

HOUSE BILL 1254

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C3

2002 Regular Session
(21r2640)

ENROLLED BILL
-- Economic Matters/Finance --

Introduced by Delegates Pendergrass and Mitchell, Mitchell, Barkley, Barve, Bates, Benson, Billings, Bobo, Bohanan, Boschert, Boutin, Bozman, Bronrott, Cadden, Clagett, Conroy, Crouse, Cryor, D'Amato, D. Davis, DeCarlo, Dembrow, Dobson, Doory, Dvpski, Flanagan, Frush, Getty, Glassman, Goldwater, Grosfeld, Hammen, Harrison, Hecht, Heller, Hill, Hubbard, Hubers, Hutchins, Kach, Kagan, Kirk, Klima, Krysiak, Lee, Love, Malone, Mandel, McHale, McKee, Menes, Morhaim, Murphy, Nathan-Pulliam, Oaks, O'Donnell, Owings, Patterson, Petzold, Pitkin, Ports, Riley, Rosso, Rudolph, Rzepkowski, Shank, Sher, Shriver, Snodgrass, Sophocleus, Stern, Stocksdale, Turner, Valderrama, Walkup, and Klausmeier

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Acquisition of a Nonprofit Health Service Plan – Prohibition Entity -**
3 **Determination by Regulating Entity**

4 FOR the purpose of *prohibiting a nonprofit health service plan formed or organized*
5 *under the laws of the State from forming or organizing under the laws of another*
6 *jurisdiction unless the Insurance Commissioner makes a certain determination;*
7 *prohibiting a nonprofit health service plan from altering its structure.*

1 operations, or affiliations under certain circumstances; providing that the
 2 Insurance Commissioner may revoke a certificate of authority issued to a foreign
 3 corporation under certain circumstances; prohibiting officers and directors of a
 4 nonprofit health service plan from receiving certain remuneration as the result of
 5 a certain acquisition, subject to a certain exception; providing that a certain
 6 acquisition is not in the public interest unless appropriate steps have been taken
 7 to ensure that no officer, director, or trustee receives certain remuneration from
 8 the acquisition, subject to a certain exception; requiring that a certain
 9 determination may not take effect until a certain time; requiring a certain
 10 regulating entity to determine if certain assets distributed to a certain public or
 11 nonprofit charitable entity must be in the form of cash; requiring that certain
 12 assets distributed to a certain public or nonprofit charitable entity be in the form
 13 of cash; requiring a certain regulating entity to determine whether a certain
 14 payment required under a certain contract is in the public interest; prohibiting a
 15 nonprofit health service plan from being subject to acquisition; prohibiting a
 16 person from engaging in the acquisition of a nonprofit health service plan;
 17 repealing certain provisions of law relating to the acquisition of a nonprofit
 18 health service plan; altering certain definitions; defining a certain term; and
 19 generally relating to prohibiting the acquisition of a nonprofit health service
 20 plan providing for a stay of a certain determination of a certain regulating entity
 21 for a certain period of time; specifying that the General Assembly reserves the
 22 right to disapprove a certain acquisition of a certain nonprofit health entity by
 23 an act of the Legislature; and generally relating to the acquisition of a nonprofit
 24 health entity.

25 ~~BY adding to~~

26 ~~Article - Insurance~~
 27 ~~Section 14-107.1~~
 28 ~~Annotated Code of Maryland~~
 29 ~~(1997 Volume and 2001 Supplement)~~

30 ~~BY repealing and reenacting, with amendments,~~

31 ~~Article - State Government~~
 32 ~~Section 6.5-101, 6.5-102, 6.5-301, 6.5-303, and 6.5-305~~
 33 ~~Annotated Code of Maryland~~
 34 ~~(1999 Replacement Volume and 2001 Supplement)~~

35 BY adding to

36 Article - Insurance
 37 Section 14-116(d) and (e)
 38 Annotated Code of Maryland
 39 (1997 Volume and 2001 Supplement)

40 BY repealing and reenacting, with amendments,

41 Article - Insurance
 42 Section 14-139

1 Annotated Code of Maryland
 2 (1997 Volume and 2001 Supplement)

3 BY repealing and reenacting, without amendments,
 4 Article - State Government
 5 Section 6.5-101(b) and (g)
 6 Annotated Code of Maryland
 7 (1999 Replacement Volume and 2001 Supplement)

8 BY adding to
 9 Article - State Government
 10 Section 6.5-203(h)
 11 Annotated Code of Maryland
 12 (1999 Replacement Volume and 2001 Supplement)

13 BY repealing and reenacting, with amendments,
 14 Article - State Government
 15 Section 6.5-301
 16 Annotated Code of Maryland
 17 (1999 Replacement Volume and 2001 Supplement)

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

20 **~~Article—Insurance~~**

21 ~~14-107.1.~~

22 ~~(A) IN THIS SECTION, "ACQUISITION" HAS THE MEANING STATED IN §~~
 23 ~~6.5-101(B) OF THE STATE GOVERNMENT ARTICLE.~~

24 ~~(B) A NONPROFIT HEALTH SERVICE PLAN MAY NOT BE SUBJECT TO~~
 25 ~~ACQUISITION.~~

26 **~~Article—State Government~~**

27 ~~6.5-101.~~

28 (a) ~~In this title the following words have the meanings indicated:~~

29 (b) ~~"Acquisition" means:~~

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

1 (2) a transfer of ownership, control, responsibility, or governance of a
2 substantial or significant portion of the assets, operations, or business of the
3 nonprofit health entity to any for profit corporation or entity or to any mutual benefit
4 corporation or entity;

5 (3) a public offering of stock; or

6 (4) a conversion to a for profit entity.

7 (e) "Administration" means the Maryland Insurance Administration.

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

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

11 (f) "Hospital" has the meaning stated in § 19-301 of the Health General
12 Article.

13 (g) "Nonprofit health entity" means:

14 (1) a nonprofit hospital; OR

15 (2) [a nonprofit health service plan; or

16 (3)] a nonprofit health maintenance organization.

17 (h) "Nonprofit health service plan" means a corporation without capital stock
18 with a certificate of authority from the Insurance Commissioner to operate as a
19 nonprofit health service plan or a nonprofit dental plan.

20 (i) "Public assets" include:

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

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

23 (3) assets owned by a governmental entity.

24 (j) "Regulating entity" means:

25 (1) for an acquisition of a nonprofit hospital, the Attorney General in
26 consultation with the Department; AND

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 organization,
30 the Administration.

1 (k) "Transferee" means the person in an acquisition that receives the
2 ownership or control of the nonprofit health entity that is the subject of the
3 acquisition.

4 (l) "Transferor" means the nonprofit health entity that is the subject of the
5 acquisition, or the corporation that owns the nonprofit health entity that is the
6 subject of the acquisition.

7 ~~6.5-102.~~

8 (A) A PERSON MAY NOT ENGAGE IN AN ACQUISITION OF A NONPROFIT
9 HEALTH SERVICE PLAN.

10 (B) A person may not engage in an acquisition of a nonprofit health entity
11 unless the transferor and the transferee receive the approval of the appropriate
12 regulating entity.

13 ~~6.5-301.~~

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

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

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

19 (2) ensure that:

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

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

27 2. 60% of the fair value of the public or charitable assets of a
28 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
29 that is:

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

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

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

- 1 D. independent of the transferee; and
- 2 (3) ensure that no part of the public or charitable assets of the
3 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
4 health entity.
- 5 (e) The regulating entity may determine that a distribution of assets of a
6 nonprofit health entity is not required under this section if the transaction is:
- 7 (1) determined not to be an acquisition;
- 8 (2) in the ordinary course of business; and
- 9 (3) for fair value.
- 10 (d) In determining fair value, the appropriate regulating entity may consider
11 all relevant factors, including, as determined by the regulating entity:
- 12 (1) the value of the nonprofit health entity or an affiliate or the assets of
13 such an entity that is determined as if the entity had voting stock outstanding and
14 100% of its stock was freely transferable and available for purchase without
15 restriction;
- 16 (2) the value as a going concern;
- 17 (3) the market value;
- 18 (4) the investment or earnings value;
- 19 (5) the net asset value; and
- 20 (6) a control premium, if any.
- 21 (e) In determining whether an acquisition is in the public interest, the
22 appropriate regulating entity shall consider:
- 23 (1) whether the transferor exercised due diligence in deciding to engage
24 in an acquisition, selecting the transferee, and negotiating the terms and conditions
25 of the acquisition;
- 26 (2) the procedures the transferor used in making the decision, including
27 whether appropriate expert assistance was used;
- 28 (3) whether any conflicts of interest were disclosed, including conflicts of
29 interest of board members, executives, and experts retained by the transferor,
30 transferee, or any other parties to the acquisition;
- 31 (4) whether the transferor will receive fair value for its public or
32 charitable assets;

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

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

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

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

10 ~~6.5-303.~~

11 In determining whether to approve an acquisition of a [nonprofit health service
12 plan or a] nonprofit health maintenance organization, the Administration shall
13 consider:

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

15 (2) whether the acquisition:

16 (i) is equitable to enrollees, insureds, shareholders, and certificate
17 holders, if any, of the transferor;

18 (ii) is in compliance with Title 2, Subtitle 6 of the Corporations and
19 Associations Article;

20 (iii) ensures that the transferee will possess surplus in an amount
21 sufficient to:

22 1. comply with the surplus required under law; and

23 2. provide for the security of the transferee's certificate
24 holders and policyholders.

25 ~~6.5-305.~~

26 (a) The Secretary of the Department may revoke or suspend a license to
27 operate a hospital in accordance with § 19-327 of the Health General Article if an
28 acquisition occurs without the approval of the Attorney General.

29 (b) An acquisition of a [nonprofit health service plan or a] nonprofit health
30 maintenance organization may not occur without the approval of the Administration.

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

33 (d) If the Commissioner determines that a [nonprofit health service plan or a]
34 nonprofit health maintenance organization is in violation of subsection (b) or (c) of

1 this section, the Commissioner may, in addition to any other remedies authorized by
2 law, require the following:

- 3 (1) the divestiture of the acquisition;
- 4 (2) that the entity fully comply with this title; OR
- 5 (3) that the entity file a plan for conversion to a for-profit entity as
6 required under this title[;].

7 (E) ~~IF THE COMMISSIONER DETERMINES THAT A NONPROFIT HEALTH
8 SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IS IN
9 VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, THE COMMISSIONER MAY, IN
10 ADDITION TO ANY OTHER REMEDIES AUTHORIZED BY LAW, REQUIRE THE
11 FOLLOWING:~~

- 12 ~~[(4)] (1) that the certificate of authority of the entity to operate as a
13 nonprofit health service plan or a nonprofit health maintenance organization in this
14 State be revoked or suspended; or~~
- 15 ~~[(5)] (2) the payment of a penalty as provided for in § 4-113(d)(1) of the
16 Insurance Article for each violation of subsection (b) or (c) of this section.~~

17 Article - Insurance

18 14-116.

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

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

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

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

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

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

1 14-139.

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

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

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

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

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

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

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

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

16 (B) AN OFFICER, DIRECTOR, OR TRUSTEE OF A CORPORATION OPERATING
17 UNDER THIS SUBTITLE MAY NOT RECEIVE ANY IMMEDIATE OR FUTURE
18 REMUNERATION AS THE RESULT OF AN ACQUISITION OR PROPOSED ACQUISITION,
19 AS DEFINED UNDER § 6.5-101 OF THE STATE GOVERNMENT ARTICLE, EXCEPT IN THE
20 FORM OF COMPENSATION PAID FOR CONTINUED EMPLOYMENT WITH THE COMPANY
21 OR ACQUIRING ENTITY.

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

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

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

29 (1) the seriousness of the violation;

30 (2) the good faith of the violator;

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

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

34 (5) the assets of the violator.

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

4 (i) the specifications of the charge; and

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

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

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

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

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

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

18 **Article - State Government**

19 6.5-101.

20 (b) "Acquisition" means:

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

26 (2) a transfer of ownership, control, responsibility, or governance of a
 27 substantial or significant portion of the assets, operations, or business of the
 28 nonprofit health entity to any for-profit corporation or entity or to any mutual
 29 benefit corporation or entity;

30 (3) a public offering of stock; or

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

32 (g) "Nonprofit health entity" means:

33 (1) a nonprofit hospital;

34 (2) a nonprofit health service plan; or

1 (3) a nonprofit health maintenance organization.

2 6.5-203.

3 (H) ~~(4)~~ A DETERMINATION MADE BY THE APPROPRIATE REGULATING
4 ENTITY UNDER SUBSECTION (F) OF THIS SECTION MAY NOT TAKE EFFECT UNTIL ~~THE~~
5 ~~LATER OF:~~

6 ~~(4)~~ 90 CALENDAR DAYS AFTER THE DATE THE DETERMINATION IS
7 MADE; OR

8 ~~(2)~~ THE LAST DAY OF THE LEGISLATIVE SESSION THAT BEGINS AFTER
9 THE DATE THE DETERMINATION IS MADE.

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

14 6.5-301.

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

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

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

20 (2) ensure that:

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

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

28 2. 60% of the fair value of the public or charitable assets of a
29 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
30 that is:

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

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

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

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

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

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

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

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

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

18 ~~(F)~~ (G) THE APPROPRIATE REGULATING ENTITY SHALL DETERMINE:

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

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 June 1, 2002.