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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, Dypski, 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

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Committee Report: Favorable with amendments  
House action: Adopted with floor amendments  
Read second time: March 23, 2002

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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 from being subject to~~  
5 ~~acquisition; prohibiting a person from engaging in the acquisition of a nonprofit~~  
6 ~~health service plan; repealing certain provisions of law relating to the~~  
7 ~~acquisition of a nonprofit health service plan; altering certain definitions;~~  
8 ~~defining a certain term; and generally relating to prohibiting the acquisition of~~  
9 ~~a nonprofit health service plan providing for a stay of a certain determination of~~  
10 ~~a certain regulating entity for a certain period of time; specifying that the~~  
11 ~~General Assembly reserves the right to disapprove a certain acquisition of a~~  
12 ~~certain nonprofit health entity by an act of the Legislature; and generally~~  
13 ~~relating to the acquisition of a nonprofit health entity.~~

14 ~~BY adding to~~  
15 ~~Article Insurance~~  
16 ~~Section 14-107.1~~

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

3 BY repealing and reenacting, with amendments,  
4 Article - State Government  
5 Section 6.5-101, 6.5-102, 6.5-301, 6.5-303, and 6.5-305  
6 Annotated Code of Maryland  
7 (1999 Replacement Volume and 2001 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article - State Government  
10 Section 6.5-101(b) and (g)  
11 Annotated Code of Maryland  
12 (1999 Replacement Volume and 2001 Supplement)

13 BY adding to  
14 Article - State Government  
15 Section 6.5-203(h)  
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 - State Government**

18 6.5-101.

19 (b) "Acquisition" means:

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

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

29 (3) a public offering of stock; or

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

31 (g) "Nonprofit health entity" means:

32 (1) a nonprofit hospital;

33 (2) a nonprofit health service plan; or

34 (3) a nonprofit health maintenance organization.

1 6.5-203.

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

5 (1) 90 CALENDAR DAYS AFTER THE DATE THE DETERMINATION IS  
6 MADE; OR

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

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

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