
By: **Delegate Hurson**
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Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 2004

CHAPTER _____

1 AN ACT concerning

2 **Regulation and Acquisition of Nonprofit Health ~~Service Plans~~ Entities**

3 FOR the purpose of extending the statute of limitations for a certain time period for
4 certain criminal violations under the Insurance Article; altering the purpose of
5 certain provisions of law relating to nonprofit health service plans; altering
6 certain provisions of law relating to the regulation and acquisition of certain
7 nonprofit health ~~service plans~~; entities; altering the mission of a nonprofit
8 health service plan; altering the manner in which a nonprofit health service
9 plan must develop certain goals, objectives, and strategies; providing that the
10 charters, laws, rules, and regulations of the jurisdiction of domicile of certain
11 entities supercede and take precedence over certain requirements under certain
12 circumstances; altering the standards the Maryland Insurance Commissioner
13 must use to issue a certificate of authority; requiring the Commissioner to
14 consider a certain entity's inability to comply with certain requirements in
15 deciding whether to renew the certificate of authority of a nonprofit health
16 service plan; altering the applicability of certain statutory requirements for a
17 board of directors of a nonprofit health service plan; requiring certain board
18 members of a nonprofit health service plan to act in a certain manner ~~consistent~~
19 ~~with~~ in furtherance of the mission of a nonprofit health service plan; altering the
20 manner of selecting board members of certain nonprofit health service plans;
21 altering the actions for which board approval is required; requiring the
22 Commissioner to adopt certain regulations; prohibiting certain board members
23 and officers from receiving certain personal or financial enrichment to the
24 detriment of the nonprofit health service plan or its mission; including as a
25 principal function of a board of a nonprofit health service plan the consideration
26 of an independent valuation of a nonprofit health service plan prior to making a
27 certain other consideration; specifying the manner in which certain officers of a
28 nonprofit health service plan must act; providing that a violation of certain

1 provisions of this Act is an unsound and unsafe business practice; altering a
 2 certain provision of law relating to unsound and unsafe business practices;
 3 authorizing the ~~Insurance~~ Commissioner to impose a certain civil penalty
 4 against certain officers or directors who fail to take appropriate action in
 5 response to a certain warning; altering certain provisions of law relating to
 6 certain actions by an officer, director, or employee of a nonprofit health service
 7 plan; requiring that an application for acquisition of a nonprofit health entity
 8 include a certain valuation of the nonprofit health entity and a certain antitrust
 9 analysis; specifying that a certain acquisition is not in the public interest unless
 10 certain steps are taken to ensure that certain assets are spent in a certain
 11 manner; prohibiting a certain regulating entity from making a certain
 12 determination unless certain ~~considerations are made~~ nonprofit health entities
 13 have considered certain risks; defining a certain term; and generally relating to
 14 the regulation and acquisition of ~~nonprofit health service plans~~ certain
 15 nonprofit health entities.

16 BY repealing and reenacting, without amendments,
 17 Article - Courts and Judicial Proceedings
 18 Section 5-106(a)
 19 Annotated Code of Maryland
 20 (2002 Replacement Volume and 2003 Supplement)

21 BY adding to
 22 Article - Courts and Judicial Proceedings
 23 Section 5-106(z)
 24 Annotated Code of Maryland
 25 (2002 Replacement Volume and 2003 Supplement)

26 BY repealing and reenacting, with amendments,
 27 Article - Insurance
 28 Section ~~14-115(e)~~ 14-102(a), (c), (d), and (f), 14-110, 14-115(b), (c), and (d)(1),
 29 (2), and (11), 14-116(a) and (b), and 14-139(a)
 30 Annotated Code of Maryland
 31 (2002 Replacement Volume and 2003 Supplement)

32 BY repealing and reenacting, without amendments,
 33 Article - Insurance
 34 Section 14-102(b) and (e)
 35 Annotated Code of Maryland
 36 (2002 Replacement Volume and 2003 Supplement)

37 BY adding to
 38 Article - Insurance
 39 Section 14-115.1
 40 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - State Government

4 Section 6.5-201(b) and 6.5-301(b) and (e)

5 Annotated Code of Maryland

6 (1999 Replacement Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Courts and Judicial Proceedings**

10 5-106.

11 (a) Except as provided by this section, a prosecution for a misdemeanor shall
12 be instituted within 1 year after the offense was committed.

13 (Z) A PROSECUTION FOR A MISDEMEANOR OFFENSE UNDER TITLE 14 OF THE
14 INSURANCE ARTICLE SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE OFFENSE
15 WAS COMMITTED.

16 **Article - Insurance**

17 14-102.

18 (a) The purpose of this subtitle is:

19 (1) to regulate the formation and operation of nonprofit health service
20 plans in the State; and

21 (2) to promote the formation and existence of nonprofit health service
22 plans in the State that:

23 (i) are committed to a nonprofit corporate structure;

24 (ii) seek to provide individuals, businesses, and other groups with
25 affordable and accessible health insurance; and

26 (iii) recognize a responsibility to contribute to the improvement of
27 the overall health status of [Maryland residents] THE RESIDENTS OF THE
28 JURISDICTIONS IN WHICH THE NONPROFIT HEALTH SERVICE PLANS OPERATE.

29 (b) A nonprofit health service plan that complies with the provisions of this
30 subtitle is declared to be a public benefit corporation that is exempt from taxation as
31 provided by law.

32 (c) The mission of a nonprofit health service plan shall be, IN ACCORDANCE
33 WITH THE CHARTER OF THE NONPROFIT HEALTH SERVICE PLAN, to:

1 (1) provide affordable and accessible health insurance to the plan's
 2 insureds and those persons insured or issued health benefit plans by affiliates or
 3 subsidiaries of the plan;

4 (2) assist and support public and private health care initiatives for
 5 individuals without health insurance; and

6 (3) promote the integration of a [statewide] health care system that
 7 meets the health care needs of all [Maryland residents] THE RESIDENTS OF THE
 8 JURISDICTIONS IN WHICH THE NONPROFIT HEALTH SERVICE PLAN OPERATES.

9 (d) A nonprofit health service plan:

10 (1) shall develop goals, objectives, and strategies for carrying out, IN
 11 ACCORDANCE WITH THE CHARTER OF THE NONPROFIT HEALTH SERVICE PLAN, its
 12 statutory mission;

13 (2) beginning on December 1, 2003, and continuing through June 30,
 14 2005, shall report quarterly, for the preceding quarter, to the Joint Nonprofit Health
 15 Service Plan Oversight Committee on the nonprofit health service plan's compliance
 16 with the provisions of this subtitle; and

17 (3) shall provide to the Joint Nonprofit Health Service Plan Oversight
 18 Committee any other information necessary for the Committee to meet the goals
 19 outlined under § 2-10A-08 of the State Government Article.

20 (e) On or before December 1, 2005, and annually thereafter, the Commissioner
 21 shall report to the Governor and, in accordance with § 2-1246 of the State
 22 Government Article, the Senate Finance Committee and the House Health and
 23 Government Operations Committee, on the compliance of a nonprofit health service
 24 plan subject to § 14-115(d) of this subtitle with the provisions of this subtitle.

25 (f) (1) [This] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS
 26 section applies to:

27 [(1)] (I) a nonprofit health service plan that is issued a certificate of
 28 authority in the State, whether or not organized under the laws of the State; and

29 [(2)] (II) an insurer or a health maintenance organization, whether or
 30 not organized as a nonprofit corporation, that is wholly owned or controlled by a
 31 nonprofit health service plan that:

32 1. is issued a certificate of authority in the State; AND

33 2. DOES BUSINESS IN THE STATE.

34 (2) TO THE EXTENT THAT THE LEGISLATIVELY ENACTED CHARTER OF
 35 AN ENTITY SUBJECT TO THIS SECTION, OR THE LAWS OR ADMINISTRATIVE RULES OR
 36 REGULATIONS OF THE JURISDICTION OF DOMICILE OF AN ENTITY SUBJECT TO THIS
 37 SECTION, PROHIBIT THE ENTITY FROM COMPLYING WITH A REQUIREMENT OF

1 SUBSECTION (C) OF THIS SECTION, THE LEGISLATIVELY ENACTED CHARTER, LAWS,
2 AND ADMINISTRATIVE RULES AND REGULATIONS OF THE JURISDICTION OF
3 DOMICILE SHALL SUPERCEDE AND TAKE PRECEDENCE OVER THE REQUIREMENT OF
4 SUBSECTION (C) OF THIS SECTION.

5 14-110.

6 (a) The Commissioner shall issue a certificate of authority to an applicant if:

7 (1) the applicant has paid the applicable fee required by § 2-112 of this
8 article; and

9 (2) the Commissioner is satisfied:

10 (i) that the applicant has been organized in good faith for the
11 purpose of establishing, maintaining, and operating a nonprofit health service plan
12 that:

13 1. is committed to a nonprofit corporate structure;

14 2. in accordance with the charter of the nonprofit health
15 service plan, seeks to provide affordable and accessible health insurance; and

16 3. IN ACCORDANCE WITH THE CHARTER OF THE NONPROFIT
17 HEALTH SERVICE PLAN, recognizes a responsibility to contribute to the improvement
18 of the overall health status of [Maryland residents] THE RESIDENTS OF THE
19 JURISDICTIONS IN WHICH IT OPERATES;

20 (ii) that:

21 1. each contract executed or proposed to be executed by the
22 applicant and a health care provider to furnish health care services to subscribers to
23 the nonprofit health service plan, obligates or, when executed, will obligate each
24 health care provider party to the contract to render the health care services to which
25 each subscriber is entitled under the terms and conditions of the various contracts
26 issued or proposed to be issued by the applicant to subscribers to the plan; and

27 2. each subscriber is entitled to reimbursement for podiatric,
28 chiropractic, psychological, or optometric services, regardless of whether the service is
29 performed by a licensed physician, licensed podiatrist, licensed chiropractor, licensed
30 psychologist, or licensed optometrist;

31 (iii) that:

32 1. each contract issued or proposed to be issued to
33 subscribers to the plan is in a form approved by the Commissioner; and

34 2. the rates charged or proposed to be charged for each form
35 of each contract are fair and reasonable;

1 (iv) that the applicant has a surplus, as defined in § 14-117 of this
 2 subtitle, of the greater of:

3 1. \$100,000; and

4 2. an amount equal to that required under § 14-117 of this
 5 subtitle; and

6 (v) that, except for a nonprofit health service plan that insures
 7 between 1 and 10,000 covered lives in the State, the nonprofit health service plan's
 8 corporate headquarters is located in the State.

9 (b) If the Commissioner determines that a nonprofit health [services]
 10 SERVICE plan does not continue to satisfy the requirements of this subtitle, the
 11 Commissioner may disapprove the renewal of the certificate of authority of the
 12 nonprofit health service plan.

13 (C) THE COMMISSIONER SHALL CONSIDER AN ENTITY'S INABILITY TO
 14 COMPLY WITH THE REQUIREMENTS OF § 14-102(C) OF THIS SUBTITLE AS A RESULT
 15 OF A CONFLICT WITH THE LEGISLATIVELY ENACTED CHARTER OF THE ENTITY OR
 16 THE LAWS OR ADMINISTRATIVE RULES OR REGULATIONS OF THE JURISDICTION OF
 17 DOMICILE OF THE ENTITY IN DETERMINING WHETHER TO ISSUE OR RENEW A
 18 CERTIFICATE OF AUTHORITY UNDER THIS SECTION.

19 14-115.

20 (b) This section applies to a nonprofit health service plan that is:

21 (1) issued a certificate of authority in the State[, whether or not]; AND

22 (2) organized under the laws of [this] THE State.

23 (c) (1) The business and affairs of a nonprofit health service plan shall be
 24 managed under the direction of a board of directors.

25 (2) (I) The board and its individual members are fiduciaries and shall
 26 act:

27 [(i)] 1. in good faith;

28 [(ii)] 2. in a manner that is reasonably believed to be in the best
 29 interests of the corporation and its controlled affiliates or subsidiaries that offer
 30 health benefit plans;

31 [(iii)] 3. [in a manner that is reasonably believed to be in
 32 furtherance of the corporation's nonprofit mission] IN A MANNER THAT IS
 33 CONSISTENT WITH THE MISSION OF REASONABLY BELIEVED TO BE IN
 34 FURTHERANCE OF THE MISSION OF THE CORPORATION AS A NONPROFIT HEALTH
 35 SERVICE PLAN AS REQUIRED UNDER § 14-102(C) OF THIS SUBTITLE; and

1 [(iv)] 4. with the care that an ordinarily prudent person in a like
2 position would use under similar circumstances.

3 (II) ~~EXCEPT IN CONFORMITY WITH THIS SECTION, THE BOARD AND~~
4 ~~ITS INDIVIDUAL MEMBERS MAY NOT USE BOARD MEMBERSHIP FOR PERSONAL OR~~
5 ~~FINANCIAL ENRICHMENT TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE~~
6 ~~PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.~~

7 (3) The principal functions of the board shall include:

8 (i) ensuring that the corporation effectively carries out the
9 nonprofit mission established under § 14-102(c) of this subtitle;

10 (ii) selecting corporate management and evaluating its
11 performance;

12 (iii) ensuring to the extent practicable that human resources and
13 other resources are sufficient to meet corporate objectives;

14 (iv) subject to the provisions of subsection (d) of this section,
15 nominating and selecting suitable candidates for the board; [and]

16 (v) establishing a system of governance at the board level,
17 including an annual evaluation of board performance; AND

18 (VI) ~~BEFORE CONSIDERING ANY BID OR OFFER TO ACQUIRE THE~~
19 ~~NONPROFIT HEALTH SERVICE PLAN AND TO CONVERT TO A FOR-PROFIT ENTITY~~
20 ~~UNDER TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE, ENSURING THAT ADEQUATE~~
21 ~~CONSIDERATION IS GIVEN TO AN INDEPENDENT VALUATION OF THE NONPROFIT~~
22 ~~HEALTH SERVICE PLAN.~~

23 (4) Each member of the board shall demonstrate a commitment to the
24 mission of the nonprofit health service plan AS REQUIRED BY § 14-102(C) OF THIS
25 SUBTITLE.

26 (5) An officer or employee of a nonprofit health service plan or any of its
27 affiliates or subsidiaries may not be appointed or elected to the board.

28 (6) A nonprofit health service plan is subject to the provisions of § 2-419
29 of the Corporations and Associations Article.

30 (d) (1) This subsection applies to a corporation that is:

31 (i) issued a certificate of authority as a nonprofit health service
32 plan; and

33 (ii) the sole member of a corporation issued a certificate of
34 authority as a nonprofit health service plan.

35 (2) The board shall be composed of no more than 23 members, including:

1 (i) one nonvoting member, who is not a member of the Maryland
 2 General Assembly, appointed by and serving at the pleasure of the President of the
 3 Senate of Maryland;

4 (ii) one nonvoting member, who is not a member of the Maryland
 5 General Assembly, appointed by and serving at the pleasure of the Speaker of the
 6 House of Delegates; and

7 (iii) 21 members selected by the board, IN ACCORDANCE WITH THE
 8 BYLAWS OF THE CORPORATION, including two consumer members, who satisfy the
 9 requirements of paragraphs (13), (14), and (15) of this subsection.

10 (11) (i) [Board approval is required for] THE BOARD SHALL APPROVE
 11 IN ADVANCE any action by the nonprofit health service plan, a corporation for which
 12 the plan is the sole member, or any affiliate or subsidiary of the nonprofit health
 13 service plan to:

- 14 [1. modify benefit levels;
- 15 2. materially modify provider networks or provider
 16 reimbursement;
- 17 3. modify underwriting guidelines;
- 18 4. modify rates or rating plans;
- 19 5. withdraw a product or withdraw from a line or type of
 20 business or geographic region; or
- 21 6. impact the availability or affordability of health care in
 22 the State.]

23 1. MATERIALLY MODIFY OPTIONS AVAILABLE IN BENEFIT
 24 PLANS MARKETED IN THE STATE;

25 2. MATERIALLY MODIFY MARYLAND PROVIDER NETWORKS
 26 OR MARYLAND PROVIDER REIMBURSEMENT LEVELS;

27 3. MATERIALLY MODIFY UNDERWRITING GUIDELINES FOR
 28 PRODUCTS MARKETED IN THE STATE;

29 4. MATERIALLY MODIFY RATES OR RATING PLANS THAT ARE
 30 REQUIRED TO BE APPROVED BY THE COMMISSIONER;

31 5. WITHDRAW:

32 A. A PRODUCT FROM THE MARYLAND MARKET;

33 B. FROM A LINE OR TYPE OF BUSINESS; OR

34 C. FROM A GEOGRAPHIC REGION IN THE STATE;

1 6. MATERIALLY MODIFY MARKETING GOALS AND
2 OBJECTIVES IN THE STATE; OR

3 7. MATERIALLY IMPACT THE AVAILABILITY OR
4 AFFORDABILITY OF HEALTH CARE IN THE STATE.

5 (II) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT
6 DEFINE "MATERIAL" FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.

7 [(ii)] (III) A decision by the board to convert to a for profit entity
8 under Title 6.5 of the State Government Article may be rejected by any three
9 members of the board.

10 [(iii)] (IV) The board may delegate approval for the actions listed in
11 subparagraph (i) of this paragraph to a standing committee of the board.

12 14-115.1.

13 (A) IN THIS SECTION, "OFFICER" MEANS ANY OFFICER THAT A MARYLAND
14 CORPORATION IS REQUIRED OR PERMITTED TO HAVE UNDER § 2-412 OF THE
15 CORPORATIONS AND ASSOCIATIONS ARTICLE.

16 (B) (1) AN OFFICER OF A NONPROFIT HEALTH SERVICE PLAN SHALL ACT:

17 (I) IN GOOD FAITH;

18 (II) IN A MANNER THAT IS REASONABLY BELIEVED TO BE IN THE
19 BEST INTERESTS OF THE CORPORATION AND ITS CONTROLLED AFFILIATES OR
20 SUBSIDIARIES THAT OFFER HEALTH BENEFIT PLANS;

21 (III) IN A MANNER THAT IS CONSISTENT WITH THE MISSION OF A
22 NONPROFIT HEALTH SERVICE PLAN AS REQUIRED UNDER § 14-102(C) OF THIS
23 SUBTITLE; AND

24 (IV) WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A
25 LIKE POSITION WOULD USE UNDER SIMILAR CIRCUMSTANCES.

26 (2) EXCEPT FOR THE RECEIPT OF REASONABLE REMUNERATION IN
27 CONFORMITY WITH § 14-139 OF THIS SUBTITLE, AN OFFICER OF A NONPROFIT
28 HEALTH SERVICE PLAN MAY NOT USE THE POSITION OF OFFICER FOR PERSONAL OR
29 FINANCIAL ENRICHMENT TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE
30 PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.

31 (3) A VIOLATION OF THIS SUBSECTION SHALL BE CONSIDERED AN
32 UNSOUND OR UNSAFE BUSINESS PRACTICE UNDER § 14-116 OF THIS SUBTITLE.

33 14-116.

34 (a) (1) In this section, "unsound or unsafe business practice" means a
35 business practice that:

- 1 (i) is detrimental to the financial condition of a nonprofit health
2 service plan and does not conform to sound industry practice;
- 3 (ii) impairs the ability of a nonprofit health service plan to pay
4 subscriber benefits; or
- 5 (iii) violates § 14-102, § 14-115, 14-115.1, or § [14-139(c)] 14-139(A),
6 (B), OR (C) of this subtitle.

7 (2) "Unsound or unsafe business practice" includes:

- 8 (i) failing to comply with the notice requirements of § 14-119 of
9 this subtitle;
- 10 (ii) willfully hindering an examination of a nonprofit health service
11 plan or its affiliates or subsidiaries; and
- 12 (iii) failure of a director to attend at least 65% of the meetings of the
13 board during a period of 12 consecutive months.

14 (b) (1) If the Commissioner believes that an officer or director of a nonprofit
15 health service plan has engaged in an unsound or unsafe business practice, the
16 Commissioner shall send a warning to that individual.

17 (2) IF THE COMMISSIONER BELIEVES THAT AN OFFICER OR DIRECTOR
18 OF A NONPROFIT HEALTH SERVICE PLAN HAS FAILED TO TAKE APPROPRIATE
19 ACTION IN RESPONSE TO A WARNING RECEIVED UNDER PARAGRAPH (1) OF THIS
20 SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING
21 \$125,000 FOR EACH WARNING.

22 [(2)] (3) The Commissioner shall send a copy of the warning OR, IF A
23 CIVIL PENALTY IS IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COPY OF
24 THE ORDER:

- 25 (i) by certified mail, return receipt requested, bearing a postmark
26 from the United States Postal Service, to each director of the nonprofit health service
27 plan; and
- 28 (ii) if the nonprofit health service plan is a corporation incorporated
29 in a state other than this State, to the insurance commissioner of the state in which
30 the corporation is incorporated.

31 14-139.

32 (a) An officer, director, or employee of a corporation operating under this
33 subtitle may not:

- 34 (1) willfully violate a provision of this article or a regulation adopted
35 under this article;

- 1 (2) willfully misrepresent or conceal a material fact in a statement,
 2 report, record, or communication [submitted] PROVIDED to the Commissioner;
- 3 (3) willfully misrepresent OR CONCEAL a material fact to the board of
 4 directors;
- 5 (4) misappropriate or fail to account properly for money that belongs to
 6 the corporation, an insurer, insurance producer, subscriber, or certificate holder;
- 7 (5) engage in fraudulent or dishonest practices in connection with the
 8 provision or administration of a health service plan;
- 9 (6) willfully fail to produce records or allow an examination under §
 10 14-125 of this subtitle; or
- 11 (7) willfully fail to comply with a lawful order of the Commissioner.

12 Article - State Government

13 6.5-201.

14 (b) An application shall include:

- 15 (1) the name of the transferor;
- 16 (2) the name of the transferee;
- 17 (3) the names of any other parties to the acquisition agreement;
- 18 (4) the terms of the proposed acquisition, including the sale price;
- 19 (5) a copy of the acquisition agreement;
- 20 (6) a financial and community impact analysis report from an
 21 independent expert or consultant that addresses the criteria in § 6.5-301 of this title;
 22 [and]
- 23 (7) AN INDEPENDENT VALUATION OF THE NONPROFIT HEALTH
 24 ~~SERVICE PLAN ENTITY~~ THAT WAS OBTAINED PRIOR TO THE CONSIDERATION OF ANY
 25 BID OR OFFER TO ACQUIRE THE ~~HEALTH CARE~~ NONPROFIT HEALTH ENTITY;
- 26 (8) AN ANTITRUST ANALYSIS PREPARED BY AN APPROPRIATE EXPERT;
 27 AND
- 28 [(7)] (9) any other documents related to the acquisition.

29 6.5-301.

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

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

2 (2) ENSURE THAT THE VALUE OF PUBLIC OR CHARITABLE ASSETS IS
3 SPENT IN A MANNER THAT CORRESPONDS WITH THE POTENTIAL RISK ASSOCIATED
4 WITH ~~AN~~ THE ACQUISITION;

5 [(2)] (3) ensure that:

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

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

13 2. 60% of the fair value of the public or charitable assets of a
14 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
15 that is:

16 A. dedicated to serving the unmet health care needs of the
17 affected community;

18 B. dedicated to promoting access to health care in the
19 affected community;

20 C. dedicated to improving the quality of health care in the
21 affected community; and

22 D. independent of the transferee;

23 [(3)] (4) ensure that no part of the public or charitable assets of the
24 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
25 health entity; and

26 [(4)] (5) ensure that no officer, director, or trustee of the nonprofit
27 health entity receives any immediate or future remuneration as the result of an
28 acquisition or proposed acquisition except in the form of compensation paid for
29 continued employment with the acquiring entity.

30 (e) (1) In determining whether an acquisition is in the public interest, the
31 appropriate regulating entity shall consider:

32 [(1)] (I) whether the transferor exercised due diligence in deciding to
33 engage in an acquisition, selecting the transferee, and negotiating the terms and
34 conditions of the acquisition;

35 [(2)] (II) the procedures the transferor used in making the decision,
36 including whether appropriate expert assistance was used;

1 [(3)] (III) whether any conflicts of interest were disclosed, including
2 conflicts of interest of board members, executives, and experts retained by the
3 transferor, transferee, or any other parties to the acquisition;

4 [(4)] (IV) whether the transferor will receive fair value for its public or
5 charitable assets;

6 [(5)] (V) whether public or charitable assets are placed at unreasonable
7 risk if the acquisition is financed in part by the transferor;

8 [(6)] (VI) whether the acquisition has the likelihood of creating a
9 significant adverse effect on the availability or accessibility of health care services in
10 the affected community;

11 [(7)] (VII) whether the acquisition includes sufficient safeguards to ensure
12 that the affected community will have continued access to affordable health care; and

13 [(8)] (VIII) whether any management contract under the acquisition is for
14 fair value.

15 (2) IN DETERMINING WHETHER A ~~HEALTH CARE~~ NONPROFIT HEALTH
16 ENTITY HAS EXERCISED DUE DILIGENCE AS REQUIRED UNDER PARAGRAPH (1)(I) OF
17 THIS SUBSECTION, THE APPROPRIATE REGULATING ENTITY MAY NOT DETERMINE
18 THAT DUE DILIGENCE WAS EXERCISED UNLESS THE ~~HEALTH CARE~~ NONPROFIT
19 HEALTH ENTITY CONSIDERED THE RISKS OF AN ACQUISITION, INCLUDING
20 WHETHER AN ACQUISITION:

21 (I) WOULD RESULT IN DISECONOMIES OF SCALE; OR

22 (II) WOULD VIOLATE FEDERAL OR STATE ANTITRUST LAWS.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 June 1, 2004.