
By: **Delegates Goldwater, Barve, Bobo, Eckardt, Hurson, Kirk, Kopp,
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Introduced and read first time: January 28, 1999

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Acquisition of Nonprofit Hospice Facilities and Nonprofit Nursing Homes**

3 FOR the purpose of adding nonprofit hospice facilities and nonprofit nursing homes
4 to the list of those nonprofit health entities that a person may not acquire
5 without the approval of a certain regulating entity; authorizing the Secretary of
6 Health and Mental Hygiene to deny or revoke the license of a person to operate
7 a nursing home or a hospice care program in a hospice facility for a violation of
8 this Act; defining certain terms; altering certain definitions; making a certain
9 technical correction; providing for the application of this Act; and generally
10 relating to the acquisition of nonprofit hospice facilities and nonprofit nursing
11 homes.

12 BY repealing and reenacting, with amendments,
13 Article - State Government
14 Section 6.5-101, 6.5-301, 6.5-302, and 6.5-305
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1998 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Health - General
19 Section 19-911
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1998 Supplement)

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

24 **Article - State Government**

25 6.5-101.

26 (a) In this title the following words have the meanings indicated.

27 (b) "Acquisition" means:

1 (1) a sale, lease, transfer, merger, or joint venture that results in the
2 disposal of the assets of a nonprofit health entity to a for-profit corporation or entity
3 or to a mutual benefit corporation or entity when a substantial or significant portion
4 of the assets of the nonprofit health entity are involved or will be involved in the
5 agreement or transaction;

6 (2) a transfer of ownership, control, responsibility, or governance of a
7 substantial or significant portion of the assets, operations, or business of the
8 nonprofit health entity to any for-profit corporation or entity or to any mutual
9 benefit corporation or entity;

10 (3) a public offering of stock; or

11 (4) a conversion to a for-profit entity.

12 (c) "Administration" means the Maryland Insurance Administration.

13 (d) "Department" means the Department of Health and Mental Hygiene.

14 (e) "Health maintenance organization" has the meaning stated in § 19-701 of
15 the Health - General Article.

16 (F) "HOSPICE FACILITY" HAS THE MEANING STATED IN § 19-901 OF THE
17 HEALTH - GENERAL ARTICLE.

18 [(f)] (G) "Hospital" has the meaning stated in § 19-301 of the Health -
19 General Article.

20 [(g)] (H) "Nonprofit health entity" means:

21 (1) a nonprofit hospital;

22 (2) a nonprofit health service plan; [or]

23 (3) a nonprofit health maintenance organization;

24 (4) A NONPROFIT HOSPICE FACILITY; OR

25 (5) A NONPROFIT NURSING HOME.

26 [(h)] (I) "Nonprofit health service plan" means a corporation without capital
27 stock with a certificate of authority from the Insurance Commissioner to operate as a
28 nonprofit health service plan or a nonprofit dental plan.

29 (J) "NURSING HOME" MEANS A RELATED INSTITUTION, AS THAT TERM IS
30 DEFINED IN § 19-301 OF THE HEALTH - GENERAL ARTICLE, THAT IS CLASSIFIED AS A
31 NURSING HOME.

32 [(i)] (K) "Public assets" include:

33 (1) assets held for the benefit of the public or the community;

1 (2) assets in which the public has an ownership interest; and

2 (3) assets owned by a governmental entity.

3 [(j)] (L) "Regulating entity" means:

4 (1) for an acquisition of a nonprofit hospital, A NONPROFIT HOSPICE
5 FACILITY, OR A NONPROFIT NURSING HOME, the Attorney General in consultation
6 with the Department;

7 (2) for an acquisition of a nonprofit health service plan, the
8 Administration; and

9 (3) for an acquisition of a nonprofit health maintenance organization,
10 the Administration.

11 [(k)] (M) "Transferee" means the person in an acquisition that receives the
12 ownership or control of the nonprofit health entity that is the subject of the
13 acquisition.

14 [(l)] (N) "Transferor" means the nonprofit health entity that is the subject of
15 the acquisition, or the corporation that owns the nonprofit health entity that is the
16 subject of the acquisition.

17 6.5-301.

18 (a) The appropriate regulating entity shall approve an acquisition unless it
19 finds the acquisition is not in the public interest.

20 (b) An acquisition is not in the public interest unless appropriate steps have
21 been taken to:

22 (1) ensure that the value of public or charitable assets is safeguarded;

23 (2) ensure that:

24 (i) the fair value of the public or charitable assets of a nonprofit
25 health service plan or a health maintenance organization will be distributed to the
26 Maryland Health Care Foundation that was established in § 20-502 of the Health -
27 General Article; or

28 (ii) 1. 40% of the fair value of the public or charitable assets of a
29 nonprofit hospital, NONPROFIT HOSPICE FACILITY, OR A NONPROFIT NURSING HOME
30 will be distributed to the Maryland Health Care Foundation that was established in §
31 20-502 of the Health - General Article; and

32 2. 60% of the fair value of the public or charitable assets of a
33 nonprofit hospital, NONPROFIT HOSPICE FACILITY, A NONPROFIT NURSING HOME
34 will be distributed to a public or nonprofit charitable entity or trust that is:

- 1 A. dedicated to serving the unmet health care needs of the
2 affected community;
- 3 B. dedicated to promoting access to health care in the
4 affected community;
- 5 C. dedicated to improving the quality of health care in the
6 affected community; and
- 7 D. independent of the transferee; and

8 (3) ensure that no part of the public or charitable assets of the
9 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
10 health entity.

11 (c) The regulating entity may determine that a distribution of assets of a
12 nonprofit health entity or a vote of its certificate holders as provided under §
13 6.5-303(2)(iii) of this subtitle is not required under this section if the transaction is:

- 14 (1) determined not be an acquisition;
- 15 (2) in the ordinary course of business; and
- 16 (3) for fair value.

17 (d) In determining fair value, the appropriate regulating entity may consider
18 all relevant factors, including, as determined by the regulating entity:

- 19 (1) the value of the nonprofit health entity or an affiliate or the assets of
20 such an entity that is determined as if the entity had voting stock outstanding and
21 100% of its stock was freely transferable and available for purchase without
22 restriction;
- 23 (2) the value as a going concern;
- 24 (3) the market value;
- 25 (4) the investment or earnings value;
- 26 (5) the net asset value; and
- 27 (6) a control premium, if any.

28 (e) In determining whether an acquisition is in the public interest, the
29 appropriate regulating entity shall consider:

- 30 (1) whether the transferor exercised due diligence in deciding to engage
31 in an acquisition, selecting the transferee, and negotiating the terms and conditions
32 of the acquisition;

1 (2) the procedures the transferor used in making the decision, including
2 whether appropriate expert assistance was used;

3 (3) whether any conflicts of interest were disclosed, including conflicts of
4 interest of board members, executives, and experts retained by the transferor,
5 transferee, or any other parties to the acquisition;

6 (4) whether the transferor will receive fair value for its public or
7 charitable assets;

8 (5) whether public or charitable assets are placed at unreasonable risk if
9 the acquisition is financed in part by the transferor;

10 (6) whether the acquisition has the likelihood of creating a significant
11 adverse effect on the availability or accessibility of health care services in the affected
12 community;

13 (7) whether the acquisition includes sufficient safeguards to ensure that
14 the affected community will have continued access to affordable health care; and

15 (8) whether any management contract under the acquisition is for fair
16 value.

17 6.5-302.

18 In determining whether to approve an acquisition of a nonprofit hospital, A
19 NONPROFIT HOSPICE FACILITY, OR A NONPROFIT NURSING HOME, the Attorney
20 General shall consider:

21 (1) the criteria listed in § 6.5-301 of this subtitle; and

22 (2) whether the affected community will have continued access to
23 affordable health care.

24 6.5-305.

25 (a) [The] IF AN ACQUISITION OCCURS WITHOUT THE APPROVAL OF THE
26 ATTORNEY GENERAL, THE Secretary of the Department may DENY OR revoke [or
27 suspend] a license to operate:

28 (1) a hospital OR A NURSING HOME in accordance with § 19-327 of the
29 Health - General Article [if an acquisition occurs without the approval of the
30 Attorney General]; OR

31 (2) A HOSPICE CARE PROGRAM IN A HOSPICE FACILITY IN ACCORDANCE
32 WITH § 19-911 OF THE HEALTH - GENERAL ARTICLE.

33 (b) An acquisition of a nonprofit health service plan or a nonprofit health
34 maintenance organization may not occur without the approval of the Administration.

1 (c) A nonprofit health service plan or a nonprofit health maintenance
2 organization may not be operated for profit.

3 (d) If the Commissioner determines that a nonprofit health service plan or a
4 nonprofit health maintenance organization is in violation of subsection (b) or (c) of
5 this section, the Commissioner may, in addition to any other remedies authorized by
6 law, require the following:

7 (1) the divestiture of the acquisition;

8 (2) that the entity fully comply with this title;

9 (3) that the entity file a plan for conversion to a for-profit entity as
10 required under this title;

11 (4) that the certificate of authority of the entity to operate as a nonprofit
12 health service plan or a nonprofit health maintenance organization in this State be
13 revoked or suspended; or

14 (5) the payment of a penalty as provided for in § 4-113(d)(1) of the
15 Insurance Article for each violation of subsection (b) or (c) of this section.

16 **Article - Health - General**

17 19-911.

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

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

24 (C) THE SECRETARY MAY DENY A LICENSE TO AN APPLICANT OR REVOKE A
25 LICENSE TO OPERATE A HOSPICE CARE PROGRAM IN A HOSPICE FACILITY IF THE
26 APPLICANT OR LICENSEE VIOLATES TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE.

27 [(c)] (D) (1) In addition to the provisions of subsections (a) [and (b)], (B),
28 AND (C) of this section, the Secretary may, for a violation of any provision of this
29 subtitle or any regulation adopted under this subtitle, impose an administrative
30 penalty of up to:

31 (i) \$500 for a first violation; and

32 (ii) \$1,000 for a subsequent, repeated violation.

33 (2) The Secretary shall adopt regulations to provide standards for the
34 imposition of an administrative penalty under paragraph (1) of this subsection.

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

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 1999.