

**[Md. Code, State Gov't §§ 6.5-301 through 6.5-307.]**

§§ 6.5-301 through 6.5-307: Attorney General; Acquisition of Nonprofit Health Entities

§ 6.5-301. Approval of acquisitions

- (a) The appropriate regulating entity may not approve an acquisition unless it finds the acquisition is in the public interest.
- (b) 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 the value of public or charitable assets is spent in a manner that corresponds with the potential risk associated with the acquisition;
  - (3) 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 Trust established under § 6.5-401 of this title; 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 Trust established under § 6.5-401 of this title; 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;
  - (4) 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; and
  - (5) ensure that no officer, director, or trustee of the nonprofit health entity receives any immediate or future remuneration as the result of an acquisition or proposed acquisition except in the form of compensation paid for continued employment with the acquiring entity.
- (c) 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 to be an acquisition;
  - (2) in the ordinary course of business; and
  - (3) for fair value.

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

- (i) 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;
- (ii) the procedures the transferor used in making the decision, including whether appropriate expert assistance was used;
- (iii) 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;
- (iv) whether the transferor will receive fair value for its public or charitable assets;
- (v) whether public or charitable assets are placed at unreasonable risk if the acquisition is financed in part by the transferor;
- (vi) 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;
- (vii) whether the acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care; and
- (viii) whether any management contract under the acquisition is for fair value.

(2) In determining whether a nonprofit health entity has exercised due diligence as required under paragraph (1)(i) of this subsection, the appropriate regulating entity may not determine that due diligence was exercised unless the nonprofit health entity considered the risks of an acquisition, including whether an acquisition:

- (i) would result in diseconomies of scale; or
- (ii) would violate federal or State antitrust laws.

(f) The public or charitable assets distributed to a public or nonprofit charitable entity or trust in accordance with subsection (b)(2) of this section shall be in the form of cash.

(g) The appropriate regulating entity shall determine whether a payment by a nonprofit health entity, required under an agreement or contract for the acquisition of a nonprofit health entity if the agreement or contract is broken by the nonprofit health entity, is in the public interest.

### § 6.5-302. Acquisition of nonprofit hospitals

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. Acquisition of nonprofit health service plan or nonprofit health maintenance organization

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; and
  - (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. Effect of acquisition

- (a) 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) 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) 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. Prohibited acts; penalties

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

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

(d) 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. Distributions

(a) 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) 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) 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 entities

(a) 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) 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.