

SENATE BILL 4

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2004 Regular Session
4lr0383
CF 4lr0377

(PRE-FILED)

By: **Senator Middleton**

Requested: August 4, 2003

Introduced and read first time: January 14, 2004

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

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 certain
5 provisions of law relating to the regulation and acquisition of nonprofit health
6 service plans; requiring certain board members of a nonprofit health service
7 plan to act in a manner consistent with the mission of a nonprofit health service
8 plan; prohibiting certain board members and officers from receiving certain
9 personal or financial enrichment to the detriment of the nonprofit health service
10 plan or its mission; including as a principal function of a board of a nonprofit
11 health service plan the consideration of an independent valuation of a nonprofit
12 health service plan prior to making a certain other consideration; specifying the
13 manner in which certain officers of a nonprofit health service plan must act;
14 providing that a violation of certain provisions of this Act is an unsound and
15 unsafe business practice; altering a certain provision of law relating to unsound
16 and unsafe business practices; authorizing the Insurance Commissioner to
17 impose a certain civil penalty against certain officers or directors who fail to
18 take appropriate action in response to a certain warning; altering certain
19 provisions of law relating to certain actions by an officer, director, or employee of
20 a nonprofit health service plan; requiring that an application for acquisition of a
21 nonprofit health entity include a certain valuation of the nonprofit health entity
22 and a certain antitrust analysis; specifying that a certain acquisition is not in
23 the public interest unless certain steps are taken to ensure that certain assets
24 are spent in a certain manner; prohibiting a certain regulating entity from
25 making a certain determination unless certain considerations are made;
26 defining a certain term; and generally relating to the regulation and acquisition
27 of nonprofit health service plans.

28 BY repealing and reenacting, without amendments,
29 Article - Courts and Judicial Proceedings
30 Section 5-106(a)
31 Annotated Code of Maryland
32 (2002 Replacement Volume and 2003 Supplement)

1 BY adding to
2 Article - Courts and Judicial Proceedings
3 Section 5-106(z)
4 Annotated Code of Maryland
5 (2002 Replacement Volume and 2003 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article - Insurance
8 Section 14-115(c), 14-116(a) and (b), and 14-139(a)
9 Annotated Code of Maryland
10 (2002 Replacement Volume and 2003 Supplement)

11 BY adding to
12 Article - Insurance
13 Section 14-115.1
14 Annotated Code of Maryland
15 (2002 Replacement Volume and 2003 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - State Government
18 Section 6.5-201(b) and 6.5-301(b) and (e)
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2003 Supplement)

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

23 **Article - Courts and Judicial Proceedings**

24 5-106.

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

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

30 **Article - Insurance**

31 14-115.

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

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

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

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

7 [(iii)] 3. [in a manner that is reasonably believed to be in
8 furtherance of the corporation's nonprofit mission] IN A MANNER THAT IS
9 CONSISTENT WITH THE MISSION OF A NONPROFIT HEALTH SERVICE PLAN AS
10 REQUIRED UNDER § 14-102(C) OF THIS SUBTITLE; and

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

13 (II) EXCEPT IN CONFORMITY WITH THIS SECTION, THE BOARD AND
14 ITS INDIVIDUAL MEMBERS MAY NOT USE BOARD MEMBERSHIP FOR PERSONAL OR
15 FINANCIAL ENRICHMENT TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE
16 PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.

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

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

20 (ii) selecting corporate management and evaluating its
21 performance;

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

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

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

28 (VI) BEFORE CONSIDERING ANY BID OR OFFER TO ACQUIRE THE
29 NONPROFIT HEALTH SERVICE PLAN AND TO CONVERT TO A FOR-PROFIT ENTITY
30 UNDER TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE, ENSURING THAT ADEQUATE
31 CONSIDERATION IS GIVEN TO AN INDEPENDENT VALUATION OF THE NONPROFIT
32 HEALTH SERVICE PLAN.

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

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

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

5 14-115.1.

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

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

10 (I) IN GOOD FAITH;

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

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

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

19 (2) EXCEPT FOR THE RECEIPT OF REASONABLE REMUNERATION IN
20 CONFORMITY WITH § 14-139 OF THIS SUBTITLE, AN OFFICER OF A NONPROFIT
21 HEALTH SERVICE PLAN MAY NOT USE THE POSITION OF OFFICER FOR PERSONAL OR
22 FINANCIAL ENRICHMENT TO THE DETRIMENT OF THE NONPROFIT HEALTH SERVICE
23 PLAN OR THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.

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

26 14-116.

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

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

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

33 (iii) violates § 14-102, § 14-115, or § [14-139(c)] 14-139(A), (B), OR
34 (C) of this subtitle.

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

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

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

10 (2) IF THE COMMISSIONER BELIEVES THAT AN OFFICER OR DIRECTOR
11 OF A NONPROFIT HEALTH SERVICE PLAN HAS FAILED TO TAKE APPROPRIATE
12 ACTION IN RESPONSE TO A WARNING RECEIVED UNDER PARAGRAPH (1) OF THIS
13 SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING
14 \$125,000 FOR EACH WARNING.

15 [(2)] (3) The Commissioner shall send a copy of the warning OR, IF A
16 CIVIL PENALTY IS IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COPY OF
17 THE ORDER:

- 18 (i) by certified mail, return receipt requested, bearing a postmark
19 from the United States Postal Service, to each director of the nonprofit health service
20 plan; and
- 21 (ii) if the nonprofit health service plan is a corporation incorporated
22 in a state other than this State, to the insurance commissioner of the state in which
23 the corporation is incorporated.

24 14-139.

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

- 27 (1) willfully violate a provision of this article or a regulation adopted
28 under this article;
- 29 (2) willfully misrepresent or conceal a material fact in a statement,
30 report, record, or communication [submitted] PROVIDED to the Commissioner;
- 31 (3) willfully misrepresent OR CONCEAL a material fact to the board of
32 directors;
- 33 (4) misappropriate or fail to account properly for money that belongs to
34 the corporation, an insurer, insurance producer, subscriber, or certificate holder;
- 35 (5) engage in fraudulent or dishonest practices in connection with the
36 provision or administration of a health service plan;

1 (6) willfully fail to produce records or allow an examination under §
2 14-125 of this subtitle; or

3 (7) willfully fail to comply with a lawful order of the Commissioner.

4 **Article - State Government**

5 6.5-201.

6 (b) An application shall include:

7 (1) the name of the transferor;

8 (2) the name of the transferee;

9 (3) the names of any other parties to the acquisition agreement;

10 (4) the terms of the proposed acquisition, including the sale price;

11 (5) a copy of the acquisition agreement;

12 (6) a financial and community impact analysis report from an
13 independent expert or consultant that addresses the criteria in § 6.5-301 of this title;
14 [and]

15 (7) AN INDEPENDENT VALUATION OF THE NONPROFIT HEALTH
16 SERVICE PLAN THAT WAS OBTAINED PRIOR TO THE CONSIDERATION OF ANY BID OR
17 OFFER TO ACQUIRE THE HEALTH CARE ENTITY;

18 (8) AN ANTITRUST ANALYSIS PREPARED BY AN APPROPRIATE EXPERT;
19 AND

20 [(7)] (9) any other documents related to the acquisition.

21 6.5-301.

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

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

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

28 [(2)] (3) ensure that:

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

14 [(3)] (4) ensure that no part of the public or charitable assets of the
15 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
16 health entity; and

17 [(4)] (5) ensure that no officer, director, or trustee of the nonprofit
18 health entity receives any immediate or future remuneration as the result of an
19 acquisition or proposed acquisition except in the form of compensation paid for
20 continued employment with the acquiring entity.

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

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

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

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

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

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

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

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

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

8 (2) IN DETERMINING WHETHER A HEALTH CARE ENTITY HAS
9 EXERCISED DUE DILIGENCE AS REQUIRED UNDER PARAGRAPH (1)(I) OF THIS
10 SUBSECTION, THE APPROPRIATE REGULATING ENTITY MAY NOT DETERMINE THAT
11 DUE DILIGENCE WAS EXERCISED UNLESS THE HEALTH CARE ENTITY CONSIDERED
12 THE RISKS OF AN ACQUISITION, INCLUDING WHETHER AN ACQUISITION:

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

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

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