

# **Nonprofit Hospital Conversion Law: Connecticut and Other States**

## **Brief Overview of PA 14-168**

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# Connecticut: Nonprofit Hospital Conversion Law (CGS § 19a-486 to § 19a-486h)

Approval Requirement

Certificate of Need (CON)  
Determination Letter

Public Hearing on Letter

Filing of Conversion Application

Application Review by AG and DPH

Public Hearing on Application

Appeals/ Licensing Action

# Approval Requirement

A nonprofit hospital must obtain approval from the AG and DPH commissioner to:

- Sell or transfer a material amount of its assets or operations to a for-profit entity or
- Change control of operations to a for-profit entity.

# CON Determination Letter

The hospital and purchaser must concurrently submit a CON determination letter to the AG and DPH. The letter must contain:

- the hospital's and purchaser's name and address;
- a brief description of the proposed agreement's terms; and
- the estimated capital expenditure, cost, or value associated with the proposed agreement.

# Public Hearing on Letter

PA 14-168 (§ 9) requires the purchaser and hospital to hold a hearing on the CON determination letter.

- The hearing must be held within 30 days after the AG and DPH receive the letter.
- The hospital must provide public notice in a newspaper.
- The hearing must be in the municipality where the new hospital would be located.

# Conversion Application

The AG and DPH must review the CON determination letter, with the AG determining whether the proposal requires approval under the nonprofit conversion law.

If so, they give the hospital and purchaser an application, which requires more detailed information (e.g., fairness evaluation by independent expert).

# Filing the Application

The purchaser and hospital must file the application with the AG and DPH within 60 days after it is mailed to them.

The AG and DPH must notify the applicants of any deficiencies within 20 days after receiving the application.

Within 25 days after receiving a complete application, the AG and DPH must jointly publish a summary of the proposal in a newspaper in the hospital's area.

# AG & DPH Application Review

- The AG and DPH must each make a decision on the completed application within 120 days after receiving it. This deadline can be extended by agreement of the AG, DPH, and the parties. The application is deemed approved if the AG and DPH do not make decisions within this timeframe.
- DPH must also make a decision on the CON request within the same period.
- The AG and DPH can contract with experts or consultants to assist with the review, which the purchaser must pay for (up to \$500,000 for the AG and up to \$150,000 for DPH).
- The AG and DPH commissioner may subpoena individuals and issue written interrogatories when conducting their reviews.

# Application Review cont.

- The law requires the AG and DPH to consider separate criteria when conducting their reviews.
- AG's factors focus on the transaction itself.
  - For example: whether the hospital (1) will receive fair market value for its assets or (2) failed to disclose conflicts of interest.
- DPH's factors focus on the affected community and health care.
  - For example: whether the affected community will be assured of continued access to high quality and affordable health care, after accounting for any proposed change impacting hospital staffing (PA 14-168 (§ 11) added underlined conditions).
- PA 14-168 (§ 10) specifically allows the AG and commissioner, when approving an application, to place any conditions on their approval that relate to the purposes of the conversion law.

# Public Hearing on Application

The AG and DPH must jointly hold at least one public hearing before making any decision on a proposed agreement.

One hearing must be in the hospital's primary service area.

They must provide notice in a newspaper in the affected community.

# Appeals/ Licensing Action

- After exhausting administrative remedies, the hospital or purchaser can appeal to the Superior Court if the AG or DPH commissioner denies the application or approves it with modifications.
- DPH must refuse to license a nonprofit hospital or suspend or revoke the license, if the commissioner finds after a hearing and an opportunity to be heard that:
  - a transaction subject to the nonprofit conversion law occurred without the required approval or
  - the hospital is not complying with the terms of the agreement approved by the AG and commissioner under this law.

# Nonprofit Hospital Conversion Laws: Other States

- We found nonprofit hospital conversion laws in over 20 states.
- In most cases, the basic features of these laws are generally similar to Connecticut's law.
- Even in states without specific nonprofit hospital conversion laws, the AG typically has oversight over these transactions as part of his or her general authority over charitable organizations and nonprofit institutions.
  - In these states, the AG may require notice of the transaction or challenge it under certain circumstances.

# Application and Approval

## Most such states require the:

- hospital or buyer to notify and obtain approval from the AG, state health department, or both prior to the transaction (some states, such as Massachusetts, also require court approval).

## Some states require:

- nonprofit hospitals to apply for approval even if the sale is to another nonprofit entity (e.g., California, New Jersey, and Oregon).

## A few states require:

- the transacting parties to notify the state but not seek prior approval (the state can challenge the transaction after its review) (e.g., Arizona and Delaware).

# Application Review

## Most such states:

- Require the regulating entity to hold a public hearing before making a decision on the application;
- Set timeframes for the application review process;
- Specify the criteria that the regulating entity must consider in its review;
- Grant the regulating entity subpoena power or similar authority to gather additional information when reviewing the application; and
- Allow the regulating entity to contract with outside experts to assist in its review and bill the transacting parties for the costs within certain limits.

# Penalties and Appeals

Most such states:

- Allow the regulating entity to revoke a hospital's license or impose other penalties for transactions occurring without the required notice and approval and
- Specify the transacting parties' right to appeal

# Post-Acquisition Monitoring

Unlike Connecticut, some states provide for specific monitoring of the hospital after the conversion.

**Massachusetts:** If the court approves the transaction, the AG must determine, in consultation with the public health commissioner, whether the purchaser needs an independent health care access monitor. If yes, the purchaser pays the department for the monitor and the monitor submits quarterly reports for three years (Mass. Gen. Laws ch. 180, § 8A(d)).

**Rhode Island:** For three years after a conversion's effective date, the AG and health department must:

- monitor, assess, and evaluate the purchaser's compliance with all conditions of approval and
- annually review the conversion's impact on the health care costs and services in the communities served (Rhode Island General Laws, Title 23, Chapter 17.14).

# Brief Overview of PA 14-168

Group Practice Transaction Notice,  
Antitrust Review Notice, and Group  
Practice Reporting (§ 1)

Medical Foundations (§§ 2 & 3)

Notice to Patient's Physician of  
Hospital Admission (§ 4)

Certificate of Need (§§ 5-8)

Nonprofit Hospital Conversions (§§  
9-11)

# Brief Overview of PA 14-168

## Group Practice Transaction Notice, Antitrust Review Notice, and Group Practice Reporting (§ 1)

- The act requires parties engaging in transactions resulting in a material change to a group practice to provide at least 30 days' advance notice to AG, with specified information (such as physicians' names and specialties).
- In general, material changes include transactions (merger, consolidation, etc.) between a group practice and:
  - another group practice resulting in a practice of eight or more physicians or
  - a hospital, hospital system, medical foundation, or certain other entities.
- The act requires parties to certain health care transactions subject to federal antitrust review to also provide information about the transaction to the state AG.
- It also requires (1) hospitals or hospital systems with affiliated group practices of any size and (2) unaffiliated group practices with 30 or more physicians to file annual reports with the AG and DPH commissioner.

# Brief Overview of PA 14-168 cont.

## Medical Foundations (§§ 2 & 3)

- The act allows for-profit hospitals or health systems to organize and join a medical foundation.
- It prohibits a hospital, health system, or medical school from joining more than one medical foundation.
- It limits who may serve on a foundation's board of directors (e.g., it prohibits a representative of a for-profit hospital from serving on the board of a medical foundation organized by a nonprofit entity, and vice versa).
- It changes medical foundation reporting requirements, requiring annual reporting and increasing the financial information to be reported.

# Brief Overview of PA 14-168 cont.

## Notice to Patient's Physician of Hospital Admission (§ 4)

- The act requires hospital personnel to ask patients, upon admission, whether the patient wants the hospital to notify his or her doctor of the admission; if so, the hospital must make reasonable efforts to do so within 24 hours.

## Certificate of Need (§§ 5-8)

- The act adds to the factors that DPH's Office of Health Care Access must consider when reviewing a CON application.
- It also requires a group practice of eight or more full-time equivalent physicians to obtain a CON before transferring ownership to any entity other than a physician or physician group. It makes related changes (such as creating a presumption in favor of approving applications for a group practice's voluntary transfer of ownership).

# Brief Overview of PA 14-168 cont.

## Nonprofit Hospital Conversions (§§ 9-11)

- As noted above, the act:
  - requires the purchaser and hospital to hold a hearing on the CON determination letter,
  - allows conditions to be placed on the conversion's approval, and
  - changes one factor in the DPH commissioner's consideration of whether to approve the application.

# More Information

- OLR Reports
  - 2014-R-0185: *Conversion of Nonprofit Hospital (Connecticut law)*
  - 2014-R-0229: *Nonprofit Hospital Conversion Laws in Other States*
- PA 14-168 Public Act Summary