

CHAPTER 627

(House Bill 872)

AN ACT concerning

Health Insurance – Public–Private Health Care Programs

FOR the purpose of requiring a person to be certified by the Maryland Insurance Commissioner before operating a public–private health care program in the State; establishing certain requirements an applicant for certification must meet; requiring the Commissioner to certify an applicant to operate a public–private health care program under certain circumstances; providing for the expiration and renewal of a certification; requiring a certified nonprofit corporation to comply with and be subject to certain provisions of law; requiring a public–private health care program to disapprove an application under certain circumstances; authorizing the Commissioner to deny a certification to an applicant or refuse to renew, suspend, or revoke a certification under certain circumstances; requiring that all forms, agreements, advertising, or other documents provided to participants in a public–private health care program be truthful and not misleading and be made available to the Commissioner on request; authorizing the Commissioner to issue certain orders to enforce this Act and certain regulations; specifying the manner in which an order of the Commissioner may be served on certain persons; providing that a request for a hearing on an order of the Commissioner does not stay a certain portion of the order; authorizing the Commissioner to file a petition in a certain court to enforce certain orders; authorizing the Commissioner to recover for the use of the State certain attorney’s fees and costs under certain circumstances; establishing certain civil penalties; authorizing the Commissioner to adopt certain regulations; specifying the purpose of certain provisions of this Act; defining certain terms; requiring the Maryland Insurance Administration to report to certain committees of the General Assembly on the Administration’s recommendations for the continuation of public–private health care programs in the State on or before a certain date; providing for the termination of this Act; and generally relating to public–private health care programs.

BY adding to

Article – Insurance

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

Annotated Code of Maryland

(2006 Replacement Volume and 2007 Supplement)

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

Article – Insurance

SUBTITLE 7. PUBLIC-PRIVATE HEALTH CARE PROGRAMS.

14-701.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14-702.

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

14-703.

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

(B) AN APPLICANT FOR CERTIFICATION SHALL:

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

(2) FILE WITH THE COMMISSIONER:

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

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

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

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

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

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

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

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

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

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

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

4. THE INTERNAL COMPLAINT PROCESS AVAILABLE TO PARTICIPANTS; AND

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

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

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

14-704.

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

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

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

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

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

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

(1) OTHERWISE IS ENTITLED TO CERTIFICATION; AND

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

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

14-705.

A CERTIFIED NONPROFIT CORPORATION SHALL:

(1) COMPLY WITH THIS SUBTITLE; AND

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

14-706.

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

14-707.

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

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

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

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

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

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

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

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

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

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

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

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

(2) MADE AVAILABLE TO THE COMMISSIONER ON REQUEST.

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

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

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

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

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

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

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

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

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

(E) IF THE COMMISSIONER PREVAILS IN AN ACTION BROUGHT BY THE COMMISSIONER UNDER THIS SECTION, THE COMMISSIONER MAY RECOVER FOR

THE USE OF THE STATE REASONABLE ATTORNEY'S FEES AND THE COSTS OF THE ACTION.

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

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

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

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

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

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

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

Approved by the Governor, May 22, 2008.