

BY: Economic Matters Committee

AMENDMENTS TO SENATE BILL NO. 412

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3 and substitute “Maryland Nonprofit Health Entity Preservation Act”; strike beginning with the first “and” in line 6 down through “Act” in line 7 and substitute “repealing a certain exemption for a certain transaction; prohibiting a nonprofit health service plan formed or organized under the laws of the State from forming or organizing under the laws of another jurisdiction unless the Insurance Commissioner makes a certain determination; prohibiting a nonprofit health service plan from altering its structure, operations, or affiliations under certain circumstances; prohibiting officers and directors of a nonprofit health service plan from personally profiting as the result of a certain acquisition, subject to a certain exception; providing that a certain acquisition is not in the public interest unless appropriate steps have been taken to ensure that no officer, director, or trustee personally profits from the acquisition, subject to a certain exception; requiring that a certain determination may not take effect until a certain time; reserving for the General Assembly the right to disapprove, by an act of the legislature, a certain acquisition; providing that a certain acquisition is not in the public interest if a certain agreement or contract includes a provision that requires a certain nonprofit health entity to pay a certain fee under certain circumstances; requiring that certain assets distributed to a certain public or nonprofit charitable entity be in the form of cash; specifying a certain exception to the exemption of certain foreign nonprofit health entities operating in the State; and generally relating to nonprofit health entities”; and after line 12, insert:

“BY adding to

Article - Insurance

Section 14-116(d)

Annotated Code of Maryland

(1997 Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,

(Over)

Article - Insurance
Section 7-501 and 14-139
Annotated Code of Maryland
(1997 Volume and 2001 Supplement)

BY adding to

Article - State Government
Section 6.5-203(h)
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,

Article - State Government
Section 6.5-301 and 6.5-307
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 33, insert:

“Article - Insurance

7-501.

(a) This section does not apply to[

(1)] a transaction that is preempted by federal law[; or

(2) a transaction as to which:

(i) the laws of the jurisdiction in which the nonprofit health service plan is domiciled authorize the commissioner of that jurisdiction to investigate and approve an acquisition of direct or indirect control of a nonprofit health service plan by conversion, merger, consolidation, exercise of a right to acquire, or otherwise; and

(ii) the Commissioner:

1. receives notice from the commissioner of the other jurisdiction about the acquisition; and

2. has the right to request information and documents about that acquisition].

(b) A person shall comply with the procedures required by Subtitles 3 and 4 of this title to the extent applicable before the person seeks control of a foreign nonprofit health service plan that is authorized to do business in the State under Title 4 of this article by:

(1) making a tender for, inviting tenders of, entering into an agreement to exchange securities for, or acquiring in the open market or otherwise any voting security of the plan;

(2) entering into any other agreement about voting securities under which the person directly or indirectly would control the plan by conversion or by exercise of a right to acquire voting securities of the plan; or

(3) entering into an agreement to merge or consolidate with or otherwise to acquire control of the plan.

(c) Approval by the Commissioner of an acquisition under this section is governed by § 7-306 of this title.

14-116.

(D) (1) A NONPROFIT HEALTH SERVICE PLAN FORMED OR ORGANIZED UNDER THE LAWS OF THIS STATE MAY NOT FORM OR ORGANIZE UNDER THE LAWS OF ANOTHER JURISDICTION UNLESS THE COMMISSIONER DETERMINES THAT IT IS IN THE PUBLIC INTEREST.

(2) A NONPROFIT HEALTH SERVICE PLAN MAY NOT ALTER ITS STRUCTURE, OPERATIONS, OR AFFILIATIONS, IF SUCH ALTERATION RESULTS IN THE FOR-PROFIT ACTIVITIES OF THE PLAN BECOMING SO SUBSTANTIAL THAT THE

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INSURANCE COMMISSIONER DETERMINES THAT THE PURPOSE OF THE NONPROFIT HEALTH SERVICE PLAN MAY NO LONGER BE CHARACTERIZED AS OPERATING A NONPROFIT HEALTH SERVICE PLAN.

14-139.

(a) An officer, director, or employee of a corporation operating under this subtitle may not:

(1) willfully violate a provision of this article or a regulation adopted under this article;

(2) willfully misrepresent or conceal a material fact in a statement, report, record, or communication submitted to the Commissioner;

(3) willfully misrepresent a material fact to the board of directors;

(4) misappropriate or fail to account properly for money that belongs to the corporation, an insurer, insurance producer, subscriber, or certificate holder;

(5) engage in fraudulent or dishonest practices in connection with the provision or administration of a health service plan;

(6) willfully fail to produce records or allow an examination under § 14-125 of this subtitle; or

(7) willfully fail to comply with a lawful order of the Commissioner.

(B) AN OFFICER OR DIRECTOR OF A CORPORATION OPERATING UNDER THIS SUBTITLE MAY NOT PERSONALLY PROFIT FROM AN ACQUISITION OR PROPOSED ACQUISITION, AS DEFINED UNDER § 6.5-101 OF THE STATE GOVERNMENT ARTICLE, EXCEPT IN THE FORM OF COMPENSATION PAID IN EXCHANGE FOR CONTINUED EMPLOYMENT WITH THE COMPANY OR ACQUIRING ENTITY.

[(b)] (C) (1) A person that violates subsection (a) OR (B) of this section is subject to a civil penalty not exceeding \$5,000 for each violation.

(2) Instead of or in addition to imposing a civil penalty, the Commissioner may require the violator to make restitution to any person that has suffered financial injury as a result of the violation.

[(c)] (D) In determining the amount of financial penalty to be imposed, the Commissioner shall consider:

(1) the seriousness of the violation;

(2) the good faith of the violator;

(3) the violator's history of previous violations;

(4) the deleterious effect of the violation on the public and the nonprofit health service industry; and

(5) the assets of the violator.

[(d)] (E) (1) Before assessing a civil penalty, the Commissioner shall serve by certified mail, return receipt requested, on the person to be charged a notice that contains:

(i) the specifications of the charge; and

(ii) the time and place of a hearing to be held on the charges.

(2) The Commissioner shall hold a hearing on the charges at least 20 days after the date of mailing the notice.

(3) The Commissioner or designee of the Commissioner shall conduct a hearing on the charges in accordance with Title 2, Subtitle 2 of this article.

(4) Subject to Title 2, Subtitle 2 of this article, an appeal may be taken from a final order of the Commissioner to the Circuit Court for Baltimore City.

[(e)] (F) In addition to any other penalty or remedy under this section, a person that is found to have gained financially from a violation of a provision of this article or a regulation adopted by the Commissioner shall forfeit the gain.

[(f)] (G) This section does not prevent a person damaged by a director, officer, manager, employee, or agent of a corporation subject to this subtitle from bringing a separate action in a court of competent jurisdiction.

Article - State Government

6.5-203.

(H) (1) A DETERMINATION MADE BY THE APPROPRIATE REGULATING ENTITY UNDER SUBSECTION (F) OF THIS SECTION MAY NOT TAKE EFFECT UNTIL THE LATER OF:

(I) 90 CALENDAR DAYS AFTER THE DATE THE DETERMINATION IS MADE; OR

(II) THE LAST DAY OF THE LEGISLATIVE SESSION THAT BEGINS AFTER THE DATE THE DETERMINATION IS MADE.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE GENERAL ASSEMBLY RESERVES THE RIGHT TO DISAPPROVE, BY AN ACT OF THE LEGISLATURE, THE ACQUISITION OF A NONPROFIT HEALTH ENTITY UNDER THIS TITLE.

6.5-301.

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

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

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

(2) ensure that:

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

(ii) 1. 40% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to the Maryland Health Care Foundation that was established in § 20-502 of the Health - General Article; and

2. 60% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust that is:

A. dedicated to serving the unmet health care needs of the affected community;

B. dedicated to promoting access to health care in the affected community;

C. dedicated to improving the quality of health care in the affected community; and

D. independent of the transferee; [and]

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

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(4) ENSURE THAT NO OFFICER, DIRECTOR, OR TRUSTEE OF THE NONPROFIT HEALTH ENTITY PERSONALLY PROFITS FROM THE ACQUISITION OR PROPOSED ACQUISITION EXCEPT IN THE FORM OF COMPENSATION PAID FOR CONTINUED EMPLOYMENT WITH THE ACQUIRING ENTITY.

(C) AN ACQUISITION IS NOT IN THE PUBLIC INTEREST IF AN AGREEMENT OR CONTRACT FOR THE ACQUISITION OF A NONPROFIT HEALTH ENTITY INCLUDES A PROVISION OR OTHER REQUIREMENT THAT THE NONPROFIT HEALTH ENTITY IS REQUIRED TO MAKE A PAYMENT IF THE AGREEMENT OR CONTRACT IS BROKEN BY THE NONPROFIT HEALTH ENTITY.

[(c)] (D) The regulating entity may determine that a distribution of assets of a nonprofit health entity is not required under this section if the transaction is:

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

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

(1) the value of the nonprofit health entity or an affiliate or the assets of such an entity that is determined as if the entity had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;

- (2) the value as a going concern;
- (3) the market value;
- (4) the investment or earnings value;
- (5) the net asset value; and

(6) a control premium, if any.

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

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

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

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

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

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

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

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

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

(G) THE PUBLIC OR CHARITABLE ASSETS DISTRIBUTED TO A PUBLIC OR NONPROFIT CHARITABLE ENTITY OR TRUST IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION SHALL BE IN THE FORM OF CASH.

6.5-307.

(a) [This] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THIS title does not apply to the acquisition of a foreign nonprofit health entity [operating in this State if the appropriate regulating entity determines, based on the standards set forth in this title, that any public or charitable assets of the nonprofit health entity that serve health care needs in this State will be adequately protected].

(b) Any nonprofit health entity [that] TO WHICH the appropriate regulating entity has determined [under subsection (a) of this section that] this title does not [apply] APPLY, shall submit an information copy of its application to engage in an acquisition to the APPROPRIATE regulating entity.

(C) THIS TITLE APPLIES TO THE ACQUISITION OF A FOREIGN NONPROFIT HEALTH ENTITY:

(1) OPERATING IN THE STATE IF THE APPROPRIATE REGULATING ENTITY DETERMINES, BASED ON STANDARDS SET FORTH IN THIS TITLE, THAT THE PUBLIC OR CHARITABLE ASSETS OF THE NONPROFIT HEALTH ENTITY THAT SERVE THE HEALTH CARE NEEDS IN THIS STATE ARE NOT ADEQUATELY PROTECTED UNDER THE TERMS OF THE ACQUISITION; OR

(2) IF THE FOREIGN NONPROFIT HEALTH ENTITY IS A SUBSIDIARY OR AFFILIATE OF A NONPROFIT HEALTH ENTITY INCORPORATED IN THIS STATE.”.

AMENDMENT NO. 3

On page 2, in line 35, strike “October 1,” and substitute “June 1,”.