

HOUSE BILL 167

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1998 Regular Session
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By: **Delegates Goldwater, Kopp, Morhaim, Hurson, Pendergrass, Genn,
Bobo, and Conroy; ~~Conroy, Busch, Barve, Crumlin, Donoghue, Eckardt,
Exum, Frank, Fulton, Gordon, Kach, Kirk, V. Mitchell, and Walkup~~**

Introduced and read first time: January 21, 1998
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 1998

CHAPTER _____

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
4 nonprofit health entity without the approval of a certain regulating entity;
5 requiring the person to submit certain applications; requiring the Department of
6 Health and Mental Hygiene, the Maryland Insurance Administration, and the
7 Attorney General to adopt certain regulations; requiring certain regulating
8 entities to provide certain notice and hold certain public hearings; requiring
9 certain transferors to provide certain notice; establishing criteria by which
10 certain regulating entities must evaluate a proposed acquisition; specifying
11 certain rules that relate to an entity that becomes a for-profit health entity
12 under this Act; authorizing certain regulating entities to revoke or suspend
13 certain licenses or certificates of authority under certain circumstances;
14 specifying the conditions under which a certain public or nonprofit charitable
15 corporation may receive ~~charitable~~ certain assets under this Act; defining
16 certain terms; providing for the application of this Act; and generally relating to
17 the acquisition of nonprofit health entities.

18 BY adding to
19 Article - State Government
20 Section 6.5-101 through ~~6.5-306~~ 6.5-307 to be under the new title "Title 6.5.
21 Attorney General - Acquisition of Nonprofit Health Entities"
22 Annotated Code of Maryland
23 (1995 Replacement Volume and 1997 Supplement)

24 BY repealing and reenacting, with amendments,

1 Article - Health - General
2 Section 19-327
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1997 Supplement)

5 BY adding to
6 Article - Health - General
7 Section 19-706(y)
8 Annotated Code of Maryland
9 (1996 Replacement Volume and 1997 Supplement)

10 BY repealing
11 Article - Health - General
12 Section 19-711.1
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1997 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Insurance
17 Section 4-113(b)
18 Annotated Code of Maryland
19 (1997 Volume)

20 BY repealing and reenacting, with amendments,
21 Article - Insurance
22 Section 14-112
23 Annotated Code of Maryland
24 (1997 Volume)

25 BY repealing
26 Article - Insurance
27 Section 14-131 and 14-132
28 Annotated Code of Maryland
29 (1997 Volume)

30 **Preamble**

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

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

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

7 ~~WHEREAS, The acquisition of nonprofit health entities by, and the transfer of~~
8 ~~assets to, for-profit entities is a national trend and, in some cases, the assets of the~~
9 ~~nonprofit health entities are not fully accounted for or are not used for the benefit of~~
10 ~~the State; and~~

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

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

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

21 **Article - State Government**

22 **TITLE 6.5. ATTORNEY GENERAL - ACQUISITION OF NONPROFIT HEALTH ENTITIES.**

23 **SUBTITLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

24 6.5-101.

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

26 (B) (1) ~~"ACQUISITION" MEANS THE SALE, LEASE, TRANSFER, MERGER,~~
27 ~~CREATION OF A JOINT VENTURE, OR OTHER DISPOSITION OF AN OWNERSHIP OR~~
28 ~~CONTROLLING INTEREST IN THE PRINCIPAL OPERATING ASSETS OF A NONPROFIT~~
29 ~~HEALTH ENTITY THAT RESULTS IN:~~

30 (I) ~~A CHANGE OF OWNERSHIP OR CONTROL OF A 20% OR GREATER~~
31 ~~INTEREST OR CONTROL IN THE NONPROFIT HEALTH ENTITY; OR~~

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

34 (2) "ACQUISITION" INCLUDES:

35 (I) A PUBLIC OFFERING OF STOCK; AND

1 ~~(H) A CONVERSION TO A FOR-PROFIT ENTITY.~~

2 ~~(3) "ACQUISITION" DOES NOT INCLUDE THE SALE, LEASE, TRANSFER,~~
3 ~~MERGER, CREATION OF A JOINT VENTURE, OR OTHER DISPOSITION OF AN~~
4 ~~OWNERSHIP OR CONTROLLING INTEREST IN A NONPROFIT HEALTH ENTITY IF THE~~
5 ~~TRANSFeree:~~

6 ~~(I) IS EXEMPT FROM FEDERAL INCOME TAXATION UNDER §~~
7 ~~501(C)(3) OF THE INTERNAL REVENUE CODE OR AS A GOVERNMENTAL ENTITY;~~

8 ~~(H) WILL MAINTAIN REPRESENTATION FROM THE AFFECTED~~
9 ~~COMMUNITY ON THE LOCAL BOARD;~~

10 ~~(HH) 1. IS A GOVERNMENTAL ENTITY; OR~~

11 ~~2. IS A NONPROFIT CORPORATION HAVING A~~
12 ~~SUBSTANTIALLY SIMILAR CHARITABLE HEALTH CARE PURPOSE AS THE~~
13 ~~TRANSFEROR; AND~~

14 ~~(IV) AGREES THAT ALL OF THE ASSETS WILL BE USED BY THE~~
15 ~~TRANSFEROR TO PROVIDE HEALTH CARE IN THE STATE.~~

16 (B) "ACQUISITION" MEANS:

17 (1) A SALE, LEASE, TRANSFER, MERGER, OR JOINT VENTURE THAT
18 RESULTS IN THE DISPOSAL OF THE ASSETS OF A NONPROFIT HEALTH ENTITY TO A
19 FOR-PROFIT CORPORATION OR ENTITY OR TO A MUTUAL BENEFIT CORPORATION OR
20 ENTITY WHEN A SUBSTANTIAL OR SIGNIFICANT PORTION OF THE ASSETS OF THE
21 NONPROFIT HEALTH ENTITY ARE INVOLVED OR WILL BE INVOLVED IN THE
22 AGREEMENT OR TRANSACTION;

23 (2) A TRANSFER OF OWNERSHIP, CONTROL, RESPONSIBILITY, OR
24 GOVERNANCE OF A SUBSTANTIAL OR SIGNIFICANT PORTION OF THE ASSETS,
25 OPERATIONS, OR BUSINESS OF THE NONPROFIT HEALTH ENTITY TO ANY
26 FOR-PROFIT CORPORATION OR ENTITY OR TO ANY MUTUAL BENEFIT CORPORATION
27 OR ENTITY;

28 (3) A PUBLIC OFFERING OF STOCK; OR

29 (4) A CONVERSION TO A FOR-PROFIT ENTITY.

30 (C) "ADMINISTRATION" MEANS THE MARYLAND INSURANCE
31 ADMINISTRATION.

32 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL
33 HYGIENE.

34 (E) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN §
35 19-701 OF THE HEALTH - GENERAL ARTICLE.

1 (F) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH -
2 GENERAL ARTICLE.

3 (G) "NONPROFIT HEALTH ENTITY" MEANS:

4 (1) A NONPROFIT HOSPITAL;

5 (2) A NONPROFIT HEALTH SERVICE PLAN; OR

6 (3) A NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

7 (H) "NONPROFIT HEALTH SERVICE PLAN" MEANS A CORPORATION WITHOUT
8 CAPITAL STOCK WITH A CERTIFICATE OF AUTHORITY FROM THE INSURANCE
9 COMMISSIONER TO OPERATE AS A NONPROFIT HEALTH SERVICE PLAN OR A
10 NONPROFIT DENTAL PLAN.

11 ~~(I) "PUBLIC ASSETS" MEANS THE ASSETS OF A NONPROFIT HEALTH ENTITY.~~

12 (I) "PUBLIC ASSETS" INCLUDE:

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

15 (2) ASSETS IN WHICH THE PUBLIC HAS AN OWNERSHIP INTEREST; AND

16 (3) ASSETS OWNED BY A GOVERNMENTAL ENTITY.

17 (J) "REGULATING ENTITY" MEANS:

18 (1) FOR AN ACQUISITION OF A NONPROFIT HOSPITAL, THE ATTORNEY
19 GENERAL IN CONSULTATION WITH THE DEPARTMENT;

20 (2) FOR AN ACQUISITION OF A NONPROFIT HEALTH SERVICE PLAN, THE
21 ADMINISTRATION; AND

22 (3) FOR AN ACQUISITION OF A NONPROFIT HEALTH MAINTENANCE
23 ORGANIZATION, THE ADMINISTRATION.

24 (K) "TRANSFEREE" MEANS THE PERSON IN AN ACQUISITION THAT RECEIVES
25 THE OWNERSHIP OR CONTROL OF THE NONPROFIT HEALTH ENTITY THAT IS THE
26 SUBJECT OF THE ACQUISITION.

27 (L) "TRANSFEROR" MEANS THE NONPROFIT HEALTH ENTITY THAT IS THE
28 SUBJECT OF THE ACQUISITION, OR THE CORPORATION THAT OWNS THE NONPROFIT
29 HEALTH ENTITY THAT IS THE SUBJECT OF THE ACQUISITION.

30 6.5-102.

31 A PERSON MAY NOT ENGAGE IN AN ACQUISITION OF A NONPROFIT HEALTH
32 ENTITY UNLESS THE TRANSFEROR AND THE TRANSFEREE RECEIVE THE APPROVAL
33 OF THE APPROPRIATE REGULATING ENTITY.

1 6.5-103.

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

4 (B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION
5 SHALL INCLUDE PROVISIONS THAT ESTABLISH HEARING AND APPEAL PROCEDURES.
6 6.5-104.

7 NOTHING IN THIS TITLE SHALL IMPAIR THE RIGHTS AND POWERS OF A COURT
8 AND THE ATTORNEY GENERAL WITH RESPECT TO ANY ASSET DEVOTED TO CHARITY
9 OR WITH RESPECT TO ANY CHARITABLE TRUST.

10 SUBTITLE 2. APPLICATION PROCESS.

11 6.5-201.

12 (A) (1) A PERSON ~~WHO~~ THAT SEEKS TO ENGAGE IN AN ACQUISITION OF A
13 NONPROFIT HEALTH ENTITY SHALL SUBMIT AN APPLICATION TO THE APPROPRIATE
14 REGULATING ENTITY.

15 (2) THE APPLICATION SUBMITTED UNDER PARAGRAPH (1) OF THIS
16 SUBSECTION SHALL BE IN ADDITION TO ANY OTHER FILING REQUIRED BY LAW.

17 (B) AN APPLICATION SHALL INCLUDE:

18 (1) THE NAME OF THE TRANSFEROR;

19 (2) THE NAME OF THE TRANSFEREE;

20 (3) THE NAMES OF ANY OTHER PARTIES TO THE ACQUISITION
21 AGREEMENT;

22 (4) THE TERMS OF THE PROPOSED ACQUISITION, INCLUDING THE SALE
23 PRICE;

24 (5) A COPY OF THE ACQUISITION AGREEMENT;

25 (6) A FINANCIAL AND COMMUNITY IMPACT ANALYSIS REPORT FROM AN
26 INDEPENDENT EXPERT OR CONSULTANT THAT ADDRESSES THE CRITERIA IN §
27 6.5-301 OF THIS TITLE; AND

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

29 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON REQUEST TO
30 THE REGULATING ENTITY, AN APPLICATION AND RELATED DOCUMENTS SHALL BE
31 AVAILABLE FOR PUBLIC INSPECTION AND COPYING.

32 (2) THE REGULATING ENTITY MAY NOT BE REQUIRED TO DISCLOSE OR
33 MAKE AVAILABLE FOR PUBLIC INSPECTION UNDER PARAGRAPH (1) OF THIS

1 SUBSECTION ANY INFORMATION THAT IS CONFIDENTIAL OR PROPRIETARY UNLESS
2 DETERMINED BY THE REGULATING ENTITY TO BE IN THE PUBLIC INTEREST.

3 (D) (1) IF THE TRANSFEROR IS A NONPROFIT HEALTH SERVICE PLAN, THE
4 TRANSFEROR SHALL NOTIFY EACH SUBSCRIBER TO THE NONPROFIT HEALTH
5 SERVICE PLAN OF THE PROPOSED TRANSACTION BY FIRST CLASS MAIL WITHIN 10
6 DAYS OF THE SUBMISSION OF THE APPLICATION REQUIRED UNDER SUBSECTION (A)
7 OF THIS SECTION.

8 (2) IF THE TRANSFEROR IS A NONPROFIT HEALTH MAINTENANCE
9 ORGANIZATION, THE TRANSFEROR SHALL NOTIFY EACH ~~ENROLLEE~~ MEMBER OR
10 SUBSCRIBER OF THE NONPROFIT HEALTH MAINTENANCE ORGANIZATION OF THE
11 PROPOSED TRANSACTION BY FIRST CLASS MAIL WITHIN 10 DAYS OF THE
12 SUBMISSION OF THE APPLICATION REQUIRED UNDER SUBSECTION (A) OF THIS
13 SECTION.

14 6.5-202.

15 (A) WITHIN 10 WORKING DAYS AFTER RECEIVING AN APPLICATION, THE
16 APPROPRIATE REGULATING ENTITY SHALL:

17 (1) PUBLISH NOTICE OF THE APPLICATION IN A NEWSPAPER OF
18 GENERAL CIRCULATION IN THE COUNTY WHERE THE NONPROFIT HEALTH ENTITY IS
19 LOCATED; AND

20 (2) NOTIFY BY FIRST-CLASS MAIL ANY PERSON ~~WHO~~ THAT HAS
21 REQUESTED IN WRITING NOTICE OF THE FILING OF AN APPLICATION.

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

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

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

25 (3) DESCRIBE THE CONTENTS OF THE APPLICATION;

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

28 (5) PROVIDE THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING ON
29 THE ACQUISITION.

30 (C) THE APPLICANT SHALL BEAR THE COST OF THE NOTICE REQUIRED
31 UNDER THIS SECTION.

32 6.5-203.

33 (A) ~~WITHIN 65 DAYS AFTER RECEIVING AN APPLICATION, THE APPROPRIATE~~
34 ~~REGULATING ENTITY SHALL HOLD A PUBLIC HEARING.~~

1 (A) AS SOON AS PRACTICABLE, BUT NO LATER THAN 90 DAYS AFTER
2 RECEIVING A COMPLETE APPLICATION, INCLUDING ALL NECESSARY EXPERT
3 REPORTS, THE APPROPRIATE REGULATING ENTITY SHALL HOLD A PUBLIC HEARING.

4 (B) A PUBLIC HEARING UNDER THIS SECTION SHALL BE A
5 QUASI-LEGISLATIVE HEARING AND NOT A CONTESTED CASE HEARING.

6 (C) ANY PERSON MAY FILE WRITTEN COMMENTS AND EXHIBITS OR MAKE A
7 STATEMENT AT A THE PUBLIC HEARING.

8 (D) THE REGULATING ENTITY MAY:

9 (1) SUBPOENA INFORMATION AND WITNESSES;

10 (2) REQUIRE SWORN STATEMENTS;

11 (3) TAKE DEPOSITIONS; AND

12 (4) USE RELATED DISCOVERY PROCEDURES.

13 (E) (1) THE REGULATING ENTITY MAY CONTRACT WITH EXPERTS ~~OR~~
14 ~~CONSULTANTS~~ AS REASONABLY NECESSARY TO:

15 (I) DETERMINE WHETHER TO APPROVE AN ACQUISITION
16 GENERALLY;

17 (II) PERFORM AN INDEPENDENT VALUATION OF THE PUBLIC OR
18 CHARITABLE ASSETS OF THE TRANSFEROR;

19 (III) EVALUATE THE IMPACT OF THE ACQUISITION ON THE
20 AFFECTED COMMUNITY;

21 (IV) DETERMINE WHETHER THERE HAS BEEN DUE DILIGENCE BY
22 THE TRANSFEROR; AND

23 (V) DETERMINE THE EXISTENCE OF ANY CONFLICTS OF INTEREST.

24 (2) THE SELECTION OF AN EXPERT BY A REGULATING ENTITY UNDER
25 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBJECT TO THE STATE
26 PROCUREMENT LAWS.

27 ~~(2)~~ (3) IF A REGULATING ENTITY ~~EMPLOYS~~ CONTRACTS FOR EXPERT
28 ASSISTANCE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE TRANSFEREE SHALL
29 PAY THE REASONABLE COST OF THE EXPERT ASSISTANCE, AS DETERMINED BY THE
30 REGULATING ENTITY.

31 (F) WITHIN 95 60 DAYS AFTER ~~RECEIVING AN APPLICATION~~ THE RECORD,
32 INCLUDING THE PUBLIC HEARING PROCESS, HAS BEEN CLOSED, THE APPROPRIATE
33 REGULATING ENTITY SHALL:

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

1 (2) DISAPPROVE THE ACQUISITION.

2 (G) (1) UNLESS THE APPROPRIATE REGULATING ENTITY EXTENDS FOR
 3 GOOD CAUSE UNDER PARAGRAPH (2) OF THIS SUBSECTION THE TIME FOR MAKING A
 4 DETERMINATION UNDER SUBSECTION (F) OF THIS SECTION, IF AN APPLICATION IS
 5 NOT APPROVED OR DISAPPROVED WITHIN 95 60 DAYS AFTER ITS RECEIPT THE
 6 RECORD, INCLUDING THE PUBLIC HEARING PROCESS, HAS BEEN CLOSED, THE
 7 APPLICATION SHALL BE DEEMED APPROVED.

8 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AT ITS
 9 DISCRETION, THE REGULATING ENTITY MAY EXTEND FOR GOOD CAUSE FOR A
 10 60-DAY PERIOD THE TIME FOR MAKING A DETERMINATION UNDER SUBSECTION (F)
 11 OF THIS SECTION.

12 (3) THE REGULATING ENTITY IS LIMITED TO A MAXIMUM OF TWO
 13 60-DAY EXTENSIONS FOR MAKING A DETERMINATION ON THE SAME APPLICATION.

14 SUBTITLE 3. REVIEW CRITERIA AND PENALTIES.

15 6.5-301.

16 (A) THE APPROPRIATE REGULATING ENTITY SHALL APPROVE AN
 17 ACQUISITION UNLESS IT FINDS THE ACQUISITION IS NOT IN THE PUBLIC INTEREST.

18 (B) AN ACQUISITION IS NOT IN THE PUBLIC INTEREST UNLESS APPROPRIATE
 19 STEPS HAVE BEEN TAKEN TO:

20 (1) ~~SAFEGUARD~~ ENSURE THAT THE VALUE OF PUBLIC OR CHARITABLE
 21 ASSETS IS SAFEGUARDED;

22 (2) ENSURE THAT:

23 (I) ~~100% OF THE PROCEEDS OF AN ACQUISITION~~ THE FAIR VALUE
 24 OF THE PUBLIC OR CHARITABLE ASSETS OF A NONPROFIT HEALTH SERVICE PLAN OR
 25 A HEALTH MAINTENANCE ORGANIZATION IS TRANSFERRED WILL BE DISTRIBUTED
 26 TO THE MARYLAND HEALTH CARE FOUNDATION THAT WAS ESTABLISHED IN § 20-502
 27 OF THE HEALTH - GENERAL ARTICLE; OR

28 (II) 1. ~~40% OF THE PROCEEDS OF AN ACQUISITION~~ FAIR VALUE
 29 OF THE PUBLIC OR CHARITABLE ASSETS OF A NONPROFIT HOSPITAL IS
 30 TRANSFERRED WILL BE DISTRIBUTED TO THE MARYLAND HEALTH CARE
 31 FOUNDATION THAT WAS ESTABLISHED IN § 20-502 OF THE HEALTH - GENERAL
 32 ARTICLE; AND

33 2. ~~60% OF THE PROCEEDS OF AN ACQUISITION~~ FAIR VALUE
 34 OF THE PUBLIC OR CHARITABLE ASSETS OF A NONPROFIT HOSPITAL IS
 35 TRANSFERRED WILL BE DISTRIBUTED TO A PUBLIC OR NONPROFIT CHARITABLE
 36 ENTITY OR TRUST THAT IS:

1 A. DEDICATED TO SERVING THE UNMET HEALTH CARE
2 NEEDS OF THE ~~CITIZENS OF THE STATE~~ AFFECTED COMMUNITY WITHIN THIS STATE;

3 B. DEDICATED TO PROMOTING ACCESS TO HEALTH CARE IN
4 THE AFFECTED COMMUNITY WITHIN THIS STATE;

5 C. DEDICATED TO IMPROVING THE QUALITY OF HEALTH
6 CARE IN THE AFFECTED COMMUNITY WITHIN THIS STATE; AND

7 D. INDEPENDENT OF THE TRANSFEREE; AND

8 ~~(3) ENSURE THAT NO PART OF THE PROCEEDS OF THE ACQUISITION~~
9 ~~INURE DIRECTLY OR INDIRECTLY TO AN OFFICER, DIRECTOR, OR TRUSTEE OF A~~
10 ~~NONPROFIT HEALTH ENTITY THROUGH STOCK OPTIONS OR OTHERWISE.~~

11 (3) ENSURE THAT NO PART OF THE PUBLIC OR CHARITABLE ASSETS OF
12 THE ACQUISITION INURE DIRECTLY OR INDIRECTLY TO AN OFFICER, DIRECTOR, OR
13 TRUSTEE OF A NONPROFIT HEALTH ENTITY.

14 (C) THE REGULATING ENTITY MAY DETERMINE THAT A DISTRIBUTION OF
15 ASSETS OF A NONPROFIT HEALTH ENTITY OR A VOTE OF ITS CERTIFICATE HOLDERS
16 AS PROVIDED UNDER § 6.5-303(2)(III) OF THIS SUBTITLE IS NOT REQUIRED UNDER
17 THIS SECTION IF THE TRANSACTION IS:

18 (1) DETERMINED NOT BE AN ACQUISITION;

19 (2) IN THE ORDINARY COURSE OF BUSINESS; AND

20 (3) FOR FAIR VALUE.

21 (D) IN DETERMINING FAIR VALUE, THE APPROPRIATE REGULATING ENTITY
22 MAY CONSIDER ALL RELEVANT FACTORS, INCLUDING, AS DETERMINED BY THE
23 REGULATING ENTITY:

24 (1) THE VALUE OF THE NONPROFIT HEALTH ENTITY OR AN AFFILIATE
25 OR THE ASSETS OF SUCH AN ENTITY THAT IS DETERMINED AS IF THE ENTITY HAD
26 VOTING STOCK OUTSTANDING AND 100% OF ITS STOCK WAS FREELY TRANSFERABLE
27 AND AVAILABLE FOR PURCHASE WITHOUT RESTRICTION;

28 (2) THE VALUE AS A GOING CONCERN;

29 (3) THE MARKET VALUE;

30 (4) THE INVESTMENT OR EARNINGS VALUE;

31 (5) THE NET ASSET VALUE; AND

32 (6) A CONTROL PREMIUM, IF ANY.

33 ~~(C)~~ (E) IN DETERMINING WHETHER AN ACQUISITION IS IN THE PUBLIC
34 INTEREST, THE APPROPRIATE REGULATING ENTITY SHALL CONSIDER:

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

4 (2) THE PROCEDURES THE TRANSFEROR USED IN MAKING THE
5 DECISION, INCLUDING WHETHER APPROPRIATE EXPERT ASSISTANCE WAS USED;

6 (3) WHETHER ANY CONFLICTS OF INTEREST WERE DISCLOSED,
7 INCLUDING CONFLICTS OF INTEREST OF BOARD MEMBERS, EXECUTIVES, AND
8 EXPERTS RETAINED BY THE TRANSFEROR, TRANSFEREE, OR ANY OTHER PARTIES TO
9 THE ACQUISITION;

10 (4) WHETHER THE TRANSFEROR WILL RECEIVE FAIR ~~MARKET~~ VALUE
11 FOR ITS PUBLIC OR CHARITABLE ASSETS;

12 (5) WHETHER ~~CHARITABLE FUNDS~~ PUBLIC OR CHARITABLE ASSETS ARE
13 PLACED AT UNREASONABLE RISK IF THE ACQUISITION IS FINANCED IN PART BY THE
14 TRANSFEROR;

15 (6) WHETHER THE ACQUISITION HAS THE LIKELIHOOD OF CREATING A
16 SIGNIFICANT ADVERSE EFFECT ON THE AVAILABILITY OR ACCESSIBILITY OF
17 HEALTH CARE SERVICES IN THE AFFECTED COMMUNITY;

18 (7) WHETHER THE ACQUISITION INCLUDES SUFFICIENT SAFEGUARDS
19 TO ENSURE THAT THE AFFECTED COMMUNITY WILL HAVE CONTINUED ACCESS TO
20 AFFORDABLE HEALTH CARE; AND

21 (8) WHETHER ANY MANAGEMENT CONTRACT UNDER THE ACQUISITION
22 IS FOR FAIR ~~MARKET~~ VALUE.

23 6.5-302.

24 IN DETERMINING WHETHER TO APPROVE AN ACQUISITION OF A NONPROFIT
25 HOSPITAL, THE ATTORNEY GENERAL SHALL CONSIDER:

26 (1) THE CRITERIA LISTED IN § 6.5-301 OF THIS SUBTITLE; AND

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

29 6.5-303.

30 IN DETERMINING WHETHER TO APPROVE AN ACQUISITION OF A NONPROFIT
31 HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION,
32 THE ADMINISTRATION SHALL CONSIDER:

33 (1) THE CRITERIA LISTED IN § 6.5-301 OF THIS SUBTITLE; AND

34 (2) WHETHER THE ACQUISITION:

1 (I) IS EQUITABLE TO ENROLLEES, INSUREDS, SHAREHOLDERS,
2 AND CERTIFICATE HOLDERS, IF ANY, OF THE TRANSFEROR;

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

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

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

8 2. PURSUANT TO THE REQUIREMENTS ADOPTED BY THE
9 COMMISSIONER REGARDING NOTICE AND PROCEDURE; AND

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

12 1. COMPLY WITH THE SURPLUS REQUIRED UNDER LAW; AND

13 2. PROVIDE FOR THE SECURITY OF THE TRANSFEREE'S
14 CERTIFICATE HOLDERS AND POLICYHOLDERS.

15 6.5-304.

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

20 (B) THE CERTIFICATE OF AUTHORITY, AGENT APPOINTMENTS, LICENSES,
21 FORMS, AND ANY OTHER FILINGS IN EXISTENCE AT THE TIME OF AN ACQUISITION
22 SHALL CONTINUE IN FULL FORCE AND EFFECT UPON AN ACQUISITION IF A
23 CORPORATION AT ALL TIMES REMAINS QUALIFIED TO ENGAGE IN BUSINESS IN THE
24 STATE.

25 (C) ALL OUTSTANDING CONTRACTS OF A TRANSFEROR SHALL REMAIN IN
26 FULL FORCE AND EFFECT AND NEED NOT BE OTHERWISE ENDORSED UNLESS
27 ORDERED BY THE ~~ADMINISTRATION~~ REGULATING ENTITY.

28 6.5-305.

29 (A) THE SECRETARY OF THE DEPARTMENT MAY REVOKE OR SUSPEND A
30 LICENSE TO OPERATE A HOSPITAL IN ACCORDANCE WITH § 19-327 OF THE HEALTH -
31 GENERAL ARTICLE IF AN ACQUISITION OCCURS WITHOUT THE APPROVAL OF THE
32 ATTORNEY GENERAL.

33 ~~(B) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A~~
34 ~~CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN IN~~
35 ~~ACCORDANCE WITH TITLE 14, SUBTITLE 1 OF THE INSURANCE ARTICLE IF AN~~

~~1 ACQUISITION OF THE NONPROFIT HEALTH SERVICE PLAN OCCURS WITHOUT THE
2 APPROVAL OF THE ADMINISTRATION.~~

~~3 (C) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
4 CERTIFICATE OF AUTHORITY TO OPERATE A HEALTH MAINTENANCE ORGANIZATION
5 IN ACCORDANCE WITH TITLE 19, SUBTITLE 7 OF THE HEALTH GENERAL ARTICLE IF
6 AN ACQUISITION OF A NONPROFIT HEALTH MAINTENANCE ORGANIZATION OCCURS
7 WITHOUT THE APPROVAL OF THE ADMINISTRATION.~~

~~8 (D) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
9 CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN OR
10 A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IF THE COMMISSIONER
11 DETERMINES THAT THE NONPROFIT ENTITY IS BEING OPERATED FOR PROFIT.~~

12 (B) AN ACQUISITION OF A NONPROFIT HEALTH SERVICE PLAN OR A
13 NONPROFIT HEALTH MAINTENANCE ORGANIZATION MAY NOT OCCUR WITHOUT THE
14 APPROVAL OF THE ADMINISTRATION.

15 (C) A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH
16 MAINTENANCE ORGANIZATION MAY NOT BE OPERATED FOR PROFIT.

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

22 (1) THE DIVESTITURE OF THE ACQUISITION;

23 (2) THAT THE ENTITY FULLY COMPLY WITH THIS TITLE;

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

26 (4) THAT THE CERTIFICATE OF AUTHORITY OF THE ENTITY TO OPERATE
27 AS A NONPROFIT HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE
28 ORGANIZATION IN THIS STATE BE REVOKED OR SUSPENDED; OR

29 (5) THE PAYMENT OF A PENALTY AS PROVIDED FOR IN § 4-113(D)(1) OF
30 THE INSURANCE ARTICLE FOR EACH VIOLATION OF SUBSECTION (B) OR (C) OF THIS
31 SECTION.

32 6.5-306.

33 (A) BEFORE A PUBLIC OR NONPROFIT CHARITABLE ENTITY OR TRUST MAY
34 RECEIVE A DISTRIBUTION OF PUBLIC OR CHARITABLE ASSETS IN ACCORDANCE
35 WITH AN AGREEMENT, CONTRACT, OR TRANSACTION APPROVED BY THE
36 REGULATING ENTITY UNDER THIS SUBTITLE, IT SHALL HAVE ~~MECHANISMS~~
37 PROCEDURES IN PLACE TO:

- 1 (1) AVOID CONFLICTS OF INTEREST; AND
- 2 (2) PROHIBIT THE MAKING OF GRANTS THAT WOULD BENEFIT:
- 3 (I) THE PUBLIC OR NONPROFIT CHARITABLE ENTITY'S OR TRUST'S
4 BOARD OF DIRECTORS;
- 5 (II) THE PUBLIC OR NONPROFIT CHARITABLE ENTITY'S OR TRUST'S
6 MANAGEMENT;
- 7 (III) THE FOR-PROFIT STOCK ENTITY; OR
- 8 (IV) A MUTUAL ENTITY.

9 (B) A PUBLIC OR NONPROFIT CHARITABLE ENTITY OR TRUST THAT RECEIVES
10 A DISTRIBUTION OF PUBLIC OR CHARITABLE ASSETS SHALL SUBMIT AN ANNUAL
11 REPORT TO THE OFFICE ON REGARDING THE GRANT-MAKING AND OTHER
12 CHARITABLE ACTIVITIES OF THE ENTITY RELATED TO ITS USE OF THE PUBLIC OR
13 CHARITABLE ASSETS RECEIVED.

14 (C) THE ANNUAL REPORT SUBMITTED UNDER SUBSECTION (B) OF THIS
15 SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AT THE PRINCIPAL OFFICE OF
16 THE PUBLIC OR NONPROFIT CHARITABLE ENTITY OR TRUST.

17 6.5-307.

18 (A) THIS TITLE DOES NOT APPLY TO THE ACQUISITION OF A FOREIGN
19 NONPROFIT HEALTH ENTITY OPERATING IN THIS STATE IF THE APPROPRIATE
20 REGULATING ENTITY DETERMINES, BASED ON THE STANDARDS SET FORTH IN THIS
21 TITLE, THAT ANY PUBLIC OR CHARITABLE ASSETS OF THE NONPROFIT HEALTH
22 ENTITY THAT SERVE HEALTH CARE NEEDS IN THIS STATE WILL BE ADEQUATELY
23 PROTECTED.

24 (B) ANY NONPROFIT HEALTH ENTITY THAT THE APPROPRIATE REGULATING
25 ENTITY HAS DETERMINED UNDER SUBSECTION (A) OF THIS SECTION THAT THIS
26 TITLE DOES NOT APPLY SHALL SUBMIT AN INFORMATION COPY OF ITS APPLICATION
27 TO ENGAGE IN AN ACQUISITION TO THE REGULATING ENTITY.

28 **Article - Health - General**

29 19-327.

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

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

1 (B) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT OR REVOKE A
2 LICENSE IF THE APPLICANT OR LICENSEE VIOLATES TITLE 6.5 OF THE STATE
3 GOVERNMENT ARTICLE.

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

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

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

10 19-706.

11 (Y) THE PROVISIONS OF TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE
12 SHALL APPLY TO THE ACQUISITION OF A HEALTH MAINTENANCE ORGANIZATION
13 OWNED BY A NONPROFIT ENTITY.

14 [19-711.1.

15 (a) A domestic nonprofit health maintenance organization may become a
16 for-profit health maintenance organization under the plan and procedure approved
17 by the Commissioner.

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

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

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

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

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

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

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

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

7 **Article - Insurance**

8 4-113.

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

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

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

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

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

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

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

27 (7) refuses to provide additional information that the Commissioner
28 considers advisable in considering an application for renewal of the certificate of
29 authority;

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

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

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

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

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

13 (13) HAS VIOLATED THE PROVISIONS OF TITLE 6.5 OF THE STATE
14 GOVERNMENT ARTICLE.

15 14-112.

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

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

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

21 (i) is being operated for profit;

22 (ii) is being fraudulently conducted;

23 (iii) is not complying with this subtitle or article; [or]

24 (iv) knowingly is failing to comply with a rule, regulation, or order
25 of the Commissioner; OR

26 (V) HAS VIOLATED THE PROVISIONS OF TITLE 6.5 OF THE STATE
27 GOVERNMENT ARTICLE.

28 [14-131.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 [14-132.

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

34 (b) A corporation that is incorporated under the laws of the State and is
35 subject to this subtitle may convert to a mutual health insurer subject to the
36 provisions of this article under a plan and procedure approved by the Commissioner.

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

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

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

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

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

13 (5) ensures that the resulting mutual health insurer will possess surplus
14 in an amount sufficient to:

15 (i) comply with the surplus requirements under this article for a
16 mutual health insurer; and

17 (ii) provide for the security of the resulting mutual health insurer's
18 policyholders and certificate holders.

19 (d) A corporation that becomes a mutual health insurer under this section
20 does not abandon its corporate status by converting, unless the plan specifically
21 provides otherwise.

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

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

27 (g) The Commissioner or designee of the Commissioner may conduct a hearing
28 on the proposed conversion of a corporation subject to this subtitle into a mutual
29 health insurer.]

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
31 construed only prospectively and may not be applied or interpreted to have any effect
32 on or application to any acquisition completed or certificate of need or certificate of
33 authority granted before the effective date of this Act.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 1998.

