

SENATE BILL 852

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8lr3197
CF HB 872

By: **Senators Kasemeyer, Kittleman, and Robey**

Introduced and read first time: February 11, 2008

Assigned to: Rules

A BILL ENTITLED

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;
10 authorizing the Commissioner to deny a certification to an applicant or refuse to
11 renew, suspend, or revoke a certification under certain circumstances; requiring
12 that all forms, agreements, advertising, or other documents provided to
13 participants in a public–private health care program be truthful and not
14 misleading and be made available to the Commissioner on request; authorizing
15 the Commissioner to issue certain orders to enforce this Act and certain
16 regulations; specifying the manner in which an order of the Commissioner may
17 be served on certain persons; providing that a request for a hearing on an order
18 of the Commissioner does not stay a certain portion of the order; authorizing the
19 Commissioner to file a petition in a certain court to enforce certain orders;
20 authorizing the Commissioner to recover for the use of the State certain
21 attorney’s fees and costs under certain circumstances; establishing certain civil
22 penalties; authorizing the Commissioner to adopt certain regulations; specifying
23 the purpose of certain provisions of this Act; defining certain terms; requiring
24 the Maryland Insurance Administration to report to certain committees of the
25 General Assembly on the Administration’s recommendations for the
26 continuation of public–private health care programs in the State on or before a
27 certain date; providing for the termination of this Act; and generally relating to
28 public–private health care programs.

29 BY adding to
30 Article – Insurance

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 14-701 through 14-709 to be under the new subtitle "Subtitle 7.
2 Public-Private Health Care Programs"
3 Annotated Code of Maryland
4 (2006 Replacement Volume and 2007 Supplement)

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

7 **Article - Insurance**

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

9 **14-701.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "CERTIFIED NONPROFIT CORPORATION" MEANS A NONPROFIT
13 CORPORATION CERTIFIED UNDER THIS SUBTITLE TO ESTABLISH AND OPERATE
14 A PUBLIC-PRIVATE HEALTH CARE PROGRAM.

15 (C) "HEALTH CARE PROVIDER" MEANS ANY PERSON, INCLUDING A
16 PHYSICIAN OR HOSPITAL, WHO IS LICENSED OR OTHERWISE AUTHORIZED TO
17 PROVIDE HEALTH CARE SERVICES IN THE STATE.

18 (D) "HEALTH CARE SERVICES" HAS THE MEANING STATED IN § 19-701
19 OF THE HEALTH - GENERAL ARTICLE.

20 (E) "QUALIFYING INDIVIDUAL" MEANS AN INDIVIDUAL WHO:

21 (1) IS NOT ELIGIBLE FOR OR ENROLLED IN THE FEDERAL
22 MEDICARE PROGRAM, THE MARYLAND PRIMARY ADULT CARE PROGRAM, OR
23 THE MARYLAND CHILDREN'S HEALTH PROGRAM; AND

24 (2) MEETS ANY OTHER ELIGIBILITY REQUIREMENTS
25 ESTABLISHED BY A PUBLIC-PRIVATE HEALTH CARE PROGRAM.

26 (F) "PARTICIPANTS" MEANS QUALIFYING INDIVIDUALS ENROLLED IN A
27 PUBLIC-PRIVATE HEALTH CARE PROGRAM.

28 (G) "PUBLIC-PRIVATE HEALTH CARE PROGRAM" MEANS A PROGRAM
29 THAT:

30 (1) IS ESTABLISHED AND OPERATED BY A NONPROFIT
31 CORPORATION THAT:

1 (I) HAS BEEN CERTIFIED BY THE COMMISSIONER UNDER
2 THIS SUBTITLE; AND

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

5 (2) FOR A MEMBERSHIP FEE, PROVIDES OR ARRANGES FOR THE
6 PROVISION OF HEALTH CARE SERVICES FOR PARTICIPANTS.

7 **14-702.**

8 THE PURPOSE OF THIS SUBTITLE IS TO REGULATE THE ESTABLISHMENT
9 AND OPERATION OF PUBLIC-PRIVATE HEALTH CARE PROGRAMS.

10 **14-703.**

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

13 (B) AN APPLICANT FOR CERTIFICATION SHALL:

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

17 (2) FILE WITH THE COMMISSIONER:

18 (I) AN APPLICATION ON THE FORM THAT THE
19 COMMISSIONER REQUIRES CONTAINING THE INFORMATION THAT THE
20 COMMISSIONER CONSIDERS NECESSARY;

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

23 1. ARTICLES OF INCORPORATION OF THE APPLICANT
24 THAT INCLUDE THE APPLICANT'S CORPORATE MISSION STATEMENT, AND ALL
25 AMENDMENTS TO THE ARTICLES;

26 2. BYLAWS OF THE APPLICANT, AND ALL
27 AMENDMENTS TO THE BYLAWS;

1 **3. A LIST OF THE NAME, ADDRESS, AND**
2 **BIOGRAPHICAL INFORMATION FOR EACH MEMBER OF THE BOARD OF**
3 **DIRECTORS OF THE APPLICANT; AND**

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

6 **(III) THE WRITTEN AGREEMENT WITH EACH COUNTY IN**
7 **WHICH THE APPLICANT PROPOSES TO OPERATE A PUBLIC-PRIVATE HEALTH**
8 **CARE PROGRAM THAT SPECIFIES THE OBLIGATIONS OF EACH PARTY TO THE**
9 **AGREEMENT;**

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

12 **1. THE CRITERIA USED TO DETERMINE WHO IS A**
13 **QUALIFYING INDIVIDUAL;**

14 **2. THE ARRANGEMENTS FOR THE DELIVERY OF**
15 **HEALTH CARE SERVICES;**

16 **3. THE PAYMENT OBLIGATIONS OF PARTICIPANTS;**
17 **AND**

18 **4. THE INTERNAL COMPLAINT PROCESS AVAILABLE**
19 **TO PARTICIPANTS;**

20 **(V) ALL FORMS, AGREEMENTS, ADVERTISING, OR OTHER**
21 **DOCUMENTS THAT WILL BE PROVIDED TO PARTICIPANTS; AND**

22 **(VI) ANY OTHER INFORMATION OR DOCUMENTS THAT THE**
23 **COMMISSIONER CONSIDERS NECESSARY TO ENSURE COMPLIANCE WITH THIS**
24 **SUBTITLE.**

25 **14-704.**

26 **(A) THE COMMISSIONER SHALL CERTIFY AN APPLICANT TO OPERATE A**
27 **PUBLIC-PRIVATE HEALTH CARE PROGRAM IF THE COMMISSIONER IS SATISFIED**
28 **THAT THE APPLICANT:**

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

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

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

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

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

11 (1) OTHERWISE IS ENTITLED TO CERTIFICATION; AND

12 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION
13 ON THE FORM THAT THE COMMISSIONER REQUIRES.

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

17 **14-705.**

18 A CERTIFIED NONPROFIT CORPORATION SHALL:

19 (1) COMPLY WITH THIS SUBTITLE; AND

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

22 **14-706.**

23 (A) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2, SUBTITLE 2 OF
24 THIS ARTICLE, THE COMMISSIONER MAY DENY A CERTIFICATION TO AN
25 APPLICANT OR REFUSE TO RENEW, SUSPEND, OR REVOKE THE CERTIFICATION
26 OF A CERTIFIED NONPROFIT CORPORATION, IF AN OFFICER, DIRECTOR, OR
27 EMPLOYEE OF THE APPLICANT OR CERTIFIED NONPROFIT CORPORATION:

28 (1) MAKES A MATERIAL MISSTATEMENT OR MISREPRESENTATION
29 IN AN APPLICATION FOR CERTIFICATION;

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

4 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR
5 INVOLVING MORAL TURPITUDE;

6 (4) IN CONNECTION WITH THE PUBLIC-PRIVATE HEALTH CARE
7 PROGRAM, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR DISHONEST
8 ACTIVITIES;

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

11 (6) PROVIDES A FALSE, FALSELY DISPARAGING, OR MISLEADING
12 ORAL OR WRITTEN STATEMENT, VISUAL DESCRIPTION, OR OTHER
13 REPRESENTATION OF ANY KIND THAT HAS THE CAPACITY, TENDENCY, OR
14 EFFECT OF BEING DECEPTIVE OR MISLEADING; OR

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

18 (B) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2, SUBTITLE 2 OF
19 THIS ARTICLE, THE COMMISSIONER MAY REFUSE TO RENEW, SUSPEND, OR
20 REVOKE THE CERTIFICATION OF A CERTIFIED NONPROFIT CORPORATION IF
21 THE CERTIFIED NONPROFIT CORPORATION OR THE PUBLIC-PRIVATE HEALTH
22 CARE PROGRAM OPERATED BY THE CERTIFIED NONPROFIT CORPORATION
23 FAILS TO CONTINUE TO SATISFY THE REQUIREMENTS OF THIS SUBTITLE.

24 **14-707.**

25 ALL FORMS, AGREEMENTS, ADVERTISING, OR OTHER DOCUMENTS
26 PROVIDED BY A CERTIFIED NONPROFIT CORPORATION TO PARTICIPANTS SHALL
27 BE:

28 (1) TRUTHFUL AND NOT MISLEADING IN FACT OR BY
29 IMPLICATION; AND

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

31 **14-708.**

1 (A) TO ENFORCE THIS SUBTITLE AND ANY REGULATIONS ADOPTED
2 UNDER THIS SUBTITLE, THE COMMISSIONER MAY ISSUE AN ORDER THAT
3 REQUIRES THE VIOLATOR TO:

4 (1) CEASE AND DESIST FROM THE IDENTIFIED VIOLATION AND
5 FURTHER SIMILAR VIOLATIONS;

6 (2) TAKE SPECIFIC AFFIRMATIVE ACTION TO CORRECT THE
7 VIOLATION; OR

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

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

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

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

20 (D) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT
21 OF ANY COUNTY TO ENFORCE AN ORDER ISSUED UNDER THIS SECTION,
22 WHETHER OR NOT A HEARING HAS BEEN REQUESTED OR, IF REQUESTED,
23 WHETHER OR NOT A HEARING HAS BEEN HELD.

24 (E) IF THE COMMISSIONER PREVAILS IN AN ACTION BROUGHT BY THE
25 COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER FOR
26 THE USE OF THE STATE REASONABLE ATTORNEY'S FEES AND THE COSTS OF THE
27 ACTION.

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

32 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION,
33 THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$1,000 PER

1 DAY FOR EACH DAY THAT A PERSON IS IN VIOLATION OF § 14-703(A) OF THIS
2 SUBTITLE.

3 (G) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS SECTION
4 DOES NOT LIMIT ANY REGULATORY POWER OF THE COMMISSIONER UNDER THIS
5 ARTICLE.

6 14-709.

7 THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THE
8 PROVISIONS OF THIS SUBTITLE.

9 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
10 31, 2010, the Maryland Insurance Administration shall report, in accordance with §
11 2-1246 of the State Government Article, to the Senate Finance Committee and the
12 House Health and Government Operations Committee on the Administration's
13 recommendations for the continuation of public-private health care programs in the
14 State.

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