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By: **Senators Neall, Astle, Baker, Blount, Colburn, Collins, Conway, Currie, DeGrange, Della, Dorman, Dyson, Exum, Ferguson, Frosh, Green, Hafer, Haines, Harris, Hoffman, Hogan, Hollinger, Hooper, Hughes, Jimeno, Kasemeyer, Kelley, Kittleman, McFadden, Middleton, Mooney, Munson, Roesser, Ruben, Schrader, Sfikas, Stoltzfus, Stone, Teitelbaum, and Van Hollen**

Introduced and read first time: February 1, 2002  
Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Acquisition of Nonprofit Health Entities - Limitations on Approval - Public**  
3 **Interest and Fair Value**

4 FOR the purpose of altering a certain standard for making a certain determination  
5 related to the acquisition of a nonprofit health entity; repealing a certain  
6 provision deeming an application for the acquisition of an nonprofit health  
7 entity approved under certain circumstances; prohibiting officers, directors, and  
8 trustees of nonprofit health entities from receiving any remuneration of any  
9 kind as the result of the acquisition of a nonprofit health entity; providing that  
10 an acquisition of a nonprofit health entity is not in the public interest if the  
11 agreement or contract for the acquisition contains a certain provision or other  
12 requirement; requiring the appropriate regulating entity to determine fair value  
13 of certain assets by requiring the assets to be disposed of by public auction to  
14 ensure fair value; and generally relating to limitations on the acquisition of  
15 nonprofit health entities.

16 BY repealing and reenacting, with amendments,  
17 Article - State Government  
18 Section 6.5-203(g) and 6.5-301  
19 Annotated Code of Maryland  
20 (1999 Replacement Volume and 2001 Supplement)

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

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**Article - State Government**

2 6.5-203.

3 (g) (1) [Unless the appropriate regulating entity extends for good cause  
4 under paragraph (2) of this subsection the time for making a determination under  
5 subsection (f) of this section, if an application is not approved or disapproved within  
6 60 days after the record, including the public hearing process, has been closed, the  
7 application shall be deemed approved.

8 (2)] Subject to paragraph [(3)] (2) of this subsection, at its discretion, the  
9 regulating entity may extend for good cause for a 60-day period the time for making  
10 a determination under subsection (f) of this section.

11 [(3)] (2) The regulating entity is limited to a maximum of two 60-day  
12 extensions for making a determination on the same application.

13 6.5-301.

14 (a) The appropriate regulating entity [shall] MAY NOT approve an acquisition  
15 unless it 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:

3 (I) no part of the public or charitable assets of the acquisition inure  
4 directly or indirectly to an officer, director, or trustee of a nonprofit health entity;

5 (II) AN OFFICER, DIRECTOR, OR TRUSTEE OF A NONPROFIT HEALTH  
6 ENTITY DOES NOT RECEIVE ANY IMMEDIATE OR FUTURE REMUNERATION OF ANY  
7 KIND AS THE RESULT OF THE ACQUISITION OF THE NONPROFIT HEALTH ENTITY.

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

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

15 (1) determined not to be an acquisition;

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

17 (3) for fair value.

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

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

24 (2) the value as a going concern;

25 (3) the market value;

26 (4) the investment or earnings value;

27 (5) the net asset value; and

28 (6) a control premium, if any.

29 (F) IN DETERMINING FAIR VALUE, THE APPROPRIATE REGULATING ENTITY  
30 SHALL REQUIRE THAT ANY PUBLIC OR CHARITABLE ASSETS OF A NONPROFIT  
31 ENTITY THAT ARE APPROPRIATE FOR PUBLIC AUCTION WILL BE DISPOSED OF  
32 THROUGH A PUBLIC AUCTION TO ENSURE FAIR VALUE HAS BEEN RECEIVED.

33 [(e)] (G) In determining whether an acquisition is in the public interest, the  
34 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       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 June 1, 2002.