

BY: Finance Committee

AMENDMENTS TO HOUSE BILL NO. 167  
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after “authority” insert “, impose certain penalties, or take certain other actions”.

On page 2, in line 27, strike “and 14-132”.

On pages 18 and 19, strike in their entirety the lines beginning with line 29 on page 18 through line 29 on page 19, inclusive.

AMENDMENT NO. 2

On page 3, after line 18, insert:

“Preamble

WHEREAS, Many charitable and nonprofit health entities exist in the State, including hospitals, health service plans, health maintenance organizations, and other nonprofit entities that provide health care and health insurance to residents of the State; and

WHEREAS, Over a period of years, these nonprofit health entities have received various types of beneficial tax treatment and other benefits while operating in the State; and

WHEREAS, Nonprofit health entities are not owned by individuals, but rather exist for the benefit of the public and are required to fulfill their nonprofit mission as expressed in the charters of their corporations; and

WHEREAS, The acquisition of nonprofit health entities by, and the transfer of assets to, for-profit entities is a national trend and, in some cases, the assets of the nonprofit health entities are

(Over)

not fully accounted for or are not used for the benefit of the State; and

WHEREAS, It is in the best interests of the State to ensure that, whenever a nonprofit health entity is acquired or otherwise converts to for-profit status, the public and charitable assets of the nonprofit health entity are fully accounted for and properly distributed to the State for the benefit of the public; and

WHEREAS, The General Assembly intends that the Secretary of Health and Mental Hygiene, the Insurance Commissioner, and the Attorney General ensure that the assets of nonprofit health entities are properly accounted for and distributed to the State as set forth in this title; now, therefore,.”.

#### AMENDMENT NO. 3

On page 3, in line 23, strike the semicolon and substitute “AND”.

On page 5, strike in their entirety lines 12 through 16, inclusive, and substitute:

“(I) “PUBLIC ASSETS” MEANS ASSETS:

(1) HELD FOR THE BENEFIT OF THE PUBLIC OR THE COMMUNITY;

(2) IN WHICH THE PUBLIC HAS AN OWNERSHIP INTEREST; OR

(3) OWNED BY A GOVERNMENTAL ENTITY.”.

#### AMENDMENT NO. 4

On pages 6 and 7, strike in their entirety the lines beginning with line 29 on page 6 through line 2 on page 7, inclusive, and substitute:

“(C) ON REQUEST TO THE REGULATING ENTITY, AND SUBJECT TO THE PROVISIONS OF § 7-106 OF THE INSURANCE ARTICLE, AN APPLICATION AND RELATED DOCUMENTS SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND COPYING.”.

#### AMENDMENT NO. 5

On page 7, strike in their entirety lines 3 through 7, inclusive; and in line 8, strike “(2)” and substitute “(D)”.

AMENDMENT NO. 6

On page 8, in line 1, after “(A)” insert “(1)”; after line 3, insert:

“(2) IF THE NONPROFIT HEALTH ENTITY IS A HOSPITAL, THE REGULATING ENTITY SHALL HOLD THE PUBLIC HEARING IN THE JURISDICTION IN WHICH THE HOSPITAL IS LOCATED.”;

and in lines 25 and 26, strike “STATE PROCUREMENT LAWS” and substitute “PROVISIONS OF DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE”.

AMENDMENT NO. 7

On page 8, in line 31, after “(F)” insert “SUBJECT TO SUBSECTION (G) OF THIS SECTION”.

On page 9, strike in their entirety lines 2 through 13, inclusive, and substitute:

“(G) (1) UNLESS THE REGULATING ENTITY EXTENDS THE TIME FOR GOOD CAUSE, IF AN APPLICATION IS NOT APPROVED OR DISAPPROVED WITHIN 60 DAYS AFTER THE RECORD, INCLUDING THE HEARING PROCESS, HAS BEEN CLOSED, THE APPLICATION SHALL BE DEEMED APPROVED.

“(2) FOR GOOD CAUSE, THE REGULATING ENTITY MAY EXTEND THE APPLICATION REVIEW PERIOD FOR UP TO TWO 60-DAY PERIODS BEYOND THE INITIAL 60 DAYS.”.

AMENDMENT NO. 8

On pages 9 and 10, strike in their entirety the lines beginning with line 18 on page 9 through line 13 on page 10, inclusive, and substitute:

“(B) AN ACQUISITION IS NOT IN THE PUBLIC INTEREST UNLESS APPROPRIATE STEPS HAVE BEEN TAKEN TO ENSURE THAT:

(1) THE VALUE OF PUBLIC ASSETS IS SAFEGUARDED;

(2) (I) THE FAIR VALUE OF THE PUBLIC OR CHARITABLE ASSETS OF A NONPROFIT HEALTH SERVICE PLAN OR A HEALTH MAINTENANCE ORGANIZATION IS TRANSFERRED TO THE MARYLAND HEALTH CARE FOUNDATION THAT WAS ESTABLISHED IN § 20-502 OF THE HEALTH - GENERAL ARTICLE; OR

(II) 1. 40% OF THE PROCEEDS OF AN ACQUISITION OF A NONPROFIT HOSPITAL IS DISTRIBUTED TO THE MARYLAND HEALTH CARE FOUNDATION THAT WAS ESTABLISHED IN § 20-502 OF THE HEALTH - GENERAL ARTICLE; AND

2. 60% OF THE PROCEEDS OF AN ACQUISITION OF A PUBLIC OR NONPROFIT HOSPITAL IS DISTRIBUTED TO A NONPROFIT CHARITABLE ENTITY OR TRUST THAT IS:

A. DEDICATED TO SERVING THE UNMET HEALTH CARE NEEDS OF THE AFFECTED COMMUNITY;

B. DEDICATED TO PROMOTING ACCESS TO HEALTH CARE;

C. DEDICATED TO IMPROVING THE QUALITY OF HEALTH CARE; AND

D. INDEPENDENT OF THE TRANSFEREE; AND

(3) NO PART OF THE PUBLIC ASSETS OR THE PROCEEDS OF THE ACQUISITION INURE DIRECTLY OR INDIRECTLY TO AN OFFICER, DIRECTOR, OR TRUSTEE OF A NONPROFIT HEALTH ENTITY.”.

AMENDMENT NO. 9

On page 10, strike in their entirety lines 14 through 20, inclusive, and substitute:

“(C) THE REGULATING ENTITY MAY DETERMINE THAT A TRANSFER OR A DISTRIBUTION OF ASSETS IS NOT REQUIRED UNDER THIS SECTION IF THE TRANSACTION IS:

(1) DETERMINED NOT TO BE AN ACQUISITION;

(2) IN THE ORDINARY COURSE OF BUSINESS; AND

(3) FOR FAIR VALUE.”.

AMENDMENT NO. 10

On page 11, in line 11, strike “OR CHARITABLE”; in line 12, strike “PUBLIC OR CHARITABLE ASSETS” and substitute “CHARITABLE FUNDS”; and in line 22, before “VALUE” insert “MARKET”.

AMENDMENT NO. 11

On page 13, strike in their entirety lines 17 through 31, inclusive, and substitute:

“(D) IF THE COMMISSIONER DETERMINES THAT A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IS IN VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, THE COMMISSIONER MAY, IN ADDITION TO OTHER REMEDIES AUTHORIZED BY LAW, REQUIRE THAT:

(1) THE ENTITY DIVEST THE ACQUISITION;

(2) THE ENTITY FULLY COMPLY WITH THIS TITLE;

(3) THE ENTITY FILE A PLAN FOR CONVERSION TO A FOR-PROFIT ENTITY AS REQUIRED UNDER THIS TITLE;

(4) THE CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IN MARYLAND BE REVOKED OR SUSPENDED; OR

(5) A PENALTY BE PAID AS PROVIDED IN § 4-113(D)(1) OF THIS ARTICLE FOR EACH VIOLATION.”.

(Over)

AMENDMENT NO. 12

On page 14, in lines 3, 5, 9, 10, 12, and 16, in each instance, strike “PUBLIC OR”; in lines 3 and 5, in each instance, strike “OR TRUST’S”; strike in their entirety lines 24 through 27, inclusive, and substitute:

“(B) IF THE APPROPRIATE REGULATING ENTITY DETERMINES UNDER SUBSECTION (A) OF THIS SECTION THAT THIS TITLE DOES NOT APPLY, THE NONPROFIT HEALTH ENTITY SHALL SUBMIT AN INFORMATION COPY OF ITS APPLICATION TO ENGAGE IN AN ACQUISITION TO THE REGULATING ENTITY.”