
By: **Delegates Pendergrass and Mitchell**
Introduced and read first time: February 12, 2002
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Acquisition of a Nonprofit Health Service Plan - Prohibition**

3 FOR the purpose of prohibiting a nonprofit health service plan from being subject to
4 acquisition; prohibiting a person from engaging in the acquisition of a nonprofit
5 health service plan; repealing certain provisions of law relating to the
6 acquisition of a nonprofit health service plan; altering certain definitions;
7 defining a certain term; and generally relating to prohibiting the acquisition of
8 a nonprofit health service plan.

9 BY adding to
10 Article - Insurance
11 Section 14-107.1
12 Annotated Code of Maryland
13 (1997 Volume and 2001 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - State Government
16 Section 6.5-101, 6.5-102, 6.5-301, 6.5-303, and 6.5-305
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2001 Supplement)

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

21 **Article - Insurance**

22 14-107.1.

23 (A) IN THIS SECTION, "ACQUISITION" HAS THE MEANING STATED IN §
24 6.5-101(B) OF THE STATE GOVERNMENT ARTICLE.

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

1

Article - State Government

2 6.5-101.

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

4 (b) "Acquisition" means:

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

10 (2) a transfer of ownership, control, responsibility, or governance of a
11 substantial or significant portion of the assets, operations, or business of the
12 nonprofit health entity to any for-profit corporation or entity or to any mutual benefit
13 corporation or entity;

14 (3) a public offering of stock; or

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

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

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

18 (e) "Health maintenance organization" has the meaning stated in § 19-701 of
19 the Health - General Article.20 (f) "Hospital" has the meaning stated in § 19-301 of the Health - General
21 Article.

22 (g) "Nonprofit health entity" means:

23 (1) a nonprofit hospital; OR

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

25 (3)] a nonprofit health maintenance organization.

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

29 (i) "Public assets" include:

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

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

1 (3) assets owned by a governmental entity.

2 (j) "Regulating entity" means:

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

5 (2) [for an acquisition of a nonprofit health service plan, the
6 Administration; and

7 (3)] for an acquisition of a nonprofit health maintenance organization,
8 the Administration.

9 (k) "Transferee" means the person in an acquisition that receives the
10 ownership or control of the nonprofit health entity that is the subject of the
11 acquisition.

12 (l) "Transferor" means the nonprofit health entity that is the subject of the
13 acquisition, or the corporation that owns the nonprofit health entity that is the
14 subject of the acquisition.

15 6.5-102.

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

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

21 6.5-301.

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

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

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

27 (2) ensure that:

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

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

1 2. 60% of the fair value of the public or charitable assets of a
2 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
3 that is:

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

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

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

10 D. independent of the transferee; and

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

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

16 (1) determined not to be an acquisition;

17 (2) in the ordinary course of business; and

18 (3) for fair value.

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

21 (1) the value of the nonprofit health entity or an affiliate or the assets of
22 such an entity that is determined as if the entity had voting stock outstanding and
23 100% of its stock was freely transferable and available for purchase without
24 restriction;

25 (2) the value as a going concern;

26 (3) the market value;

27 (4) the investment or earnings value;

28 (5) the net asset value; and

29 (6) a control premium, if any.

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

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

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

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

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

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

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

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

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

20 6.5-303.

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

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

25 (2) whether the acquisition:

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

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

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

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

33 2. provide for the security of the transferee's certificate
34 holders and policyholders.

1 6.5-305.

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

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

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

9 (d) If the Commissioner determines that a [nonprofit health service plan or a]
10 nonprofit health maintenance organization is in violation of subsection (b) or (c) of
11 this section, the Commissioner may, in addition to any other remedies authorized by
12 law, require the following:

13 (1) the divestiture of the acquisition;

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

15 (3) that the entity file a plan for conversion to a for-profit entity as
16 required under this title[;].

17 (E) IF THE COMMISSIONER DETERMINES THAT A NONPROFIT HEALTH
18 SERVICE PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION IS IN
19 VIOLATION OF SUBSECTION (B) OR (C) OF THIS SECTION, THE COMMISSIONER MAY, IN
20 ADDITION TO ANY OTHER REMEDIES AUTHORIZED BY LAW, REQUIRE THE
21 FOLLOWING:

22 [(4)] (1) that the certificate of authority of the entity to operate as a
23 nonprofit health service plan or a nonprofit health maintenance organization in this
24 State be revoked or suspended; or

25 [(5)] (2) the payment of a penalty as provided for in § 4-113(d)(1) of the
26 Insurance Article for each violation of subsection (b) or (c) of this section.

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