHO ARE LICENSED OR OTHERWISE AUTHORIZED TO
3 PROVIDE HEALTH CARE, THE OFFICERS AND DIRECTORS OF A FACILITY, AND THE
4 AGENTS AND EMPLOYEES OF A HEALTH CARE PROVIDER WHO ARE LICENSED OR
5 OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE.

6 (D) "PAYOR" MEANS:

7 (1) A HEALTH INSURER OR NONPROFIT HEALTH SERVICE PLAN THAT
8 HOLDS A CERTIFICATE OF AUTHORITY AND PROVIDES HEALTH INSURANCE
9 POLICIES OR CONTRACTS IN THE STATE IN ACCORDANCE WITH THE HEALTH -
10 GENERAL ARTICLE OR THE INSURANCE ARTICLE;

11 (2) A HEALTH MAINTENANCE ORGANIZATION THAT HOLDS A
12 CERTIFICATE OF AUTHORITY IN THE STATE; OR

13 (3) A THIRD PARTY ADMINISTRATOR AS DEFINED IN § 15-111 OF THE
14 INSURANCE ARTICLE.

15 20-402.

16 THERE IS A NONPROFIT MARYLAND HEALTH CARE FOUNDATION
17 ESTABLISHED TO PROMOTE PUBLIC AWARENESS OF THE NEED TO PROVIDE MORE
18 TIMELY AND COST-EFFECTIVE CARE FOR MARYLANDERS WITHOUT HEALTH
19 INSURANCE AND TO RECEIVE MONEYS THAT CAN BE USED TO PROVIDE FINANCIAL
20 SUPPORT TO PROGRAMS THAT EXPAND ACCESS TO HEALTH CARE SERVICES FOR
21 UNINSURED MARYLANDERS.

22 20-403.

23 THE PURPOSE OF THE MARYLAND HEALTH CARE FOUNDATION IS DECLARED
24 TO BE OF GENERAL BENEFIT TO THE CITIZENS AND CHARITABLE IN NATURE. THE
25 FOUNDATION SHALL BE A BODY CORPORATE AND SHALL HAVE PERPETUAL
26 EXISTENCE, SUBJECT TO MODIFICATION OR TERMINATION BY THE GENERAL
27 ASSEMBLY IF NECESSARY TO EFFECTUATE ITS PURPOSE OR WHEN AND IF ITS
28 SUBSTANTIAL PURPOSE CEASES.

29 20-404.

30 (A) THE POWERS AND DUTIES OF THE MARYLAND HEALTH CARE
31 FOUNDATION SHALL REST IN AND BE EXERCISED BY A BOARD OF 19 TRUSTEES.

32 (B) THE BOARD OF TRUSTEES SHALL CONSIST OF:

33 (1) THE PRESIDENT OF THE SENATE, EX OFFICIO;

34 (2) THE SPEAKER OF THE HOUSE, EX OFFICIO;

35 (3) THE SECRETARIES OF HEALTH AND MENTAL HYGIENE AND HUMAN
36 RESOURCES AND THE MARYLAND INSURANCE COMMISSIONER, EX OFFICIO, OR
37 THEIR DESIGNEES; AND

38 (4) FOURTEEN INDIVIDUALS APPOINTED BY THE GOVERNOR AS
39 FOLLOWS:

10

1 (I) FOUR SHALL REPRESENT THE INTERESTS OF THE PAYOR
2 COMMUNITY;

3 (II) FOUR SHALL REPRESENT THE INTERESTS OF THE HEALTH
4 CARE PROVIDER COMMUNITY;

5 (III) TWO SHALL REPRESENT THE BUSINESS COMMUNITY;

6 (IV) TWO SHALL REPRESENT THE LABOR COMMUNITY; AND

7 (V) TWO SHALL REPRESENT THE INTERESTS OF THE GENERAL
8 PUBLIC AND MAY NOT HAVE ANY CONNECTION WITH THE MANAGEMENT OR
9 POLICY OF A HEALTH CARE PROVIDER OR PAYOR.

10 (C) THE GOVERNOR SHALL CONSIDER GEOGRAPHICAL BALANCE IN MAKING
11 APPOINTMENTS TO THE BOARD OF TRUSTEES.

12 (D) EXCEPT FOR THE EX OFFICIO MEMBERS OR THEIR DESIGNEES:

13 (1) THE TERM OF A MEMBER IS 4 YEARS;

14 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE
15 TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 1997;

16 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A
17 SUCCESSOR IS APPOINTED AND QUALIFIES;

18 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
19 FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
20 QUALIFIES; AND

21 (5) A MEMBER MAY NOT SERVE MORE THAN 2 TERMS.

22 20-405.

23 (A) THE BOARD OF TRUSTEES SHALL ELECT ONE OF THEIR MEMBERS TO
24 SERVE AS CHAIRMAN.

25 (B) THE BOARD SHALL MEET AT PLACES AND DATES TO BE DETERMINED BY
26 THE BOARD, BUT NOT LESS THAN 2 TIMES A YEAR.

27 (C) SEVEN TRUSTEES SHALL CONSTITUTE A QUORUM, BUT ACTION MAY NOT
28 BE TAKEN BY LESS THAN A VOTE OF SEVEN MEMBERS.

29 (D) A TRUSTEE:

30 (1) MAY NOT RECEIVE COMPENSATION; BUT

31 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
32 STANDARD STATE TRAVEL REGULATIONS AS PROVIDED IN THE STATE BUDGET.

33 (E) THE STATE AGENCIES REPRESENTED ON THE FOUNDATION SHALL
34 PROVIDE STAFF, SUPPLIES, AND OFFICE SPACE AND SHALL BE REIMBURSED FOR
35 THESE EXPENSES FROM MONEYS OF THE FOUNDATION.

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1 20-406.

2 (A) THE FOUNDATION SHALL:

3 (1) SOLICIT AND ACCEPT ANY GIFT, GRANT, LEGACY, OR ENDOWMENT
4 OF MONEY, INCLUDING IN-KIND SERVICES, FROM THE FEDERAL GOVERNMENT,
5 STATE GOVERNMENT, LOCAL GOVERNMENT, OR ANY PRIVATE SOURCE IN
6 FURTHERANCE OF THE FOUNDATION;

7 (2) PROVIDE GRANTS TO PROGRAMS THAT:

8 (I) PROMOTE PUBLIC AWARENESS OF THE NEED TO PROVIDE
9 MORE TIMELY AND COST-EFFECTIVE CARE FOR UNINSURED MARYLANDERS;

10 (II) EXPAND ACCESS TO HEALTH CARE SERVICES FOR UNINSURED
11 INDIVIDUALS; OR

12 (III) PROVIDE OR SUBSIDIZE HEALTH INSURANCE COVERAGE FOR
13 UNINSURED INDIVIDUALS;

14 (3) DEVELOP PROGRAMS FOR SPONSORSHIP BY CORPORATE AND
15 BUSINESS ORGANIZATIONS OR PRIVATE INDIVIDUALS;

16 (4) DEVELOP CRITERIA FOR AWARDING GRANTS TO HEALTH CARE
17 DELIVERY PROGRAMS, INSURANCE COVERAGE PROGRAMS, OR CORPORATE
18 SPONSORSHIP PROGRAMS;

19 (5) DEVELOP CRITERIA FOR PRIORITIZING PROGRAMS TO BE
20 SUPPORTED;

21 (6) DEVELOP CRITERIA FOR EVALUATING THE EFFECTIVENESS OF
22 PROGRAMS RECEIVING GRANTS;

23 (7) MAKE, EXECUTE, AND ENTER INTO ANY CONTRACT OR OTHER
24 LEGAL INSTRUMENT;

25 (8) RECEIVE APPROPRIATIONS AS PROVIDED IN THE STATE BUDGET;

26 (9) LEASE AND MAINTAIN AN OFFICE AT A PLACE WITHIN THE STATE
27 THAT THE FOUNDATION DESIGNATES;

28 (10) ADOPT BYLAWS FOR THE REGULATION OF ITS AFFAIRS AND THE
29 CONDUCT OF ITS BUSINESS; AND

30 (11) TAKE ANY OTHER ACTION NECESSARY TO CARRY OUT THE
31 PURPOSES OF THE FOUNDATION.

32 (B) THE FOUNDATION MAY SUE AND BE SUED, BUT ONLY TO ENFORCE
33 CONTRACTUAL OR SIMILAR AGREEMENTS WITH THE FOUNDATION.

34 (C) THE FOUNDATION SHALL REPORT ANNUALLY TO THE GOVERNOR, THE
35 DEPARTMENT, THE ADMINISTRATION, THE ATTORNEY GENERAL, AND, SUBJECT TO
36 § 2-1312 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, ON ITS
37 ACTIVITIES DURING THE PRECEDING YEAR, INCLUDING AN EVALUATION OF THE

12

1 EFFECTIVENESS OF FUNDED PROGRAMS, TOGETHER WITH ANY
2 RECOMMENDATIONS OR REQUESTS DEEMED APPROPRIATE TO FURTHER THE
3 PURPOSES OF THE FOUNDATION.

4 20-407.

5 (A) IN DEVELOPING THE CRITERIA FOR AWARDING GRANTS TO HEALTH
6 CARE DELIVERY PROGRAMS, INSURANCE COVERAGE PROGRAMS, OR CORPORATE
7 SPONSORSHIP PROGRAMS, THE FOUNDATION MAY CONSIDER ACTIVITIES THAT:

8 (1) PROVIDE PRIMARY AND PREVENTIVE HEALTH CARE SERVICES TO
9 UNINSURED MARYLANDERS IN A MORE TIMELY AND COST-EFFECTIVE MANNER;

10 (2) PROVIDE ASSISTANCE TO COMMUNITY PROGRAMMING FOR
11 IMPROVING HEALTH STATUS BY ENHANCING ACCESS TO HEALTH CARE SERVICES
12 FOR UNINSURED INDIVIDUALS;

13 (3) PUBLISH OR PRODUCE EDUCATIONAL MATERIALS ON THE
14 PROBLEM OF UNINSURED INDIVIDUALS;

15 (4) PROVIDE EDUCATIONAL SCHOLARSHIPS OR TRAINING; OR

16 (5) FOSTER THE CREATION OF ADDITIONAL HEALTH CARE DELIVERY
17 PROGRAMS TO MEET THE HEALTH CARE NEEDS OF UNINSURED INDIVIDUALS.

18 (B) THE FOUNDATION MAY NOT CONSIDER ACTIVITIES THAT ADVOCATE A
19 POLITICAL CANDIDATE OR POLITICAL SOLUTION.

20 20-408.

21 TO THE EXTENT FEASIBLE, THE FOUNDATION SHALL CONSIDER
22 GEOGRAPHICAL BALANCE IN PROVIDING GRANTS AND DEVELOPING PROGRAMS.

23 20-409.

24 (A) ALL MONEY RECEIVED BY THE FOUNDATION SHALL BE DEPOSITED, AS
25 DIRECTED BY THE FOUNDATION, IN ANY STATE OR NATIONAL BANK OR
26 FEDERALLY OR STATE INSURED SAVINGS AND LOAN ASSOCIATION LOCATED IN THE
27 STATE HAVING A TOTAL PAID-IN CAPITAL OF AT LEAST \$1,000,000. THE TRUST
28 DEPARTMENT OF ANY STATE OR NATIONAL BANK OR SAVINGS AND LOAN
29 ASSOCIATION MAY BE DESIGNATED AS A DEPOSITORY TO RECEIVE ANY SECURITIES
30 ACQUIRED OR OWNED BY THE FOUNDATION. THE RESTRICTION WITH RESPECT TO
31 PAID-IN CAPITAL MAY BE WAIVED FOR ANY QUALIFYING BANK OR SAVINGS AND
32 LOAN ASSOCIATION WHICH AGREES TO PLEDGE SECURITIES OF THE STATE OR OF
33 THE UNITED STATES TO PROTECT THE FUNDS AND SECURITIES OF THE
34 FOUNDATION IN AMOUNTS AND UNDER ARRANGEMENTS ACCEPTABLE TO THE
35 FOUNDATION.

36 (B) ANY MONEY OF THE FOUNDATION, IN ITS DISCRETION AND UNLESS
37 OTHERWISE PROVIDED IN ANY AGREEMENT OR COVENANT BETWEEN THE
38 FOUNDATION AND THE HOLDERS OF ANY OF ITS OBLIGATIONS LIMITING OR
39 RESTRICTING CLASSES OF INVESTMENTS, MAY BE INVESTED IN BONDS OR OTHER

13

1 OBLIGATIONS OF, OR GUARANTEED AS TO PRINCIPAL AND INTEREST BY, THE
2 UNITED STATES, THE STATE, OR A POLITICAL SUBDIVISION OR UNIT OF THE STATE.

3 (C) THE FOUNDATION SHALL MAKE PROVISION FOR A SYSTEM OF FINANCIAL
4 ACCOUNTING, CONTROLS, AUDITS, AND REPORTS.

5 (D) THE BOOKS, RECORDS, AND ACCOUNTS OF THE FOUNDATION ARE
6 SUBJECT TO AUDIT BY THE STATE.

7 20-410.

8 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IN
9 EXERCISING ITS POWERS, THE FOUNDATION:

10 (1) IS EXEMPT FROM THE PROVISIONS OF THE STATE FINANCE AND
11 PROCUREMENT ARTICLE, THE PROVISIONS OF DIVISION I OF THE STATE PERSONNEL
12 AND PENSIONS ARTICLE THAT GOVERN THE STATE PERSONNEL MANAGEMENT
13 SYSTEM, THE PROVISIONS OF DIVISION II AND TITLE 37 OF THE STATE PERSONNEL
14 AND PENSIONS ARTICLE, AND THE PROVISIONS OF ARTICLE 78A OF THE CODE; AND

15 (2) MAY CARRY OUT ITS CORPORATE PURPOSES WITHOUT OBTAINING
16 THE CONSENT OF ANY DEPARTMENT, BOARD, OR AGENCY OF THE STATE.

17 (B) THE FOUNDATION IS SUBJECT TO THE PROVISIONS OF THE STATE
18 FINANCE AND PROCUREMENT ARTICLE AND ARTICLE 78A OF THE CODE TO THE
19 EXTENT OF STATE APPROPRIATIONS, IF ANY.

20 **Article - Health - General**

21 19-327.

22 (a) (1) The Secretary shall deny a license to any applicant or revoke a license if
23 the applicant or licensee has been convicted of a felony that relates to Medicaid or to a
24 nursing home.

25 (2) The Secretary may deny a license to an applicant or revoke a license if
26 the applicant or licensee does not meet the requirements of this subtitle or any rule or
27 regulation that the Secretary adopts under this subtitle.

28 (B) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT OR REVOKE A
29 LICENSE IF THE APPLICANT OR LICENSEE VIOLATES ARTICLE 41, TITLE 20 OF THE
30 CODE.

31 [(b)] (C) (1) Before any action is taken under this section, the Secretary shall
32 give the applicant or licensee an opportunity for a hearing.

33 (2) The hearing notice to be given to the applicant or licensee shall be sent
34 at least 10 days before the hearing.

35 (3) The applicant or licensee is entitled to be represented by counsel at the
36 hearing.

14

1 19-706.

2 (N) THE PROVISIONS OF ARTICLE 41, TITLE 20 OF THE CODE SHALL APPLY TO
3 THE ACQUISITION OF A HEALTH MAINTENANCE ORGANIZATION OWNED BY A
4 NONPROFIT CORPORATION.

5 [19-711.1.

6 (a) A domestic nonprofit health maintenance organization may become a
7 for-profit health maintenance organization under the plan and procedure approved by
8 the Commissioner.

9 (b) The Commissioner may not approve any plan or procedure unless:

10 (1) It is equitable to enrollees and shareholders, if any, of the health
11 maintenance organization;

12 (2) It is in compliance with Title 2, Subtitle 6 of the Corporations and
13 Associations Article; and

14 (3) The plan or procedure provides that no part of the assets or surplus of
15 the nonprofit health maintenance organization will inure directly or indirectly to any
16 officer or director of the health maintenance organization.

17 (c) A domestic nonprofit health maintenance organization that becomes a
18 for-profit health maintenance organization shall be given recognition in all respects as a
19 health maintenance organization formed under the laws of this State as of the date of its
20 initial authorization as a nonprofit health maintenance organization.

21 (d) The certificate of authority, agent appointments, forms, and other filings
22 which are in existence at the time of the conversion from a nonprofit health maintenance
23 organization to a for-profit health maintenance organization shall continue in full force
24 and effect upon conversion if the health maintenance organization at all times remains
25 qualified to engage in business in this State.

26 (e) All outstanding contracts of the converting health maintenance organization
27 shall remain in full force and effect and need not otherwise be endorsed unless ordered
28 by the Commissioner.

29 (f) The Commissioner may conduct a hearing concerning the proposed
30 conversion of a nonprofit health maintenance organization to a for-profit health
31 maintenance organization.]

32 **Article - Insurance**

33 4-113.

34 (b) The Commissioner may deny a certificate of authority to an applicant or,
35 subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or
36 revoke a certificate of authority if the applicant or holder of the certificate of authority:

37 (1) violates any provision of this article other than one that provides for
38 mandatory denial, refusal to renew, suspension, or revocation for its violation;

15

1 (2) knowingly fails to comply with a regulation or order of the
2 Commissioner;

3 (3) is found by the Commissioner to be in unsound condition or in a
4 condition that renders further transaction of insurance business hazardous to the
5 insurer's policyholders or the public;

6 (4) is engaged in writing policies in a jurisdiction in which it operates on a
7 premium basis that the Commissioner finds to be insufficient, insecure, or impracticable
8 so as to endanger the solvency of the insurer;

9 (5) refuses or delays payment of amounts due claimants without just cause;

10 (6) refuses to be examined or to produce its accounts, records, or files for
11 examination by the Commissioner when required;

12 (7) refuses to provide additional information that the Commissioner
13 considers advisable in considering an application for renewal of the certificate of
14 authority;

15 (8) fails to pay a final judgment against it in the State within 30 days after
16 the judgment becomes final;

17 (9) is affiliated with and under the same general management or
18 interlocking directorate or ownership as another insurer that transacts direct insurance in
19 the State without having a certificate of authority to do so, except as allowed to a surplus
20 lines insurer under Title 3, Subtitle 3 of this article;

21 (10) is found by the Commissioner to have participated, with or without the
22 knowledge of an agent or broker, in selling motor vehicle insurance without an actual
23 intent to sell the insurance, as evidenced by a persistent pattern of filing certificates of
24 insurance together with or closely followed by cancellation notices for the insurance;

25 (11) except as allowed under § 10-103(b) of this article, is found by the
26 Commissioner to have knowingly participated with a person, acting as an agent, that does
27 not have an appointment from the insurer in accepting insurance contracts that the
28 person has solicited, negotiated, or effectuated, if committed with sufficient frequency to
29 indicate a general business practice; [or]

30 (12) has had a certificate of authority revoked or suspended by the insurance
31 regulatory authority of another state; OR

32 (13) HAS VIOLATED THE PROVISIONS OF ARTICLE 41, TITLE 20 OF THE
33 CODE.

34 14-112.

35 The Commissioner may revoke a certificate of authority issued to a corporation
36 subject to this subtitle, and at any time after revocation may institute proceedings under
37 Title 9, Subtitle 2 of this article to rehabilitate or liquidate the corporation, if:

38 (1) grounds exist under § 4-113 of this article; or

39 (2) the Commissioner has reason to believe that the corporation:

16

- 1 (i) is being operated for profit;
- 2 (ii) is being fraudulently conducted;
- 3 (iii) is not complying with this subtitle or article; [or]
- 4 (iv) knowingly is failing to comply with a rule, regulation, or order of
- 5 the Commissioner; OR

6 (V) HAS VIOLATED THE PROVISIONS OF ARTICLE 41, TITLE 20 OF
7 THE CODE.

8 [14-131.

9 (a) This section does not apply to the conversion of a corporation authorized
10 under this subtitle to a stock health insurer under a court order in connection with the
11 rehabilitation or reorganization of the corporation under Title 9, Subtitle 2 of this article.

12 (b) A corporation that is incorporated under the laws of the State and is subject to
13 this subtitle may convert to a for-profit stock health insurer subject to the provisions of
14 this article under a plan and procedure approved by the Commissioner.

15 (c) The Commissioner may not approve a plan or procedure for conversion unless
16 the plan or procedure:

17 (1) is equitable to subscribers and certificate holders, if any, of the
18 corporation;

19 (2) complies with Title 2, Subtitle 6 of the Corporations and Associations
20 Article;

21 (3) provides that none of the assets or surplus of the nonprofit health
22 service plan will inure directly or indirectly to an officer or director of the corporation;

23 (4) is approved by at least two-thirds of the corporation's certificate holders
24 who have voted on the plan or procedure in person, by proxy, or by mail under the notice
25 and procedure approved by the Commissioner; and

26 (5) ensures that the resulting stock health insurer will possess surplus in an
27 amount sufficient to:

28 (i) comply with the surplus requirements under this article for a stock
29 health insurer; and

30 (ii) provide for the security of the resulting stock health insurer's
31 policyholders and certificate holders.

32 (d) A corporation that becomes a for-profit stock health insurer under this
33 section does not abandon its corporate status by converting, unless the plan specifically
34 provides otherwise.

35 (e) If the corporation at all times remains qualified to engage in business in the
36 State, the certificate of authority, agent appointments, forms, and other filings existing at
37 the time of the conversion shall continue in effect after the conversion.

17

1 (f) All outstanding contracts of the converting corporation shall remain in effect
2 and need not otherwise be endorsed unless ordered by the Commissioner.

3 (g) The Commissioner or designee of the Commissioner may conduct a hearing
4 on the proposed conversion of a corporation subject to this subtitle into a for-profit stock
5 health insurer.]

6 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
7 members of the Board of Trustees shall expire as follows:

8 (1) 6 members in 2001;

9 (2) 4 members in 2000; and

10 (3) 4 members in 1999.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed
12 only prospectively and may not be applied or interpreted to have any effect on or
13 application to any acquisition completed or certificate of need or certificate of authority
14 granted before the effective date of this Act.

15 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 1997.