

SENATE BILL 143

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1998 Regular Session
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By: **Senators Hollinger, Bromwell, and Teitelbaum**
Introduced and read first time: January 23, 1998
Assigned to: Finance

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
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 under certain circumstances; specifying the conditions under
14 which a nonprofit charitable corporation may receive charitable assets under
15 this Act; defining certain terms; providing for the application of this Act; and
16 generally relating to the acquisition of nonprofit health entities.

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

23 BY repealing and reenacting, with amendments,
24 Article - Health - General
25 Section 19-327
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 1997 Supplement)

28 BY adding to
29 Article - Health - General
30 Section 19-706(y)
31 Annotated Code of Maryland

1 (1996 Replacement Volume and 1997 Supplement)

2 BY repealing

3 Article - Health - General

4 Section 19-711.1

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 1997 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Insurance

9 Section 4-113(b)

10 Annotated Code of Maryland

11 (1997 Volume)

12 BY repealing and reenacting, with amendments,

13 Article - Insurance

14 Section 14-112

15 Annotated Code of Maryland

16 (1997 Volume)

17 BY repealing

18 Article - Insurance

19 Section 14-131

20 Annotated Code of Maryland

21 (1997 Volume)

22

Preamble

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

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

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

33 WHEREAS, The acquisition of nonprofit health entities by, and the transfer of
34 assets to, for-profit entities is a national trend and, in some cases, the assets of the
35 nonprofit health entities are not fully accounted for or are not used for the benefit of
36 the State; and

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

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

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

11 **Article - State Government**

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

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

14 6.5-101.

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

16 (B) (1) "ACQUISITION" MEANS THE SALE, LEASE, TRANSFER, MERGER,
17 CREATION OF A JOINT VENTURE, OR OTHER DISPOSITION OF AN OWNERSHIP OR
18 CONTROLLING INTEREST IN THE PRINCIPAL OPERATING ASSETS OF A NONPROFIT
19 HEALTH ENTITY THAT RESULTS IN:

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

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

24 (2) "ACQUISITION" INCLUDES:

25 (I) A PUBLIC OFFERING OF STOCK; AND

26 (II) A CONVERSION TO A FOR-PROFIT ENTITY.

27 (3) "ACQUISITION" DOES NOT INCLUDE THE SALE, LEASE, TRANSFER,
28 MERGER, CREATION OF A JOINT VENTURE, OR OTHER DISPOSITION OF AN
29 OWNERSHIP OR CONTROLLING INTEREST IN A NONPROFIT HEALTH ENTITY IF THE
30 TRANSFEREE:

31 (I) IS EXEMPT FROM FEDERAL INCOME TAXATION UNDER §
32 501(C)(3) OF THE INTERNAL REVENUE CODE OR AS A GOVERNMENTAL ENTITY;

33 (II) WILL MAINTAIN REPRESENTATION FROM THE AFFECTED
34 COMMUNITY ON THE LOCAL BOARD;

1 (III) 1. IS A GOVERNMENTAL ENTITY; OR

2 2. IS A NONPROFIT CORPORATION HAVING A
3 SUBSTANTIALLY SIMILAR CHARITABLE HEALTH CARE PURPOSE AS THE
4 TRANSFEROR; AND

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

7 (C) "ADMINISTRATION" MEANS THE MARYLAND INSURANCE
8 ADMINISTRATION.

9 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL
10 HYGIENE.

11 (E) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN §
12 19-701 OF THE HEALTH - GENERAL ARTICLE.

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

15 (G) "NONPROFIT HEALTH ENTITY" MEANS:

16 (1) A NONPROFIT HOSPITAL;

17 (2) A NONPROFIT HEALTH SERVICE PLAN; OR

18 (3) A NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

19 (H) "NONPROFIT HEALTH SERVICE PLAN" MEANS A CORPORATION WITHOUT
20 CAPITAL STOCK WITH A CERTIFICATE OF AUTHORITY FROM THE INSURANCE
21 COMMISSIONER TO OPERATE AS A NONPROFIT HEALTH SERVICE PLAN OR A
22 NONPROFIT DENTAL PLAN.

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

24 (J) "REGULATING ENTITY" MEANS:

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

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

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

31 (K) "TRANSFeree" MEANS THE PERSON IN AN ACQUISITION THAT RECEIVES
32 THE OWNERSHIP OR CONTROL OF THE NONPROFIT HEALTH ENTITY THAT IS THE
33 SUBJECT OF THE ACQUISITION.

1 (L) "TRANSFEROR" MEANS THE NONPROFIT HEALTH ENTITY THAT IS THE
2 SUBJECT OF THE ACQUISITION, OR THE CORPORATION THAT OWNS THE NONPROFIT
3 HEALTH ENTITY THAT IS THE SUBJECT OF THE ACQUISITION.

4 6.5-102.

5 A PERSON MAY NOT ENGAGE IN AN ACQUISITION OF A NONPROFIT HEALTH
6 ENTITY UNLESS THE TRANSFEROR AND THE TRANSFEREE RECEIVE THE APPROVAL
7 OF THE APPROPRIATE REGULATING ENTITY.

8 6.5-103.

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

11 (B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION
12 SHALL INCLUDE PROVISIONS THAT ESTABLISH HEARING AND APPEAL PROCEDURES.

13 SUBTITLE 2. APPLICATION PROCESS.

14 6.5-201.

15 (A) A PERSON WHO SEEKS TO ENGAGE IN AN ACQUISITION OF A NONPROFIT
16 HEALTH ENTITY SHALL SUBMIT AN APPLICATION TO THE APPROPRIATE
17 REGULATING ENTITY.

18 (B) AN APPLICATION SHALL INCLUDE:

19 (1) THE NAME OF THE TRANSFEROR;

20 (2) THE NAME OF THE TRANSFEREE;

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

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

25 (5) A COPY OF THE ACQUISITION AGREEMENT;

26 (6) A FINANCIAL AND COMMUNITY IMPACT ANALYSIS REPORT FROM AN
27 INDEPENDENT EXPERT OR CONSULTANT THAT ADDRESSES THE CRITERIA IN §
28 6.5-301 OF THIS TITLE; AND

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

30 (C) ON REQUEST TO THE REGULATING ENTITY, AN APPLICATION AND
31 RELATED DOCUMENTS SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND
32 COPYING.

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

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

11 6.5-202.

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

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

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

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

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

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

22 (3) DESCRIBE THE CONTENTS OF THE APPLICATION;

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

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

27 (C) THE APPLICANT SHALL BEAR THE COST OF THE NOTICE REQUIRED
28 UNDER THIS SECTION.

29 6.5-203.

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

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

34 (C) ANY PERSON MAY FILE WRITTEN COMMENTS AND EXHIBITS OR MAKE A
35 STATEMENT AT A PUBLIC HEARING.

1 (D) THE REGULATING ENTITY MAY:

2 (1) SUBPOENA INFORMATION AND WITNESSES;

3 (2) REQUIRE SWORN STATEMENTS;

4 (3) TAKE DEPOSITIONS; AND

5 (4) USE RELATED DISCOVERY PROCEDURES.

6 (E) (1) THE REGULATING ENTITY MAY CONTRACT WITH EXPERTS OR
7 CONSULTANTS AS REASONABLY NECESSARY TO:

8 (I) DETERMINE WHETHER TO APPROVE AN ACQUISITION
9 GENERALLY;

10 (II) PERFORM AN INDEPENDENT VALUATION OF THE PUBLIC
11 ASSETS OF THE TRANSFEROR;

12 (III) EVALUATE THE IMPACT OF THE ACQUISITION ON THE
13 AFFECTED COMMUNITY;

14 (IV) DETERMINE WHETHER THERE HAS BEEN DUE DILIGENCE BY
15 THE TRANSFEROR; AND

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

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

20 (F) WITHIN 95 DAYS AFTER RECEIVING AN APPLICATION, THE APPROPRIATE
21 REGULATING ENTITY SHALL:

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

23 (2) DISAPPROVE THE ACQUISITION.

24 (G) IF AN APPLICATION IS NOT APPROVED OR DISAPPROVED WITHIN 95 DAYS
25 AFTER ITS RECEIPT, THE APPLICATION SHALL BE DEEMED APPROVED.

26 SUBTITLE 3. REVIEW CRITERIA AND PENALTIES.

27 6.5-301.

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

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

1 (1) SAFEGUARD THE VALUE OF PUBLIC ASSETS;

2 (2) ENSURE THAT:

3 (I) 100% OF THE PROCEEDS OF AN ACQUISITION OF A NONPROFIT
4 HEALTH SERVICE PLAN OR A HEALTH MAINTENANCE ORGANIZATION IS
5 TRANSFERRED TO THE MARYLAND HEALTH CARE FOUNDATION THAT WAS
6 ESTABLISHED IN § 20-502 OF THE HEALTH - GENERAL ARTICLE; OR

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

11 2. 60% OF THE PROCEEDS OF AN ACQUISITION OF A
12 NONPROFIT HOSPITAL IS TRANSFERRED TO A NONPROFIT CHARITABLE ENTITY OR
13 TRUST THAT IS:

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

16 B. DEDICATED TO PROMOTING ACCESS TO HEALTH CARE;

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

19 D. INDEPENDENT OF THE TRANSFEREE; 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 THROUGH STOCK OPTIONS OR OTHERWISE.

23 (C) IN DETERMINING WHETHER AN ACQUISITION IS IN THE PUBLIC
24 INTEREST, THE APPROPRIATE 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 THE
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 TO
33 THE ACQUISITION;

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

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

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

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

9 (8) WHETHER ANY MANAGEMENT CONTRACT UNDER THE ACQUISITION
10 IS FOR FAIR MARKET VALUE.

11 6.5-302.

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

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

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

17 6.5-303.

18 IN DETERMINING WHETHER TO APPROVE AN ACQUISITION OF A NONPROFIT
19 HEALTH SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION,
20 THE ADMINISTRATION SHALL CONSIDER:

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

22 (2) WHETHER THE ACQUISITION:

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

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

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

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

30 2. PURSUANT TO THE REQUIREMENTS ADOPTED BY THE
31 COMMISSIONER REGARDING NOTICE AND PROCEDURE; AND

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

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

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

4 6.5-304.

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

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

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

17 6.5-305.

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

22 (B) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
23 CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN IN
24 ACCORDANCE WITH TITLE 14, SUBTITLE 1 OF THE INSURANCE ARTICLE IF AN
25 ACQUISITION OF THE NONPROFIT HEALTH SERVICE PLAN OCCURS WITHOUT THE
26 APPROVAL OF THE ADMINISTRATION.

27 (C) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
28 CERTIFICATE OF AUTHORITY TO OPERATE A HEALTH MAINTENANCE ORGANIZATION
29 IN ACCORDANCE WITH TITLE 19, SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE IF
30 AN ACQUISITION OF A NONPROFIT HEALTH MAINTENANCE ORGANIZATION OCCURS
31 WITHOUT THE APPROVAL OF THE ADMINISTRATION.

32 (D) THE INSURANCE COMMISSIONER MAY REVOKE OR SUSPEND A
33 CERTIFICATE OF AUTHORITY TO OPERATE A NONPROFIT HEALTH SERVICE PLAN OR
34 A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IF THE COMMISSIONER
35 DETERMINES THAT THE NONPROFIT ENTITY IS BEING OPERATED FOR PROFIT.

36 6.5-306.

37 (A) BEFORE A NONPROFIT CHARITABLE ENTITY OR TRUST MAY RECEIVE A
38 DISTRIBUTION OF CHARITABLE ASSETS IN ACCORDANCE WITH AN AGREEMENT,

1 CONTRACT, OR TRANSACTION APPROVED BY THE REGULATING ENTITY UNDER THIS
2 SUBTITLE, IT SHALL HAVE MECHANISMS IN PLACE TO:

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

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

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

16 **Article - Health - General**

17 19-327.

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

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

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

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

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

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

1 19-706.

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

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
8 by 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
19 as a health maintenance organization formed under the laws of this State as of the
20 date of its 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
23 maintenance organization to a for-profit health maintenance organization shall
24 continue in full force and effect upon conversion if the health maintenance
25 organization at all times remains qualified to engage in business in this State.

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

1 revoke a certificate of authority if the applicant or holder of the certificate of
2 authority:

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

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

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

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

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

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

17 (7) refuses to provide additional information that the Commissioner
18 considers advisable in considering an application for renewal of the certificate of
19 authority;

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

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

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

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

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

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

3 14-112.

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

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

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

9 (i) is being operated for profit;

10 (ii) is being fraudulently conducted;

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

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

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

16 [14-131.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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