

SENATE BILL 143

Unofficial Copy
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1998 Regular Session
8lr0545
CF 8lr0257

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: April 2, 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, impose certain penalties, or take
14 certain other actions under certain circumstances; specifying the conditions
15 under which a nonprofit ~~charitable~~ certain corporation may receive charitable
16 assets under this Act; defining certain terms; providing for the application of
17 this Act; and generally relating to 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,
25 Article - Health - General

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

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

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

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

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

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

29 Preamble

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

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

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

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

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

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

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

18 **Article - State Government**

19 TITLE 6.5. ATTORNEY GENERAL - ACQUISITION OF NONPROFIT HEALTH ENTITIES.

20 SUBTITLE 1. DEFINITIONS AND GENERAL PROVISIONS.

21 6.5-101.

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

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

27 ~~(1) A CHANGE OF OWNERSHIP OR CONTROL OF A 20% OR GREATER~~
 28 ~~INTEREST OR CONTROL IN THE NONPROFIT HEALTH ENTITY; OR~~

29 ~~(2) A TRANSFEREE HOLDING A 50% OR GREATER INTEREST IN THE~~
 30 ~~OWNERSHIP OR CONTROL OF A NONPROFIT HEALTH ENTITY.~~

31 ~~(2) "ACQUISITION" INCLUDES:~~

32 ~~(1) A PUBLIC OFFERING OF STOCK; AND~~

33 ~~(2) A CONVERSION TO A FOR PROFIT ENTITY.~~

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

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

7 (5) ~~WILL MAINTAIN REPRESENTATION FROM THE AFFECTED~~
8 ~~COMMUNITY ON THE LOCAL BOARD;~~

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

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

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

15 (B) "ACQUISITION" MEANS:

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

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

26 (3) A PUBLIC OFFERING OF STOCK; OR

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

28 (C) "ADMINISTRATION" MEANS THE MARYLAND INSURANCE
29 ADMINISTRATION.

30 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND MENTAL
31 HYGIENE.

32 (E) "HEALTH MAINTENANCE ORGANIZATION" HAS THE MEANING STATED IN §
33 19-701 OF THE HEALTH - GENERAL ARTICLE.

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

36 (G) "NONPROFIT HEALTH ENTITY" MEANS:

- 1 (1) A NONPROFIT HOSPITAL;
- 2 (2) A NONPROFIT HEALTH SERVICE PLAN; OR
- 3 (3) A NONPROFIT HEALTH MAINTENANCE ORGANIZATION.

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

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

9 (I) "PUBLIC ASSETS" MEANS ASSETS:

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

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

12 (3) OWNED BY A GOVERNMENTAL ENTITY.

13 (J) "REGULATING ENTITY" MEANS:

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

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

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

20 (K) "TRANSFeree" MEANS THE PERSON IN AN ACQUISITION THAT RECEIVES
21 THE OWNERSHIP OR CONTROL OF THE NONPROFIT HEALTH ENTITY THAT IS THE
22 SUBJECT OF THE ACQUISITION.

23 (L) "TRANSFEROR" MEANS THE NONPROFIT HEALTH ENTITY THAT IS THE
24 SUBJECT OF THE ACQUISITION, OR THE CORPORATION THAT OWNS THE NONPROFIT
25 HEALTH ENTITY THAT IS THE SUBJECT OF THE ACQUISITION.

26 6.5-102.

27 A PERSON MAY NOT ENGAGE IN AN ACQUISITION OF A NONPROFIT HEALTH
28 ENTITY UNLESS THE TRANSFEROR AND THE TRANSFeree RECEIVE THE APPROVAL
29 OF THE APPROPRIATE REGULATING ENTITY.

30 6.5-103.

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

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

3 6.5-104.

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

7 SUBTITLE 2. APPLICATION PROCESS.

8 6.5-201.

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

12 (2) THIS APPLICATION SHALL BE IN ADDITION TO ANY OTHER FILING
13 REQUIRED BY LAW.

14 (B) AN APPLICATION SHALL INCLUDE:

15 (1) THE NAME OF THE TRANSFEROR;

16 (2) THE NAME OF THE TRANSFEREE;

17 (3) THE NAMES OF ANY OTHER PARTIES TO THE ACQUISITION
18 AGREEMENT;

19 (4) THE TERMS OF THE PROPOSED ACQUISITION, INCLUDING THE SALE
20 PRICE;

21 (5) A COPY OF THE ACQUISITION AGREEMENT;

22 (6) A FINANCIAL AND COMMUNITY IMPACT ANALYSIS REPORT FROM AN
23 INDEPENDENT EXPERT OR CONSULTANT THAT ADDRESSES THE CRITERIA IN §
24 6.5-301 OF THIS TITLE; AND

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

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

29 ~~(D) (1) IF THE TRANSFEROR IS A NONPROFIT HEALTH SERVICE PLAN, THE~~
30 ~~TRANSFEROR SHALL NOTIFY EACH SUBSCRIBER TO THE NONPROFIT HEALTH~~
31 ~~SERVICE PLAN OF THE PROPOSED TRANSACTION BY FIRST CLASS MAIL WITHIN 10~~
32 ~~DAYS OF THE SUBMISSION OF THE APPLICATION REQUIRED UNDER SUBSECTION (A)~~
33 ~~OF THIS SECTION.~~

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

6 6.5-202.

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

9 (1) PUBLISH NOTICE OF THE APPLICATION IN A NEWSPAPER OF
10 GENERAL CIRCULATION IN THE COUNTY WHERE THE NONPROFIT HEALTH ENTITY IS
11 LOCATED; AND

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

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

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

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

17 (3) DESCRIBE THE CONTENTS OF THE APPLICATION;

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

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

22 (C) THE APPLICANT SHALL BEAR THE COST OF THE NOTICE REQUIRED
23 UNDER THIS SECTION.

24 6.5-203.

25 (A) ~~WITHIN 65 DAYS AFTER RECEIVING AN APPLICATION~~

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

29 (2) IF THE NONPROFIT HEALTH ENTITY IS A HOSPITAL, THE
30 REGULATING ENTITY SHALL HOLD THE PUBLIC HEARING IN THE JURISDICTION IN
31 WHICH THE HOSPITAL IS LOCATED.

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

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

3 (D) THE REGULATING ENTITY MAY:

4 (1) SUBPOENA INFORMATION AND WITNESSES;

5 (2) REQUIRE SWORN STATEMENTS;

6 (3) TAKE DEPOSITIONS; AND

7 (4) USE RELATED DISCOVERY PROCEDURES.

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

10 (I) DETERMINE WHETHER TO APPROVE AN ACQUISITION
11 GENERALLY;

12 (II) PERFORM AN INDEPENDENT VALUATION OF THE PUBLIC OR
13 CHARITABLE ASSETS OF THE TRANSFEROR;

14 (III) EVALUATE THE IMPACT OF THE ACQUISITION ON THE
15 AFFECTED COMMUNITY;

16 (IV) DETERMINE WHETHER THERE HAS BEEN DUE DILIGENCE BY
17 THE TRANSFEROR; AND

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

19 (2) THE SELECTION OF AN EXPERT BY A REGULATING ENTITY UNDER
20 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF
21 DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

22 ~~(2)~~ (3) IF A REGULATING ENTITY EMPLOYS EXPERT ASSISTANCE
23 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE TRANSFEREE SHALL PAY THE
24 COST REASONABLE COST, AS DETERMINED BY THE REGULATING ENTITY, OF THE
25 EXPERT ASSISTANCE.

26 (F) ~~WITHIN 95 DAYS AFTER RECEIVING AN APPLICATION, SUBJECT TO~~
27 ~~SUBSECTION (G) OF THIS SECTION, WITHIN 60 DAYS AFTER THE RECORD, INCLUDING~~
28 ~~THE HEARING PROCESS, HAS BEEN CLOSED, THE APPROPRIATE REGULATING ENTITY~~
29 ~~SHALL:~~

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

31 (2) DISAPPROVE THE ACQUISITION.

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

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

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

8 SUBTITLE 3. REVIEW CRITERIA AND PENALTIES.

9 6.5-301.

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

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

14 ~~(1) SAFEGUARD THE VALUE OF PUBLIC ASSETS;~~

15 ~~(2) ENSURE THAT:~~

16 ~~(1) 100% OF THE PROCEEDS OF AN ACQUISITION~~

17 (1) THE VALUE OF PUBLIC ASSETS IS SAFEGUARDED;

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

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

26 2. 60% OF THE PROCEEDS OF AN ACQUISITION OF A PUBLIC
 27 OR NONPROFIT HOSPITAL IS ~~TRANSFERRED~~ DISTRIBUTED TO A NONPROFIT
 28 CHARITABLE ENTITY OR TRUST THAT IS:

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

31 B. DEDICATED TO PROMOTING ACCESS TO HEALTH CARE;

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

34 D. INDEPENDENT OF THE TRANSFEREE; AND

1 (3) ~~ENSURE THAT NO PART OF~~ NO PART OF THE PUBLIC ASSETS OR THE
2 PROCEEDS OF THE ACQUISITION INURE DIRECTLY OR INDIRECTLY TO AN OFFICER,
3 DIRECTOR, OR TRUSTEE OF A NONPROFIT HEALTH ENTITY THROUGH STOCK
4 OPTIONS OR OTHERWISE.

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

8 (1) DETERMINED NOT TO BE AN ACQUISITION;

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

10 (3) FOR FAIR VALUE.

11 (D) IN DETERMINING FAIR VALUE, THE APPROPRIATE REGULATING ENTITY
12 MAY CONSIDER ALL RELEVANT FACTORS, INCLUDING, AS DETERMINED BY THE
13 REGULATING ENTITY:

14 (1) THE VALUE OF A NONPROFIT HEALTH ENTITY OR AN AFFILIATE OR
15 THE ASSETS OF SUCH AN ENTITY DETERMINED AS IF THE ENTITY HAD VOTING
16 STOCK OUTSTANDING AND 100% OF ITS STOCK WERE FREELY TRANSFERABLE AND
17 AVAILABLE FOR PURCHASE WITHOUT RESTRICTION;

18 (2) THE VALUE AS A GOING CONCERN;

19 (3) THE MARKET VALUE;

20 (4) THE INVESTMENT OR EARNINGS VALUE;

21 (5) THE NET ASSET VALUE; AND

22 (6) A CONTROL PREMIUM, IF ANY.

23 ~~(E)~~ (E) 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~~ REGULATING ENTITY.

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

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

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

7 (1) THE ENTITY DIVEST THE ACQUISITION;

8 (2) THE ENTITY FULLY COMPLY WITH THIS TITLE;

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

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

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

16 6.5-306.

17 (A) BEFORE A NONPROFIT PUBLIC OR CHARITABLE ENTITY OR TRUST MAY
18 RECEIVE A DISTRIBUTION OF PUBLIC OR CHARITABLE ASSETS IN ACCORDANCE
19 WITH AN AGREEMENT, CONTRACT, OR TRANSACTION APPROVED BY THE
20 REGULATING ENTITY UNDER THIS SUBTITLE, IT SHALL HAVE MECHANISMS IN
21 PLACE TO:

22 (1) AVOID CONFLICTS OF INTEREST; AND

23 (2) PROHIBIT THE MAKING OF GRANTS THAT WOULD BENEFIT:

24 (I) THE NONPROFIT CHARITABLE ENTITY'S BOARD OF DIRECTORS;

25 (II) THE NONPROFIT CHARITABLE ENTITY'S MANAGEMENT;

26 (III) THE FOR-PROFIT STOCK ENTITY; OR

27 (IV) A MUTUAL ENTITY.

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

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

1 6.5-307.

2 (A) THIS TITLE DOES NOT APPLY TO THE ACQUISITION OF A FOREIGN
 3 NONPROFIT HEALTH ENTITY OPERATING IN THIS STATE IF THE APPROPRIATE
 4 REGULATING ENTITY DETERMINES, BASED ON THE STANDARDS SET FORTH IN THIS
 5 TITLE, THAT ANY PUBLIC OR CHARITABLE ASSETS OF THE NONPROFIT HEALTH
 6 ENTITY THAT SERVE HEALTH CARE NEEDS IN THIS STATE WILL BE ADEQUATELY
 7 PROTECTED.

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

12 **Article - Health - General**

13 19-327.

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

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

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

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

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

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

29 19-706.

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

33 [19-711.1.

34 (a) A domestic nonprofit health maintenance organization may become a
 35 for-profit health maintenance organization under the plan and procedure approved
 36 by the Commissioner.

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

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

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

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

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

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

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

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

24 **Article - Insurance**

25 4-113.

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

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

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

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

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

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

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

8 (7) refuses to provide additional information that the Commissioner
9 considers advisable in considering an application for renewal of the certificate of
10 authority;

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

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

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

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

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

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

31 14-112.

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

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

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

- 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
5 of the Commissioner; OR
- 6 (V) HAS VIOLATED THE PROVISIONS OF TITLE 6.5 OF THE STATE
7 GOVERNMENT ARTICLE.
- 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
11 the rehabilitation or reorganization of the corporation under Title 9, Subtitle 2 of this
12 article.

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

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

- 18 (1) is equitable to subscribers and certificate holders, if any, of the
19 corporation;
- 20 (2) complies with Title 2, Subtitle 6 of the Corporations and Associations
21 Article;
- 22 (3) provides that none of the assets or surplus of the nonprofit health
23 service plan will inure directly or indirectly to an officer or director of the corporation;
- 24 (4) is approved by at least two-thirds of the corporation's certificate
25 holders who have voted on the plan or procedure in person, by proxy, or by mail under
26 the notice and procedure approved by the Commissioner; and
- 27 (5) ensures that the resulting stock health insurer will possess surplus
28 in an amount sufficient to:

- 29 (i) comply with the surplus requirements under this article for a
30 stock health insurer; and
- 31 (ii) provide for the security of the resulting stock health insurer's
32 policyholders and certificate holders.

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

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

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

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

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

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