

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 772

(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 12, after the first semicolon insert “prohibiting certain individuals from serving on a certain board;”; strike beginning with “specifying” in line 13 through “board;” in line 15 and substitute “providing that a violation of certain provisions of law is an unsound or unsafe business practice; prohibiting the Insurance Commissioner from approving certain amendments to the articles of incorporation or bylaws of certain corporations unless a certain determination is made by the Insurance Commissioner; prohibiting the Insurance Commissioner from approving a statement of proposed action by a certain nonprofit health service plan unless a certain determination is made by the Insurance Commissioner; providing that an officer, director, trustee, or employee of a certain corporation may not approve or receive any remuneration from certain corporate assets except for certain fair and reasonable compensation; providing that the approval or receipt of certain remuneration is a violation of certain provisions of law; requiring the Insurance Commissioner to review certain payments made to officers, directors, or trustees of a certain corporation on an annual basis; requiring the Insurance Commissioner to issue an order prohibiting payment of a certain amount under certain circumstances;”; in line 18, after the semicolon insert “specifying that the terms of certain board members are subject to certain provisions of law; requiring the terms of certain board members to terminate no later than a certain date; requiring a board of a certain corporation to develop a plan for staggered board membership; declaring the intent of the General Assembly that certain board members be subject to the provisions of this Act; providing that certain provisions of this Act apply to certain compensation agreements made by certain officers, directors, trustees, or employees of a certain corporation; prohibiting a person from filing an application to acquire a certain nonprofit health service plan, and prohibiting a certain nonprofit health service plan from being acquired, for a certain period of time; prohibiting the Insurance Commissioner from approving an application for acquisition of a certain nonprofit health service plan;”; in line 20, after “term;” insert “altering a certain definition;”; and in line 24, after “14-115,” insert “14-116(a)(1), 14-126(a), 14-133(c), 14-139 (b) through (g),”.

(Over)

AMENDMENT NO. 2

On page 7, in line 7, strike “TITLE 14,”; in line 8, strike “ARTICLE” and substitute “TITLE”; and in line 32, strike “Title 14,”.

On page 8, in line 20, after “article” insert “:

1.”;

in line 22, after “SUBTITLE” insert a semicolon; and strike beginning with “UNTIL” in line 22 through “SUBTITLE.” in line 24 and substitute:

“2. IN AN AMOUNT EQUAL TO THE AMOUNT BY WHICH THE VALUE OF THE NONPROFIT HEALTH SERVICE PLAN’S PREMIUM TAX EXEMPTION UNDER § 6-101(B) OF THIS ARTICLE EXCEEDS THE SUM OF:

A. THE SUBSIDY REQUIRED UNDER THE SENIOR PRESCRIPTION DRUG PROGRAM ESTABLISHED UNDER SUBTITLE 5, PART II OF THIS TITLE; AND

B. OTHER FUNDS USED BY THE NONPROFIT HEALTH SERVICE PLAN TO MEET THE PUBLIC SERVICE REQUIREMENT UNDER § 14-106 OF THIS SUBTITLE.”.

On page 9, in line 21, strike “AND MEMBER OF THE BOARD OF DIRECTORS” and substitute “, DIRECTOR, OR TRUSTEE”.

AMENDMENT NO. 3

On page 12, in line 4, strike “CANDIDATES FOR” and substitute “INDIVIDUALS TO”; and in line 7, after “INCLUDING” insert “AN ANNUAL”.

On page 14, in line 14, after “FOR” insert “:

A.”;

in line 15, strike “APPROVING” and substitute “RECOMMENDING FOR APPROVAL”; in line 17, strike the comma and substitute a semicolon; in the same line, after “AND” insert:

“B.”;

in the same line, strike “FOR”; in line 19, after “STATES” insert “AND REPORTING THIS INFORMATION ANNUALLY TO THE BOARD”; in line 28, strike “INSURANCE” and substitute “CARE SERVICES AND HEALTH CARE”; and in line 37, strike “BUSINESS” and substitute “DUTIES”.

AMENDMENT NO. 4

On page 15, in lines 16, 17, 19, and 20, in each instance, after “A” insert “SIGNIFICANT”; in line 23, after “COULD” insert “SIGNIFICANTLY”; and in line 25, after the second “A” insert “FOR”.

On page 16, in line 16, strike the second “or”; and in line 17, after “debts” insert “; OR”

(IV) HAS BEEN PROHIBITED UNDER ANY FEDERAL SECURITIES LAW FROM ACTING AS A DIRECTOR OR OFFICER OF ANY CORPORATION”.

AMENDMENT NO. 5

On page 17, after line 11, insert:

“14-116.

(a) (1) In this section, “unsound or unsafe business practice” means a business practice that:

(i) is detrimental to the financial condition of a nonprofit health service plan and does not conform to sound industry practice; [or]

(ii) impairs the ability of a nonprofit health service plan to pay subscriber benefits; OR

(III) VIOLATES § 14-102, § 14-115, OR § 14-139 (C) OF THIS SUBTITLE.

(Over)

14-126.

(a) (1) A corporation subject to this subtitle may not amend its certificate of incorporation, bylaws, or the terms and provisions of contracts issued or proposed to be issued to subscribers to the plan until the proposed amendments have been submitted to and approved by the Commissioner and the applicable fees required by § 2-112 of this article have been paid.

(2) A corporation subject to this subtitle may not change the table of rates charged or proposed to be charged to subscribers for a form of contract issued or to be issued for health care services until the proposed change has been submitted to and approved by the Commissioner.

(3) THE COMMISSIONER MAY NOT APPROVE AN AMENDMENT TO A CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS UNDER PARAGRAPH (1) OF THIS SUBSECTION UNLESS THE COMMISSIONER DETERMINES THE AMENDMENT IS IN THE PUBLIC INTEREST.

14-133.

(c) (1) A nonprofit health service plan shall submit a statement of proposed action to the Commissioner before the plan may:

(i) create, acquire, or invest in an affiliate or subsidiary in order to control the affiliate or subsidiary;

(ii) alter the structure, organization, purpose, or ownership of the plan or an affiliate or subsidiary of the corporation;

(iii) make an investment exceeding \$500,000; or

(iv) make an investment in an affiliate or subsidiary.

(2) The nonprofit health service plan shall file the statement of proposed action required under this subsection at least 60 days before the effective date of the proposed action.

(3) The nonprofit health service plan may not engage in a proposed action described under paragraph (1)(i) through (iii) of this subsection unless the Commissioner approves the action in writing.

(4) The Commissioner shall either approve or disapprove the proposed action within 60 days after the Commissioner receives the statement of proposed action.

(5) THE COMMISSIONER MAY NOT APPROVE A STATEMENT OF PROPOSED ACTION UNDER THIS SUBSECTION UNLESS THE COMMISSIONER DETERMINES THE PROPOSED ACTION IS IN THE PUBLIC INTEREST.

14-139.

(b) An officer, director, or trustee of a corporation operating under this subtitle may not receive any immediate or future remuneration as the result of an acquisition or proposed acquisition, as defined under § 6.5-101 of the State Government Article, except in the form of compensation paid for continued employment with the company or acquiring entity.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN OFFICER, DIRECTOR, TRUSTEE, OR EMPLOYEE OF A CORPORATION OPERATING UNDER THIS SUBTITLE MAY NOT APPROVE OR RECEIVE ANY REMUNERATION FROM THE ASSETS OF THE CORPORATION.

(2) AN OFFICER, DIRECTOR, TRUSTEE, OR EMPLOYEE OF A CORPORATION OPERATING UNDER THIS SUBTITLE MAY ONLY APPROVE OR RECEIVE FROM THE ASSETS OF THE CORPORATION FAIR AND REASONABLE COMPENSATION IN THE FORM OF SALARY, BONUSES, OR PERQUISITES FOR WORK ACTUALLY PERFORMED FOR THE BENEFIT OF THE CORPORATION.

(3) THE APPROVAL OR RECEIPT OF REMUNERATION IN VIOLATION OF THIS SUBSECTION IS A VIOLATION OF § 14-115(C) OF THIS SUBTITLE AND SHALL BE CONSIDERED AN UNSOUND OR UNSAFE BUSINESS PRACTICE UNDER § 14-116 OF THIS SUBTITLE.

(Over)

(4) (I) ON AN ANNUAL BASIS, THE COMMISSIONER SHALL REVIEW THE COMPENSATION, BONUSES, AND ANY PAYMENTS FOR PERQUISITES PAID TO EACH OFFICER, DIRECTOR, OR TRUSTEE OF A CORPORATION OPERATING UNDER THIS SUBTITLE FOR WORK PERFORMED FOR THE CORPORATION.

(II) IF THE COMMISSIONER FINDS THAT REMUNERATION PAID TO AN OFFICER, DIRECTOR, OR TRUSTEE EXCEEDS THE AMOUNT AUTHORIZED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER SHALL ISSUE AN ORDER PROHIBITING PAYMENT OF THE EXCESS AMOUNT.

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

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

[(d)] (E) In determining the amount of financial penalty to be imposed, the Commissioner shall consider:

- (1) the seriousness of the violation;
- (2) the good faith of the violator;
- (3) the violator's history of previous violations;
- (4) the deleterious effect of the violation on the public and the nonprofit health service industry; and
- (5) the assets of the violator.

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

(i) the specifications of the charge; and

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

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

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

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

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

~~[(g)]~~ (H) This section does not prevent a person damaged by a director, officer, manager, employee, or agent of a corporation subject to this subtitle from bringing a separate action in a court of competent jurisdiction.”.

AMENDMENT NO. 6

On pages 18 and 19, strike in their entirety the lines beginning with line 19 on page 18 through line 19 on page 19, inclusive, and substitute:

“SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Those board members representing a corporation that is organized under the laws of the State and that is subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, shall be removed from the board of directors as follows:

(1) eight members whose initial election to any board of a nonprofit health service plan organized under the laws of this State occurred between June 1993 and December 1995 shall be

(Over)

removed on the effective date of this Act; and

(2) four members whose initial election to any board of a nonprofit health service plan organized under the laws of this State occurred between January 1996 and April 1998 shall be removed on or before December 31, 2003.

(b) This section does not apply to those members who serve on the board of directors of a corporation that is subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, who represent a corporation that is not organized under the laws of the State.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) Notwithstanding the provisions of § 14-115(d)(3)(ii)3 of the Insurance Article, as enacted by Section 1 of this Act, to fill the eight board vacancies resulting from the removal of directors under Section 3(a)(1) of this Act, successor members shall begin serving on the effective date of this Act and shall be appointed as follows:

(1) one member by the President of the Senate;

(2) one member by the Speaker of the House; and

(3) six members by the Governor as follows:

(i) one member representing the Maryland Medical and Chirurgical Society;

(ii) one member representing the interests of hospitals in the State;

(iii) one member representing small business interests in the State;

(iv) one member representing organized labor in the State; and

(v) two consumer members, both of whom shall be subject to the provisions of § 14-115(d)(5) and (6) of the Insurance Article, as enacted by Section 1 of this Act, and one of whom shall be an officer of an insurer that is not a health insurer and that is organized under



the laws of the State.

(b) Notwithstanding the provisions of § 14-115(d)(3)(ii)3 of the Insurance Article, as enacted by Section 1 of this Act, to fill the four board vacancies resulting from the removal of directors under Section 3(a)(2) of this Act, successor members shall begin serving on or before December 31, 2003 and shall be appointed by those members appointed under subsection (a) of this section.”.

On page 19, in lines 23, 25, and 31, in each instance, after “Article” insert a comma; after line 25, insert:

“(e) The term of a board member who serves on the board of a corporation subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, and who represents a corporation that is not organized under the laws of the State:

(1) shall be subject to the provisions of § 14-115(e)(6)(ii) of the Insurance Article, as enacted by Section 1 of this Act; and

(2) shall terminate no later than March 31, 2006.

(f) Subject to approval by the Insurance Commissioner, the board of directors of a corporation subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, shall develop a plan to stagger the terms of the board members.

SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the provisions of Section 1 of this Act shall apply to all members serving on the board of directors of a nonprofit health service plan that is subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That the provisions of § 14-139(c) of the Insurance Article, as enacted by Section 1 of this Act, shall apply to any existing compensation agreement, including an agreement to provide termination benefits, between a corporation organized under the laws of this State and subject to § 14-115(d) of the Insurance Article, as enacted by Section

(Over)

1 of this Act, and an officer, director, trustee, or employee of the corporation.

SECTION 7. AND BE IT FURTHER ENACTED, That, for a period of 5 years after the effective date of this Act:

(1) a person may not file an application for the acquisition of a nonprofit health service plan subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, and a nonprofit health service plan subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act, may not be acquired, under Title 6.5 of the State Government Article; and

(2) the Insurance Commissioner may not approve an application for the acquisition of a nonprofit health service plan subject to the provisions of § 14-115(d) of the Insurance Article, as enacted by Section 1 of this Act.”;

in line 26, strike “5.” and substitute “8.”; and in line 32, strike “6.” and substitute “9.”.