

# SENATE BILL 852

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CF HB 872

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

Introduced and read first time: February 11, 2008

Assigned to: Rules

Re-referred to: Finance, February 18, 2008

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 2008

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## 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;  
23 establishing certain civil penalties; authorizing the Commissioner to adopt  
24 certain regulations; specifying the purpose of certain provisions of this Act;  
25 defining certain terms; requiring the Maryland Insurance Administration to

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**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 report to certain committees of the General Assembly on the Administration's  
 2 recommendations for the continuation of public-private health care programs in  
 3 the State on or before a certain date; providing for the termination of this Act;  
 4 and generally relating to public-private health care programs.

5 BY adding to  
 6 Article – Insurance  
 7 Section 14-701 through ~~14-709~~ 14-710 to be under the new subtitle “Subtitle 7.  
 8 Public-Private Health Care Programs”  
 9 Annotated Code of Maryland  
 10 (2006 Replacement Volume and 2007 Supplement)

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

13 **Article – Insurance**

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

15 **14-701.**

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

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

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

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

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

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

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

32 ~~(2)~~ (3) MEETS ANY OTHER ELIGIBILITY REQUIREMENTS  
 33 ESTABLISHED BY A PUBLIC-PRIVATE HEALTH CARE PROGRAM.

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

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

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

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

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

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

13 **14-702.**

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

16 **14-703.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21                   3.     THE PAYMENT OBLIGATIONS OF PARTICIPANTS;

22 ~~AND~~

23                   4.     THE INTERNAL COMPLAINT PROCESS AVAILABLE  
24 TO PARTICIPANTS; AND

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

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

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

1 **14-704.**

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

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

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

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

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

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

17 (1) OTHERWISE IS ENTITLED TO CERTIFICATION; AND

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

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

23 **14-705.**

24 A CERTIFIED NONPROFIT CORPORATION SHALL:

25 (1) COMPLY WITH THIS SUBTITLE; AND

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

28 **14-706.**

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

7        14-707.

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

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

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

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

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

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

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

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

32        (B) SUBJECT TO THE HEARING PROVISIONS OF TITLE 2, SUBTITLE 2 OF  
33 THIS ARTICLE, THE COMMISSIONER MAY REFUSE TO RENEW, SUSPEND, OR  
34 REVOKE THE CERTIFICATION OF A CERTIFIED NONPROFIT CORPORATION IF  
35 THE CERTIFIED NONPROFIT CORPORATION OR THE PUBLIC-PRIVATE HEALTH

1 CARE PROGRAM OPERATED BY THE CERTIFIED NONPROFIT CORPORATION  
2 FAILS TO CONTINUE TO SATISFY THE REQUIREMENTS OF THIS SUBTITLE.

3 ~~14-707, 14-708.~~

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

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

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

10 ~~14-708, 14-709.~~

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

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

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

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

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

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

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

30 (D) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT  
31 OF ANY COUNTY TO ENFORCE AN ORDER ISSUED UNDER THIS SECTION,

1 WHETHER OR NOT A HEARING HAS BEEN REQUESTED OR, IF REQUESTED,  
2 WHETHER OR NOT A HEARING HAS BEEN HELD.

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

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

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

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

18 ~~14-709.~~ 14-710.

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December  
22 31, 2010, the Maryland Insurance Administration shall report, in accordance with §  
23 2-1246 of the State Government Article, to the Senate Finance Committee and the  
24 House Health and Government Operations Committee on the Administration's  
25 recommendations for the continuation of public-private health care programs in the  
26 State.

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