

SENATE BILL 4

Unofficial Copy
C3

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 29, 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 health
8 service plan; altering the manner in which a nonprofit health service plan must
9 develop certain goals, objectives, and strategies; providing that a certain charter
10 and the laws, rules, and regulations of the jurisdiction of domicile of a certain
11 entity 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 determining whether to issue or renew the certificate of authority of a nonprofit
16 health service plan; altering the applicability of certain statutory requirements
17 for a board of directors of a nonprofit health service plan; requiring certain
18 board members of a nonprofit health service plan to act in a certain manner
19 ~~consistent with~~ in furtherance of the mission of a nonprofit health service plan;
20 altering the manner of selecting board members of certain nonprofit health
21 service plans; altering the actions for which board approval is required;
22 requiring the Commissioner to adopt certain regulations; prohibiting certain
23 board members and officers from receiving certain personal or financial
24 enrichment to the detriment of the nonprofit health service plan or its mission;
25 including as a principal function of a board of a nonprofit health service plan the
26 consideration of an independent valuation of a nonprofit health service plan
27 prior to making a certain other consideration; specifying the manner in which

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

18 BY repealing and reenacting, without amendments,
 19 Article - Courts and Judicial Proceedings
 20 Section 5-106(a)
 21 Annotated Code of Maryland
 22 (2002 Replacement Volume and 2003 Supplement)

23 BY adding to
 24 Article - Courts and Judicial Proceedings
 25 Section 5-106(z)
 26 Annotated Code of Maryland
 27 (2002 Replacement Volume and 2003 Supplement)

28 BY repealing and reenacting, with amendments,
 29 Article - Insurance
 30 Section ~~14-115(e)~~ 14-102(a), (c), (d), and (f), 14-110, 14-115(b), (c), and (d)(2)
 31 and (11), 14-116(a) and (b), and 14-139(a)
 32 Annotated Code of Maryland
 33 (2002 Replacement Volume and 2003 Supplement)

34 BY repealing and reenacting, without amendments,
 35 Article - Insurance
 36 Section 14-102(b) and (e) and 14-115(d)(1)
 37 Annotated Code of Maryland
 38 (2002 Replacement Volume and 2003 Supplement)

39 BY adding to
 40 Article - Insurance

1 Section 14-115.1
2 Annotated Code of Maryland
3 (2002 Replacement Volume and 2003 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - State Government
6 Section 6.5-201(b) and 6.5-301(b) and (e)
7 Annotated Code of Maryland
8 (1999 Replacement Volume and 2003 Supplement)

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

11 **Article - Courts and Judicial Proceedings**

12 5-106.

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

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

18 **Article - Insurance**

19 14-102.

20 (a) The purpose of this subtitle is:

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

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

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

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

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

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

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

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

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

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

11 (d) A nonprofit health service plan:

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

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

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

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

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

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

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

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

35 2. DOES BUSINESS IN THE STATE.

1 (2) TO THE EXTENT THAT THE LEGISLATIVELY ENACTED CHARTER OF
2 AN ENTITY SUBJECT TO THIS SECTION, OR THE LAWS OR ADMINISTRATIVE RULES OR
3 REGULATIONS OF THE JURISDICTION OF DOMICILE OF AN ENTITY SUBJECT TO THIS
4 SECTION, PROHIBIT THE ENTITY FROM COMPLYING WITH A REQUIREMENT OF
5 SUBSECTION (C) OF THIS SECTION, THE LEGISLATIVELY ENACTED CHARTER, LAWS,
6 AND ADMINISTRATIVE RULES AND REGULATIONS OF THE JURISDICTION OF
7 DOMICILE SHALL SUPERCEDE AND TAKE PRECEDENCE OVER THE REQUIREMENT OF
8 SUBSECTION (C) OF THIS SECTION.

9 14-110.

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

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

13 (2) the Commissioner is satisfied:

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

17 1. is committed to a nonprofit corporate structure;

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

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

24 (ii) that:

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

31 2. each subscriber is entitled to reimbursement for podiatric,
32 chiropractic, psychological, or optometric services, regardless of whether the service is
33 performed by a licensed physician, licensed podiatrist, licensed chiropractor, licensed
34 psychologist, or licensed optometrist;

35 (iii) that:

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

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

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

5 1. \$100,000; and

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

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

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

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

21 14-115.

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

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

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

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

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

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

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

33 [(iii)] 3. [in a manner that is reasonably believed to be in
 34 furtherance of the corporation's nonprofit mission] IN A MANNER THAT IS
 35 CONSISTENT WITH THE MISSION OF REASONABLY BELIEVED TO BE IN

1 FURTHERANCE OF THE MISSION OF THE CORPORATION AS A NONPROFIT HEALTH
2 SERVICE PLAN AS REQUIRED UNDER § 14-102(C) OF THIS SUBTITLE; and

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

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

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

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

12 (ii) selecting corporate management and evaluating its
13 performance;

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

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

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

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

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

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

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

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

33 (i) issued a certificate of authority as a nonprofit health service
34 plan; and

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

- 1 (2) The board shall be composed of no more than 23 members, including:
- 2 (i) one nonvoting member, who is not a member of the Maryland
3 General Assembly, appointed by and serving at the pleasure of the President of the
4 Senate of Maryland;
- 5 (ii) one nonvoting member, who is not a member of the Maryland
6 General Assembly, appointed by and serving at the pleasure of the Speaker of the
7 House of Delegates; and
- 8 (iii) 21 members selected by the board, IN ACCORDANCE WITH THE
9 BYLAWS OF THE CORPORATION, including two consumer members, who satisfy the
10 requirements of paragraphs (13), (14), and (15) of this subsection.
- 11 (11) (i) [Board approval is required for] THE BOARD SHALL APPROVE
12 IN ADVANCE any action by the nonprofit health service plan, a corporation for which
13 the plan is the sole member, or any affiliate or subsidiary of the nonprofit health
14 service plan to:
- 15 1. [modify benefit levels] MATERIALLY MODIFY OPTIONS
16 AVAILABLE IN BENEFIT PLANS MARKETED IN THE STATE;
- 17 2. materially modify MARYLAND provider networks or
18 MARYLAND provider reimbursement LEVELS;
- 19 3. MATERIALLY modify underwriting guidelines FOR
20 PRODUCTS MARKETED IN THE STATE;
- 21 4. MATERIALLY modify rates or rating plans THAT ARE
22 REQUIRED TO BE APPROVED BY THE COMMISSIONER;
- 23 5. ADD A PRODUCT TO OR withdraw a product FROM THE
24 MARYLAND MARKET, [or] withdraw from a line or type of [business] BUSINESS, or
25 WITHDRAW FROM A geographic region IN THE STATE; [or]
- 26 6. MATERIALLY MODIFY MARKETING GOALS AND
27 OBJECTIVES IN THE STATE; OR
- 28 [6.] 7. MATERIALLY impact the availability or affordability
29 of health care in the State.
- 30 (II) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT
31 DEFINE "MATERIAL" FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.
- 32 (ii) (III) A decision by the board to convert to a for profit entity
33 under Title 6.5 of the State Government Article may be rejected by any three
34 members of the board.
- 35 (iii) (IV) The board may delegate approval for the actions listed in
36 subparagraph (i) of this paragraph to a standing committee of the board.

1 14-115.1.

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

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

6 (I) IN GOOD FAITH;

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

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

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

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

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

22 14-116.

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

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

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

29 (iii) violates § 14-102, § 14-115, § 14-115.1, or § [14-139(c)]
30 14-139(A), (B), OR (C) of this subtitle.

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

32 (i) failing to comply with the notice requirements of § 14-119 of
33 this subtitle;

34 (ii) willfully hindering an examination of a nonprofit health service
35 plan or its affiliates or subsidiaries; and

1 (iii) failure of a director to attend at least 65% of the meetings of the
2 board during a period of 12 consecutive months.

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

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

11 [(2)] (3) The Commissioner shall send a copy of the warning OR, IF A
12 CIVIL PENALTY IS IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A COPY OF
13 THE ORDER:

14 (i) by certified mail, return receipt requested, bearing a postmark
15 from the United States Postal Service, to each director of the nonprofit health service
16 plan; and

17 (ii) if the nonprofit health service plan is a corporation incorporated
18 in a state other than this State, to the insurance commissioner of the state in which
19 the corporation is incorporated.

20 14-139.

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

23 (1) willfully violate a provision of this article or a regulation adopted
24 under this article;

25 (2) willfully misrepresent or conceal a material fact in a statement,
26 report, record, or communication [submitted] PROVIDED to the Commissioner;

27 (3) willfully misrepresent OR CONCEAL a material fact to the board of
28 directors;

29 (4) misappropriate or fail to account properly for money that belongs to
30 the corporation, an insurer, insurance producer, subscriber, or certificate holder;

31 (5) engage in fraudulent or dishonest practices in connection with the
32 provision or administration of a health service plan;

33 (6) willfully fail to produce records or allow an examination under §
34 14-125 of this subtitle; or

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

1

Article - State Government

2 6.5-201.

3 (b) An application shall include:

4 (1) the name of the transferor;

5 (2) the name of the transferee;

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

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

8 (5) a copy of the acquisition agreement;

9 (6) a financial and community impact analysis report from an
10 independent expert or consultant that addresses the criteria in § 6.5-301 of this title;
11 [and]12 (7) AN INDEPENDENT VALUATION OF THE NONPROFIT HEALTH
13 ~~SERVICE PLAN ENTITY~~ THAT WAS OBTAINED PRIOR TO THE CONSIDERATION OF ANY
14 BID OR OFFER TO ACQUIRE THE NONPROFIT HEALTH CARE ENTITY;15 (8) AN ANTITRUST ANALYSIS PREPARED BY AN APPROPRIATE EXPERT;
16 AND

17 [(7)] (9) any other documents related to the acquisition.

18 6.5-301.

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

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

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

25 [(2)] (3) ensure that:

26 (i) the fair value of the public or charitable assets of a nonprofit
27 health service plan or a health maintenance organization will be distributed to the
28 Maryland Health Care Foundation that was established in § 20-502 of the Health -
29 General Article; or30 (ii) 1. 40% of the fair value of the public or charitable assets of a
31 nonprofit hospital will be distributed to the Maryland Health Care Foundation that
32 was established in § 20-502 of the Health - General Article; and

1 2. 60% of the fair value of the public or charitable assets of a
2 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
3 that is:

4 A. dedicated to serving the unmet health care needs of the
5 affected community;

6 B. dedicated to promoting access to health care in the
7 affected community;

8 C. dedicated to improving the quality of health care in the
9 affected community; and

10 D. independent of the transferee;

11 [(3)] (4) ensure that no part of the public or charitable assets of the
12 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
13 health entity; and

14 [(4)] (5) ensure that no officer, director, or trustee of the nonprofit
15 health entity receives any immediate or future remuneration as the result of an
16 acquisition or proposed acquisition except in the form of compensation paid for
17 continued employment with the acquiring entity.

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

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

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

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

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

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

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

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

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

3 (2) IN DETERMINING WHETHER A ~~HEALTH CARE NONPROFIT HEALTH~~
4 ENTITY HAS EXERCISED DUE DILIGENCE AS REQUIRED UNDER PARAGRAPH (1)(I) OF
5 THIS SUBSECTION, THE APPROPRIATE REGULATING ENTITY MAY NOT DETERMINE
6 THAT DUE DILIGENCE WAS EXERCISED UNLESS THE ~~HEALTH CARE NONPROFIT~~
7 HEALTH ENTITY CONSIDERED THE RISKS OF AN ACQUISITION, INCLUDING
8 WHETHER AN ACQUISITION:

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That:

12 (a) notwithstanding the term limitations established under § 14-115(e)(6) of
13 the Insurance Article, an individual who is a Class I director of a board of a domestic
14 nonprofit health service plan that is subject to § 14-115 of the Insurance Article and
15 who was appointed to the board prior to December 31, 2003 and subsequently
16 reappointed to the board for a 1-year term on January 1, 2004 as the representative
17 of a foreign nonprofit health service plan of which the domestic nonprofit health
18 service plan is the sole member, may serve on the board of the domestic nonprofit
19 health service plan for an additional 1-year term until December 31, 2005;

20 (b) any replacement of a Class I director described in subsection (a) of this
21 section, and any other individual who is elected to the board of a domestic nonprofit
22 health service plan that is subject to § 14-115 of the Insurance Article, shall be
23 subject to the term limitations established under § 14-115(e)(6) of the Insurance
24 Article; and

25 (c) the provisions of subsection (a) of this section shall be limited to and affect
26 no more than two of the Class I directors described in subsection (a) of this section.

27 SECTION 2- 3. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect June 1, 2004.