

# Annotated Code of Maryland

## State Government Title 6.5

### Acquisition of Nonprofit Health Plans

(Enacted in 1998, Amended in 2001)

#### Subtitle 1. Definitions: General Provisions

##### **6.5-101 Definitions**

(a) *In general.* - In this title the following words have the meanings indicated.

(b) "Acquisition" means:

- (1) a sale, lease, transfer, merger, or joint venture that results in the disposal of the assets of a nonprofit health entity to a for-profit corporation or entity or to a mutual benefit corporation or entity when a substantial or significant portion of the assets of the nonprofit health entity are involved or will be involved in the agreement or transaction;
- (2) a transfer of ownership, control, responsibility, or governance of a substantial or significant portion of the assets, operations, or business of the nonprofit health entity to any for-profit corporation or entity or to any mutual benefit corporation or entity;
- (3) a public offering of stock; or
- (4) a conversion to a for-profit entity.

(c) "Administration" means the Maryland Insurance Administration.

(d) "Department" means the Department of Health and Mental Hygiene.

(e) "Health maintenance organization" has the meaning stated in § 19-701 of the Health - General Article.

(f) "Hospital" has the meaning stated in § 19-301 of the Health - General Article.

(g) "Nonprofit health entity" means:

- (1) a nonprofit hospital;
- (2) a nonprofit health service plan; or
- (3) a nonprofit health maintenance organization.

(h) "Nonprofit health service plan" means a corporation without capital stock with a certificate of authority from the Insurance Commissioner to operate as a nonprofit health service plan or a nonprofit dental plan.

(i) "Public assets" include:

- (1) assets held for the benefit of the public or the community;
- (2) assets in which the public has an ownership interest; and
- (3) assets owned by a governmental entity.

(j) "Regulating entity" means:

- (1) for an acquisition of a nonprofit hospital, the Attorney General in consultation with the Department;
- (2) for an acquisition of a nonprofit health service plan, the Administration; and
- (3) for an acquisition of a nonprofit health maintenance organization, the Administration.

(k) "Transferee" means the person in an acquisition that receives the ownership or control of the nonprofit health entity that is the subject of the acquisition.

(l) "Transferor" means the nonprofit health entity that is the subject of the acquisition, or the corporation that owns the nonprofit health entity that is the subject of the acquisition.

### **6.5-102. Acquisition**

A person may not engage in an acquisition of a nonprofit health entity unless the transferor and the transferee receive the approval of the appropriate regulating entity.

### **6.5-103. Regulations**

(a) *In general.* - The Attorney General, the Department, and the Administration shall adopt regulations to carry out this title.

(b) *Hearing and appeal procedures to be included.* - The regulations adopted under subsection (a) of this section shall include provisions that establish hearing and appeal procedures.

### **6.5-104. Rights and Powers**

Nothing in this title shall impair the rights and powers of a court and the Attorney General with respect to any asset devoted to charity or with respect to any charitable trust.

## **Subtitle 2 Application Process**

### **6.5-201. Application Process and Content**

#### **(a) Application Required**

(1) A person that seeks to engage in an acquisition of a nonprofit health entity shall submit an application to the appropriate regulating entity.

(2) The application submitted under paragraph (1) of this subsection shall be in addition to any other filing required by law.

#### **(b) Contents of application.** - An application shall include:

(1) the name of the transferor;

(2) the name of the transferee;

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

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

(5) a copy of the acquisition agreement;

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

(7) any other documents related to the acquisition.

#### **(c) Public Inspection and copying**

(1) On request to the regulating entity, and subject to paragraphs (2), (3), and (4) of this subsection, an application and related documents shall be available for public inspection and copying.

(2) Except as provided in paragraphs (3) and (4) of this subsection or otherwise by law, all information and documents that are filed with the regulating entity in compliance with the requirements of this title or that are reported to, obtained by, or otherwise disclosed to the regulating entity or any other person in the course of an examination or investigation made under this title:

(i) are confidential material;

(ii) are not subject to subpoena; and

- (iii) may not be made public by the regulating entity or any other person.
- (3) Material that otherwise is confidential under paragraph (2) of this subsection may be made public by any person to whom the nonprofit health entity to which the material relates gives prior written consent.
- (4) If, after giving a nonprofit health entity notice and an opportunity to be heard, the regulating entity determines that it is in the interest of the policyholders, stockholders, or the public to make public any material relating to the nonprofit health entity that otherwise is confidential under paragraph (2) of this subsection, the regulating entity may make public all or part of the material in an appropriate manner.

### **6.5-202. Receiving an Application**

- (a) *Notice of application.* - Within 10 working days after receiving an application, the appropriate regulating entity shall:
- (1) publish notice of the application in the most widely circulated newspapers that are part of a nonprofit health entity's service area; and
  - (2) notify by first-class mail any person that has requested in writing notice of the filing of an application.
- (b) *Generally.* - The notice under subsection (a) of this section shall:
- (1) state that an application has been received;
  - (2) state the names of the parties to the acquisition;
  - (3) describe the contents of the application;
  - (4) state the date by which a person must submit written comments on the application; and
  - (5) provide the date, time, and place of the public hearing on the acquisition.
- (c) *Cost of notice.* - The applicant shall bear the cost of the notice required under this section.

### **6.5-203. Regulatory Entity**

- (a) *Public hearing.*
- (1) As soon as practicable, but no later than 90 days after receiving a complete application, including all necessary expert reports, the appropriate regulating entity shall hold a public hearing.
  - (2) If the nonprofit health entity is a hospital, the regulating entity shall hold the public hearing in the jurisdiction in which the hospital is located.
- (b) *Quasi-legislative.* - A public hearing under this section shall be a quasi-legislative hearing and not a contested case hearing.
- (c) *Written comments; exhibits.* - Any person may file written comments and exhibits or make a statement at the public hearing.
- (d) *Discovery procedures.* - The regulating entity may:
- (1) subpoena information and witnesses;
  - (2) require sworn statements;
  - (3) take depositions; and
  - (4) use related discovery procedures.
- (e) *Experts.*
- (1) The regulating entity may contract with experts as reasonably necessary to:
    - (i) determine whether to approve an acquisition generally;

- (ii) perform an independent valuation of the public or charitable assets of the transferor;
  - (iii) evaluate the impact of the acquisition on the affected community;
  - (iv) determine whether there has been due diligence by the transferor; and
  - (v) determine the existence of any conflicts of interest.
- (2) The selection of an expert by a regulating entity under paragraph (1) of this subsection shall be subject to the State procurement laws.
- (3) If a regulating entity contracts for expert assistance under paragraph (1) of this subsection, the transferee shall pay the reasonable cost of the expert assistance, as determined by the regulating entity.
- (f) *Approval or nonapproval deadline.* – Within 60 days after the record, including the public hearing process, has been closed, the appropriate regulating entity shall:
- (1) approve the acquisition, with or without modifications; or
  - (2) disapprove the acquisition.
- (g) *Applications deemed approved if no action taken.*
- (1) Unless the appropriate regulating entity extends for good cause under paragraph (2) of this subsection the time for making a determination under subsection (f) of this section, if an application is not approved or disapproved within 60 days after the record, including the public hearing process, has been closed, the application shall be deemed approved.
  - (2) Subject to paragraph (3) of this subsection, at its discretion, the regulating entity may extend for good cause for a 60-day period the time for making a determination under subsection (f) of this section.
  - (3) The regulating entity is limited to a maximum of two 60-day extensions for making a determination on the same application.

### **Subtitle 3. Review Criteria and Penalties**

#### **6.5-301. Acquisition**

- (a) *Approval.* - The appropriate regulating entity shall approve an acquisition unless it finds the acquisition is not in the public interest.
- (b) *Appropriate steps.* - An acquisition is not in the public interest unless appropriate steps have been taken to:
- (1) ensure that the value of public or charitable assets is safeguarded;
  - (2) ensure that:
    - (i) the fair value of the public or charitable assets of a nonprofit health service plan or a health maintenance organization will be distributed to the Maryland Health Care Foundation that was established in § 20-502 of the Health - General Article; or
    - (ii)
      - 1. 40% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to the Maryland Health Care Foundation that was established in § 20-502 of the Health - General Article; and
      - 2. 60% of the fair value of the public or charitable assets of a nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust that is:
        - A. dedicated to serving the unmet health care needs of the affected community;

- B. dedicated to promoting access to health care in the affected community;
  - C. dedicated to improving the quality of health care in the affected community; and
  - D. independent of the transferee; and
- (3) ensure that no part of the public or charitable assets of the acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit health entity.
- (c) *Distribution of assets.* - The regulating entity may determine that a distribution of assets of a nonprofit health entity is not required under this section if the transaction is:
- (1) determined not be an acquisition;
  - (2) in the ordinary course of business; and
  - (3) for fair value.
- (d) *Fair value.* - In determining fair value, the appropriate regulating entity may consider all relevant factors, including, as determined by the regulating entity:
- (1) the value of the nonprofit health entity or an affiliate or the assets of such an entity that is determined as if the entity had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;
  - (2) the value as a going concern;
  - (3) the market value;
  - (4) the investment or earnings value;
  - (5) the net asset value; and
  - (6) a control premium, if any.
- (e) *Public interest.* - In determining whether an acquisition is in the public interest, the appropriate regulating entity shall consider:
- (1) whether the transferor exercised due diligence in deciding to engage in an acquisition, selecting the transferee, and negotiating the terms and conditions of the acquisition;
  - (2) the procedures the transferor used in making the decision, including whether appropriate expert assistance was used;
  - (3) whether any conflicts of interest were disclosed, including conflicts of interest of board members, executives, and experts retained by the transferor, transferee, or any other parties to the acquisition;
  - (4) whether the transferor will receive fair value for its public or charitable assets;
  - (5) whether public or charitable assets are placed at unreasonable risk if the acquisition is financed in part by the transferor;
  - (6) whether the acquisition has the likelihood of creating a significant adverse effect on the availability or accessibility of health care services in the affected community;
  - (7) whether the acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care; and
  - (8) whether any management contract under the acquisition is for fair value.

### **6.5-302. Considerations by Attorney General**

In determining whether to approve an acquisition of a nonprofit hospital, the Attorney General shall consider:

- (1) the criteria listed in § 6.5-301 of this subtitle; and
- (2) whether the affected community will have continued access to affordable health care.

### **6.5-303. Considerations by Administration**

In determining whether to approve an acquisition of a nonprofit health service plan or a nonprofit health maintenance organization, the Administration shall consider:

- (1) the criteria listed in § 6.5-301 of this subtitle; and
- (2) whether the acquisition:
  - (i) is equitable to enrollees, insureds, shareholders, and certificate holders, if any, of the transferor;
  - (ii) is in compliance with Title 2, Subtitle 6 of the Corporations and Associations Article;
  - (iii) ensures that the transferee will possess surplus in an amount sufficient to:
    1. comply with the surplus required under law; and
    2. provide for the security of the transferee's certificate holders and policyholders.

### **6.5-304. For-profit health entity**

(a) *Corporate status.* - A corporation that becomes a for-profit health entity under this title may not be deemed to have abandoned its corporate status by virtue of an acquisition unless the acquisition provides specifically to the contrary.

(b) *Continuation of filings.* - The certificate of authority, agent appointments, licenses, forms, and any other filings in existence at the time of an acquisition shall continue in full force and effect upon an acquisition if a corporation at all times remains qualified to engage in business in the State.

(c) *Contracts.* - All outstanding contracts of a transferor shall remain in full force and effect and need not be otherwise endorsed unless ordered by the regulating entity.

### **6.5-305. Nonprofit health service plan**

(a) *Revocation or suspension of license.* - The Secretary of the Department may revoke or suspend a license to operate a hospital in accordance with § 19-327 of the Health - General Article if an acquisition occurs without the approval of the Attorney General.

(b) *Approval required.* - An acquisition of a nonprofit health service plan or a nonprofit health maintenance organization may not occur without the approval of the Administration.

(c) *Operation for profit.* - A nonprofit health service plan or a nonprofit health maintenance organization may not be operated for profit.

(d) *Violations.* - If the Commissioner determines that a nonprofit health service plan or a nonprofit health maintenance organization is in violation of subsection (b) or (c) of this section, the Commissioner may, in addition to any other remedies authorized by law, require the following:

- (1) the divestiture of the acquisition;
- (2) that the entity fully comply with this title;
- (3) that the entity file a plan for conversion to a for-profit entity as required under this title;
- (4) that the certificate of authority of the entity to operate as a nonprofit health service plan or a nonprofit health maintenance organization in this State be revoked or suspended; or

(5) the payment of a penalty as provided for in § 4-113(d)(1) of the Insurance Article for each violation of subsection (b) or (c) of this section.

#### **6.5-306. Charitable entity or trust**

(a) *Prerequisites for distribution.* - Before a public or nonprofit charitable entity or trust may receive a distribution of public or charitable assets in accordance with an agreement, contract, or transaction approved by the regulating entity under this subtitle, it shall have mechanisms in place to:

- (1) avoid conflicts of interest; and
- (2) prohibit the making of grants that would benefit:
  - (i) the public or nonprofit charitable entity's or trust's board of directors;
  - (ii) the public or nonprofit charitable entity's or trust's management;
  - (iii) the for-profit stock entity; or
  - (iv) a mutual entity.

(b) *Annual report.* - A public or nonprofit charitable entity or trust that receives a distribution of public or charitable assets shall submit an annual report to the office regarding the grant-making and other charitable activities of the entity related to its use of the public or charitable assets received.

(c) *Availability of annual report.* - The annual report submitted under subsection (b) of this section shall be made available to the public at the principal office of the public or nonprofit charitable entity or trust.

#### **6.5-307. Foreign nonprofit health entity**

(a) *Applicability to acquisition of foreign entities.* - This title does not apply to the acquisition of a foreign nonprofit health entity operating in this State if the appropriate regulating entity determines, based on the standards set forth in this title, that any public or charitable assets of the nonprofit health entity that serve health care needs in this State will be adequately protected.

(b) *Information copy.* - Any nonprofit health entity that the appropriate regulating entity has determined under subsection (a) of this section that this title does not apply shall submit an information copy of its application to engage in an acquisition to the regulating entity.

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