
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**

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Assigned to: Finance

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CHAPTER _____

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 a~~ a nonprofit health
7 entity approved under certain circumstances; requiring that a certain
8 determination may not take effect until a certain time; prohibiting officers,
9 directors, and trustees of nonprofit health entities from receiving any
10 remuneration of any kind as the result of the acquisition of a nonprofit health
11 entity, subject to a certain exception; providing that an acquisition of a nonprofit
12 health entity is not in the public interest if the agreement or contract for the
13 acquisition contains a certain provision or other requirement; ~~requiring the~~
14 ~~appropriate regulating entity to determine fair value of certain assets by~~
15 ~~requiring the assets to be disposed of by public auction to ensure fair value;~~
16 making the provisions of this Act severable; and generally relating to limitations
17 on the acquisition of nonprofit health entities.

18 BY repealing and reenacting, with amendments,
19 Article - State Government
20 Section 6.5-203(g) and 6.5-301
21 Annotated Code of Maryland

1 (1999 Replacement Volume and 2001 Supplement)

2 BY adding to

3 Article - State Government

4 Section 6.5-203(h)

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2001 Supplement)

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

9 **Article - State Government**

10 6.5-203.

11 (g) (1) [Unless the appropriate regulating entity extends for good cause
12 under paragraph (2) of this subsection the time for making a determination under
13 subsection (f) of this section, if an application is not approved or disapproved within
14 60 days after the record, including the public hearing process, has been closed, the
15 application shall be deemed approved.

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

19 [(3)] (2) The regulating entity is limited to a maximum of two 60-day
20 extensions for making a determination on the same application.

21 (H) A DETERMINATION MADE BY THE APPROPRIATE REGULATING ENTITY
22 UNDER SUBSECTION (F) OF THIS SECTION MAY NOT TAKE EFFECT UNTIL 90
23 CALENDAR DAYS AFTER THE DATE THE DETERMINATION IS MADE.

24 6.5-301.

25 (a) The appropriate regulating entity [shall] MAY NOT approve an acquisition
26 unless it finds the acquisition is [not] in the public interest.

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

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

30 (2) ensure that:

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

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

4 2. 60% of the fair value of the public or charitable assets of a
5 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
6 that is:

7 A. dedicated to serving the unmet health care needs of the
8 affected community;

9 B. dedicated to promoting access to health care in the
10 affected community;

11 C. dedicated to improving the quality of health care in the
12 affected community; and

13 D. independent of the transferee; and

14 (3) ensure that:

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

17 (II) AN OFFICER, DIRECTOR, OR TRUSTEE OF A NONPROFIT HEALTH
18 ENTITY DOES NOT RECEIVE ANY IMMEDIATE OR FUTURE REMUNERATION OF ANY
19 KIND AS THE RESULT OF THE ACQUISITION OF THE NONPROFIT HEALTH ENTITY,
20 EXCEPT FOR COMPENSATION PAID FOR CONTINUED EMPLOYMENT WITH THE
21 ACQUIRING ENTITY.

22 (C) AN ACQUISITION IS NOT IN THE PUBLIC INTEREST IF AN AGREEMENT OR
23 CONTRACT FOR THE ACQUISITION OF A NONPROFIT HEALTH ENTITY INCLUDES A
24 PROVISION OR OTHER REQUIREMENT THAT THE NONPROFIT HEALTH ENTITY IS
25 REQUIRED TO MAKE A PAYMENT IF THE AGREEMENT OR CONTRACT IS BROKEN BY
26 THE NONPROFIT HEALTH ENTITY.

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

29 (1) determined not to be an acquisition;

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

31 (3) for fair value.

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

34 (1) the value of the nonprofit health entity or an affiliate or the assets of
35 such an entity that is determined as if the entity had voting stock outstanding and

1 100% of its stock was freely transferable and available for purchase without
2 restriction;

3 (2) the value as a going concern;

4 (3) the market value;

5 (4) the investment or earnings value;

6 (5) the net asset value; and

7 (6) a control premium, if any.

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

12 [(e)] ~~(G)~~ (F) In determining whether an acquisition is in the public interest,
13 the appropriate regulating entity shall consider:

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

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

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

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

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

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

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

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

33 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
34 Act or the application thereof to any person or circumstance is held invalid for any
35 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

4 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect June 1, 2002.