

HOUSE BILL 872

C3

8lr1803

By: ~~Delegates Pendergrass, Bobo, DeBoy, Guzzone, Malone, and F. Turner~~
F. Turner, Benson, Bromwell, Costa, Donoghue, Elliott, Hammen,
Hubbard, Kach, Kipke, Kullen, McDonough, Mizeur, Montgomery,
Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Riley, Tarrant,
V. Turner, and Weldon

Introduced and read first time: February 6, 2008
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 12, 2008

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – Public–Private Health Care Programs**

3 FOR the purpose of requiring a person to be certified by the Maryland Insurance
4 Commissioner before operating a public–private health care program in the
5 State; establishing certain requirements an applicant for certification must
6 meet; requiring the Commissioner to certify an applicant to operate a
7 public–private health care program under certain circumstances; providing for
8 the expiration and renewal of a certification; requiring a certified nonprofit
9 corporation to comply with and be subject to certain provisions of law; requiring
10 a public–private health care program to disapprove an application under certain
11 circumstances; authorizing the Commissioner to deny a certification to an
12 applicant or refuse to renew, suspend, or revoke a certification under certain
13 circumstances; requiring that all forms, agreements, advertising, or other
14 documents provided to participants in a public–private health care program be
15 truthful and not misleading and be made available to the Commissioner on
16 request; authorizing the Commissioner to issue certain orders to enforce this
17 Act and certain regulations; specifying the manner in which an order of the
18 Commissioner may be served on certain persons; providing that a request for a
19 hearing on an order of the Commissioner does not stay a certain portion of the
20 order; authorizing the Commissioner to file a petition in a certain court to
21 enforce certain orders; authorizing the Commissioner to recover for the use of
22 the State certain attorney’s fees and costs under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 establishing certain civil penalties; authorizing the Commissioner to adopt
 2 certain regulations; specifying the purpose of certain provisions of this Act;
 3 defining certain terms; requiring the Maryland Insurance Administration to
 4 report to certain committees of the General Assembly on the Administration's
 5 recommendations for the continuation of public-private health care programs in
 6 the State on or before a certain date; providing for the termination of this Act;
 7 and generally relating to public-private health care programs.

8 BY adding to

9 Article – Insurance

10 Section 14-701 through ~~14-709~~ 14-710 to be under the new subtitle “Subtitle 7.
 11 Public-Private Health Care Programs”

12 Annotated Code of Maryland

13 (2006 Replacement Volume and 2007 Supplement)

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

16 **Article – Insurance**

17 **SUBTITLE 7. PUBLIC-PRIVATE HEALTH CARE PROGRAMS.**

18 **14-701.**

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 20 INDICATED.

21 (B) “CERTIFIED NONPROFIT CORPORATION” MEANS A NONPROFIT
 22 CORPORATION CERTIFIED UNDER THIS SUBTITLE TO ESTABLISH AND OPERATE
 23 A PUBLIC-PRIVATE HEALTH CARE PROGRAM.

24 (C) “HEALTH CARE PROVIDER” MEANS ANY PERSON, INCLUDING A
 25 PHYSICIAN OR HOSPITAL, WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
 26 PROVIDE HEALTH CARE SERVICES IN THE STATE.

27 (D) “HEALTH CARE SERVICES” HAS THE MEANING STATED IN § 19-701
 28 OF THE HEALTH – GENERAL ARTICLE.

29 (E) “QUALIFYING INDIVIDUAL” MEANS AN INDIVIDUAL WHO:

30 (1) IS NOT ELIGIBLE FOR OR ENROLLED IN THE FEDERAL
 31 MEDICARE PROGRAM, THE MARYLAND PRIMARY ADULT CARE PROGRAM, OR
 32 THE MARYLAND CHILDREN’S HEALTH PROGRAM; ~~AND~~

33 (2) IS NOT COVERED UNDER A HEALTH BENEFIT PLAN ISSUED
 34 UNDER TITLE 15, SUBTITLE 12 OF THIS ARTICLE; AND

1 ~~(2)~~ **(3)** MEETS ANY OTHER ELIGIBILITY REQUIREMENTS
2 ESTABLISHED BY A PUBLIC-PRIVATE HEALTH CARE PROGRAM.

3 **(F) “PARTICIPANTS” MEANS QUALIFYING INDIVIDUALS ENROLLED IN A**
4 **PUBLIC-PRIVATE HEALTH CARE PROGRAM.**

5 **(G) “PUBLIC-PRIVATE HEALTH CARE PROGRAM” MEANS A PROGRAM**
6 **THAT:**

7 **(1) IS ESTABLISHED AND OPERATED BY A NONPROFIT**
8 **CORPORATION THAT:**

9 **(I) HAS BEEN CERTIFIED BY THE COMMISSIONER UNDER**
10 **THIS SUBTITLE; AND**

11 **(II) HAS ENTERED INTO A WRITTEN AGREEMENT WITH EACH**
12 **COUNTY IN WHICH THE PROGRAM PROPOSES TO OPERATE; AND**

13 **(2) FOR A MEMBERSHIP FEE, PROVIDES OR ARRANGES FOR THE**
14 **PROVISION OF HEALTH CARE SERVICES FOR PARTICIPANTS.**

15 **14-702.**

16 **THE PURPOSE OF THIS SUBTITLE IS TO REGULATE THE ESTABLISHMENT**
17 **AND OPERATION OF PUBLIC-PRIVATE HEALTH CARE PROGRAMS.**

18 **14-703.**

19 **(A) A PERSON SHALL BE CERTIFIED BY THE COMMISSIONER BEFORE**
20 **OPERATING A PUBLIC-PRIVATE HEALTH CARE PROGRAM IN THE STATE.**

21 **(B) AN APPLICANT FOR CERTIFICATION SHALL:**

22 **(1) BE A NONPROFIT CORPORATION THAT, IN ACCORDANCE WITH**
23 **ITS CHARTER, IS ORGANIZED FOR THE PURPOSE OF ESTABLISHING AND**
24 **OPERATING A PUBLIC-PRIVATE HEALTH CARE PROGRAM; AND**

25 **(2) FILE WITH THE COMMISSIONER:**

26 **(I) AN APPLICATION ON THE FORM THAT THE**
27 **COMMISSIONER REQUIRES CONTAINING THE INFORMATION THAT THE**
28 **COMMISSIONER CONSIDERS NECESSARY;**

1 (II) COPIES OF THE FOLLOWING DOCUMENTS, CERTIFIED BY
2 AT LEAST TWO OF THE EXECUTIVE OFFICERS OF THE APPLICANT:

3 1. ARTICLES OF INCORPORATION OF THE APPLICANT
4 THAT INCLUDE THE APPLICANT'S CORPORATE MISSION STATEMENT, AND ALL
5 AMENDMENTS TO THE ARTICLES;

6 2. BYLAWS OF THE APPLICANT, AND ALL
7 AMENDMENTS TO THE BYLAWS;

8 3. A LIST OF THE NAME, ADDRESS, AND
9 BIOGRAPHICAL INFORMATION FOR EACH MEMBER OF THE BOARD OF
10 DIRECTORS OF THE APPLICANT; AND

11 4. A LIST OF THE BEGINNING AND ENDING TERMS OF
12 OFFICE OF EACH MEMBER OF THE BOARD OF DIRECTORS OF THE APPLICANT;

13 (III) THE WRITTEN AGREEMENT WITH EACH COUNTY IN
14 WHICH THE APPLICANT PROPOSES TO OPERATE A PUBLIC-PRIVATE HEALTH
15 CARE PROGRAM THAT SPECIFIES THE OBLIGATIONS OF EACH PARTY TO THE
16 AGREEMENT;

17 (IV) A DESCRIPTION OF THE PUBLIC-PRIVATE HEALTH CARE
18 PROGRAM THE APPLICANT PROPOSES TO OPERATE, INCLUDING:

19 1. THE CRITERIA USED TO DETERMINE WHO IS A
20 QUALIFYING INDIVIDUAL;

21 2. THE ARRANGEMENTS FOR THE DELIVERY OF
22 HEALTH CARE SERVICES;

23 3. THE PAYMENT OBLIGATIONS OF PARTICIPANTS;
24 ~~AND~~

25 4. THE INTERNAL COMPLAINT PROCESS AVAILABLE
26 TO PARTICIPANTS; AND

27 5. THE PROCEDURES TO BE USED TO MONITOR
28 APPLICATIONS FOR ENROLLMENT TO DETERMINE WHETHER AN INDIVIDUAL
29 HAS VOLUNTARILY TERMINATED COVERAGE UNDER A HEALTH BENEFIT PLAN
30 ISSUED UNDER TITLE 15, SUBTITLE 12 OF THIS ARTICLE;

31 (V) ALL FORMS, AGREEMENTS, ADVERTISING, OR OTHER
32 DOCUMENTS THAT WILL BE PROVIDED TO PARTICIPANTS; AND

1 (VI) ANY OTHER INFORMATION OR DOCUMENTS THAT THE
2 COMMISSIONER CONSIDERS NECESSARY TO ENSURE COMPLIANCE WITH THIS
3 SUBTITLE.

4 **14-704.**

5 (A) THE COMMISSIONER SHALL CERTIFY AN APPLICANT TO OPERATE A
6 PUBLIC-PRIVATE HEALTH CARE PROGRAM IF THE COMMISSIONER IS SATISFIED
7 THAT THE APPLICANT:

8 (1) HAS BEEN ORGANIZED IN GOOD FAITH FOR THE PURPOSE OF
9 ESTABLISHING AND OPERATING A PUBLIC-PRIVATE HEALTH CARE PROGRAM;

10 (2) IS COMMITTED TO A NONPROFIT CORPORATE STRUCTURE;
11 AND

12 (3) HAS SUFFICIENT FUNDS TO MEET ITS OBLIGATIONS UNDER
13 THE PUBLIC-PRIVATE HEALTH CARE PROGRAM.

14 (B) A CERTIFICATION EXPIRES ON THE THIRD JUNE 30 FOLLOWING
15 THE DATE ON WHICH THE CERTIFICATION WAS LAST ISSUED UNLESS IT IS
16 RENEWED AS PROVIDED IN THIS SECTION.

17 (C) BEFORE A CERTIFICATION EXPIRES, A CERTIFIED NONPROFIT
18 CORPORATION MAY RENEW IT FOR AN ADDITIONAL 3-YEAR TERM IF THE
19 CERTIFIED NONPROFIT CORPORATION:

20 (1) OTHERWISE IS ENTITLED TO CERTIFICATION; AND

21 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION
22 ON THE FORM THAT THE COMMISSIONER REQUIRES.

23 (D) AN APPLICATION FOR RENEWAL OF A CERTIFICATION SHALL BE
24 CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE
25 JUNE 30 OF THE YEAR OF RENEWAL.

26 **14-705.**

27 A CERTIFIED NONPROFIT CORPORATION SHALL:

28 (1) COMPLY WITH THIS SUBTITLE; AND

29 (2) BE SUBJECT TO §§ 27-203, 27-303(2), AND 27-304(1)
30 THROUGH (15) OF THIS ARTICLE.

1 **14-706.**

2 **A PUBLIC-PRIVATE HEALTH CARE PROGRAM MAY NOT APPROVE AN**
3 **APPLICATION FOR ENROLLMENT IF IT IS DETERMINED THAT THE INDIVIDUAL**
4 **FOR WHOM THE APPLICATION WAS SUBMITTED WAS COVERED BY A HEALTH**
5 **BENEFIT PLAN ISSUED UNDER TITLE 15, SUBTITLE 12 OF THIS ARTICLE THAT**
6 **WAS VOLUNTARILY TERMINATED BY THE INDIVIDUAL WITHIN 6 MONTHS**
7 **PRECEDING THE DATE OF THE APPLICATION.**

8 **14-707.**

9 (A) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2, SUBTITLE 2 OF
10 THIS ARTICLE, THE COMMISSIONER MAY DENY A CERTIFICATION TO AN
11 APPLICANT OR REFUSE TO RENEW, SUSPEND, OR REVOKE THE CERTIFICATION
12 OF A CERTIFIED NONPROFIT CORPORATION, IF AN OFFICER, DIRECTOR, OR
13 EMPLOYEE OF THE APPLICANT OR CERTIFIED NONPROFIT CORPORATION:

14 (1) MAKES A MATERIAL MISSTATEMENT OR MISREPRESENTATION
15 IN AN APPLICATION FOR CERTIFICATION;

16 (2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
17 OBTAIN A CERTIFICATION FOR THE APPLICANT OR CERTIFIED NONPROFIT
18 CORPORATION OR FOR ANOTHER;

19 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR
20 INVOLVING MORAL TURPITUDE;

21 (4) IN CONNECTION WITH THE PUBLIC-PRIVATE HEALTH CARE
22 PROGRAM, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR DISHONEST
23 ACTIVITIES;

24 (5) HAS VIOLATED ANY PROVISION OF THIS SUBTITLE OR A
25 REGULATION ADOPTED UNDER THIS SUBTITLE;

26 (6) PROVIDES A FALSE, FALSELY DISPARAGING, OR MISLEADING
27 ORAL OR WRITTEN STATEMENT, VISUAL DESCRIPTION, OR OTHER
28 REPRESENTATION OF ANY KIND THAT HAS THE CAPACITY, TENDENCY, OR
29 EFFECT OF BEING DECEPTIVE OR MISLEADING; OR

30 (7) MAKES A REPRESENTATION THAT A PUBLIC-PRIVATE HEALTH
31 CARE PROGRAM HAS A SPONSORSHIP, APPROVAL, CHARACTERISTIC, USE, OR
32 BENEFIT THAT IT DOES NOT HAVE.

33 (B) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2, SUBTITLE 2 OF
34 THIS ARTICLE, THE COMMISSIONER MAY REFUSE TO RENEW, SUSPEND, OR

1 REVOKE THE CERTIFICATION OF A CERTIFIED NONPROFIT CORPORATION IF
2 THE CERTIFIED NONPROFIT CORPORATION OR THE PUBLIC-PRIVATE HEALTH
3 CARE PROGRAM OPERATED BY THE CERTIFIED NONPROFIT CORPORATION
4 FAILS TO CONTINUE TO SATISFY THE REQUIREMENTS OF THIS SUBTITLE.

5 ~~14-707.~~ 14-708.

6 ALL FORMS, AGREEMENTS, ADVERTISING, OR OTHER DOCUMENTS
7 PROVIDED BY A CERTIFIED NONPROFIT CORPORATION TO PARTICIPANTS SHALL
8 BE:

9 (1) TRUTHFUL AND NOT MISLEADING IN FACT OR BY
10 IMPLICATION; AND

11 (2) MADE AVAILABLE TO THE COMMISSIONER ON REQUEST.

12 ~~14-708.~~ 14-709.

13 (A) TO ENFORCE THIS SUBTITLE AND ANY REGULATIONS ADOPTED
14 UNDER THIS SUBTITLE, THE COMMISSIONER MAY ISSUE AN ORDER THAT
15 REQUIRES THE VIOLATOR TO:

16 (1) CEASE AND DESIST FROM THE IDENTIFIED VIOLATION AND
17 FURTHER SIMILAR VIOLATIONS;

18 (2) TAKE SPECIFIC AFFIRMATIVE ACTION TO CORRECT THE
19 VIOLATION; OR

20 (3) MAKE RESTITUTION OF MONEY, PROPERTY, OR OTHER ASSETS
21 TO A PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE
22 VIOLATION.

23 (B) (1) AN ORDER OF THE COMMISSIONER ISSUED UNDER THIS
24 SECTION MAY BE SERVED ON A VIOLATOR WHO IS CERTIFIED UNDER THIS
25 SUBTITLE IN THE MANNER PROVIDED IN § 2-204 OF THIS ARTICLE.

26 (2) AN ORDER OF THE COMMISSIONER ISSUED UNDER THIS
27 SECTION MAY BE SERVED ON A VIOLATOR WHO IS NOT CERTIFIED UNDER THIS
28 SUBTITLE IN THE MANNER PROVIDED IN § 2-204 OR § 4-207 OF THIS ARTICLE.

29 (C) A REQUEST FOR A HEARING ON AN ORDER ISSUED UNDER THIS
30 SECTION DOES NOT STAY THAT PORTION OF THE ORDER THAT REQUIRES THE
31 VIOLATOR TO CEASE AND DESIST FROM CONDUCT IDENTIFIED IN THE ORDER.

1 (D) **THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT**
2 **OF ANY COUNTY TO ENFORCE AN ORDER ISSUED UNDER THIS SECTION,**
3 **WHETHER OR NOT A HEARING HAS BEEN REQUESTED OR, IF REQUESTED,**
4 **WHETHER OR NOT A HEARING HAS BEEN HELD.**

5 (E) **IF THE COMMISSIONER PREVAILS IN AN ACTION BROUGHT BY THE**
6 **COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER FOR**
7 **THE USE OF THE STATE REASONABLE ATTORNEY'S FEES AND THE COSTS OF THE**
8 **ACTION.**

9 (F) **(1) IN ADDITION TO ANY OTHER ENFORCEMENT ACTION TAKEN**
10 **BY THE COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY**
11 **IMPOSE A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION OF A**
12 **PROVISION OF THIS SUBTITLE.**

13 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION,**
14 **THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$1,000 PER**
15 **DAY FOR EACH DAY THAT A PERSON IS IN VIOLATION OF § 14-703(A) OF THIS**
16 **SUBTITLE.**

17 (G) **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS SECTION**
18 **DOES NOT LIMIT ANY REGULATORY POWER OF THE COMMISSIONER UNDER THIS**
19 **ARTICLE.**

20 ~~14-709.~~ 14-710.

21 **THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THE**
22 **PROVISIONS OF THIS SUBTITLE.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
24 31, 2010, the Maryland Insurance Administration shall report, in accordance with §
25 2-1246 of the State Government Article, to the Senate Finance Committee and the
26 House Health and Government Operations Committee on the Administration's
27 recommendations for the continuation of public-private health care programs in the
28 State.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 June 1, 2008. It shall remain effective for a period of 5 years and, at the end of May 31,
31 2013, with no further action required by the General Assembly, this Act shall be
32 abrogated and of no further force and effect.