

BY: Finance Committee

AMENDMENTS TO HOUSE BILL NO. 1254

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after “of” insert “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; providing that the Insurance Commissioner may revoke a certificate of authority issued to a foreign corporation under certain circumstances; prohibiting officers and directors of a nonprofit health service plan from receiving certain remuneration 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 receives certain remuneration from the acquisition, subject to a certain exception; requiring that a certain determination may not take effect until a certain time; requiring a certain regulating entity to determine if certain assets distributed to a certain public or nonprofit charitable entity must be in the form of cash; requiring a certain regulating entity to determine whether a certain payment required under a certain contract is in the public interest;”.

On page 2, after line 7, insert:

“BY adding to

Article - Insurance

Section 14-116(d) and (e)

Annotated Code of Maryland

(1997 Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,

Article - Insurance

Section 14-139

(Over)

Annotated Code of Maryland  
(1997 Volume and 2001 Supplement)”;

and after line 17, insert:

“BY repealing and reenacting, with amendments,  
Article - State Government  
Section 6.5-301  
Annotated Code of Maryland  
(1999 Replacement Volume and 2001 Supplement)”.

AMENDMENT NO. 2

On page 7, after line 16, insert:

“Article - Insurance

14-116.

(D) A NONPROFIT HEALTH SERVICE PLAN FORMED OR ORGANIZED UNDER THE LAWS OF THIS STATE MAY NOT:

(1) FORM OR ORGANIZE UNDER THE LAWS OF ANOTHER JURISDICTION UNLESS THE COMMISSIONER DETERMINES THAT IT IS IN THE PUBLIC INTEREST; OR

(2) ALTER ITS STRUCTURE, OPERATIONS, OR AFFILIATIONS, IF SUCH ALTERATION RESULTS IN THE FOR-PROFIT ACTIVITIES OF THE PLAN BECOMING SO SUBSTANTIAL THAT THE INSURANCE COMMISSIONER DETERMINES THAT THE PURPOSE OF THE NONPROFIT HEALTH SERVICE PLAN MAY NO LONGER BE CHARACTERIZED AS OPERATING A NONPROFIT HEALTH SERVICE PLAN.

(E) THE COMMISSIONER MAY REVOKE A CERTIFICATE OF AUTHORITY ISSUED TO A FOREIGN CORPORATION SUBJECT TO THIS SUBTITLE IF:

(1) THE FOREIGN CORPORATION OPERATES A NONPROFIT HEALTH SERVICE PLAN THAT IS AFFILIATED WITH A NONPROFIT HEALTH SERVICE PLAN FORMED OR ORGANIZED UNDER THE LAWS OF THIS STATE; AND

(2) THE AFFILIATION BETWEEN THE FOREIGN NONPROFIT HEALTH SERVICE PLAN AND THE NONPROFIT HEALTH SERVICE PLAN FORMED OR ORGANIZED UNDER THE LAWS OF THIS STATE IS TERMINATED.

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, DIRECTOR, OR TRUSTEE OF A CORPORATION OPERATING UNDER THIS SUBTITLE MAY NOT RECEIVE ANY IMMEDIATE OR FUTURE REMUNERATION AS THE RESULT OF AN ACQUISITION OR PROPOSED ACQUISITION, AS DEFINED UNDER § 6.5-101 OF THE STATE GOVERNMENT ARTICLE, EXCEPT IN THE

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FORM OF COMPENSATION PAID FOR CONTINUED EMPLOYMENT WITH THE COMPANY OR ACQUIRING ENTITY.

[(b)] (C) (1) A person that violates subsection (a) 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.”.

AMENDMENT NO. 3

On page 8, strike beginning with “THE” in line 3 down through “(1)” in line 5; strike beginning with the semicolon in line 6 down through “MADE” in line 8; and after line 12, insert:

“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

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(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

(4) ENSURE THAT NO OFFICER, DIRECTOR, OR TRUSTEE OF THE NONPROFIT HEALTH ENTITY RECEIVES ANY IMMEDIATE OR FUTURE REMUNERATION AS THE RESULT OF AN ACQUISITION OR PROPOSED ACQUISITION EXCEPT IN THE FORM OF COMPENSATION PAID FOR CONTINUED EMPLOYMENT WITH THE ACQUIRING ENTITY.

(c) 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) 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) 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;

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(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.

(F) THE APPROPRIATE REGULATING ENTITY SHALL DETERMINE:

(1) IF ALL OR PART OF THE PUBLIC OR CHARITABLE ASSETS DISTRIBUTED TO A PUBLIC OR NONPROFIT CHARITABLE ENTITY OR TRUST IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION MUST BE IN THE FORM OF CASH; AND

(2) WHETHER A PAYMENT BY A NONPROFIT HEALTH ENTITY, REQUIRED UNDER AN AGREEMENT OR CONTRACT FOR THE ACQUISITION OF A NONPROFIT HEALTH ENTITY IF THE AGREEMENT OR CONTRACT IS BROKEN BY THE NONPROFIT HEALTH ENTITY, IS IN THE PUBLIC INTEREST.”