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NONPROFIT HOSPITAL CONVERSIONS IN MASSACHUSETTS

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This report provides a brief description of Massachusetts' review process for converting a nonprofit hospital into a for-profit hospital.

SUMMARY

Massachusetts law requires the attorney general to review, and the Supreme Judicial Court to approve, a nonprofit hospital's agreement to sell, lease, exchange, or otherwise dispose of a substantial amount (generally, 20% or more) of its assets or operations. If the transaction results in a charitable fund, its governance is also subject to this process ([Massachusetts General Laws, Chapter 180, Section 8A\(d\)](#)).

Prior to entering into such a transaction, the hospital must provide written notice to the attorney general. The attorney general must review the proposed agreement using any criteria she deems relevant. The purchaser must pay the attorney general all reasonable and necessary costs to conduct the review, including contracting with experts, educating the public about the proposal and obtaining public input, and administrative costs.

During the course of her review, the attorney general must hold at least one public hearing in a location convenient to the population the hospital serves. Once completing the review, the attorney general must issue a statement with her findings and recommendations. The

purchaser must then file a motion with the Supreme Judicial Court seeking the transaction's approval. The court may approve it, approve it with modifications, or disapprove it.

If the court approves the transaction, the attorney general must determine, in consultation with the public health (DPH) commissioner, if the purchaser needs an independent health care access monitor.

MASSACHUSETTS' NONPROFIT HOSPITAL CONVERSION REVIEW PROCESS

Notice Requirement

At least 90 days before entering into such a transaction, the nonprofit hospital must provide written notice to the attorney general. The notice must include a summary statement providing the following information:

1. the board's consideration of (a) facts and circumstances in concluding the transfer's necessity, (b) alternatives to the transfer, and (c) partnering with or remaining a nonprofit hospital;
2. any agreements (a) between the hospital and outside consultants retained to assist with the transfer and (b) proposed between the hospital and purchaser;
3. the process the board used to select the purchaser;
4. a list of anyone affiliated with the hospital who has any financial interest (not including stock ownership in a publicly held company) in any entity currently doing business with the purchaser or its affiliates;
5. copies of any documents or writings on any personal financial benefit the transfer would confer on any person or family member affiliated with the hospital; and
6. any other relevant information the attorney general should consider.

Waiver

Notice is not required if the hospital applies for and receives a waiver from the attorney general. To apply for a waiver, the hospital must provide (1) a description of the proposed transfer, (2) the reasons why it is not subject to review, and (3) documentary evidence for any proposed reasons, including financial data, if relevant.

Review

When reviewing the proposed hospital conversion, Massachusetts law requires the attorney general to consider any factors she deems relevant, including whether:

1. the proposal complies with applicable general nonprofit and charities law;
2. due care was followed by the hospital;
3. the hospital avoided conflicts of interest in all phases of decision making;
4. fair value will be received for the nonprofit assets; and
5. the proposal is in the public's interest.

The purchaser must pay the attorney general all reasonable and necessary costs to conduct the review, including expert review of the proposal, a process for educating the public about the proposal and obtaining public input, and administrative costs. The attorney general must make all materials filed by the hospital and purchaser in the course of the review publicly available, upon request.

The law does not specify a timeframe for completing the review; presumably, the attorney general must complete it before the transaction's effective date.

Public Hearing

During the course of her review, the attorney general must hold at least one public hearing in a location convenient to the population the hospital serves. At least 21 days before the hearing, the hospital must publish a hearing notice in a newspaper circulated where the hospital is located. The notice must offer for the hospital to provide any person who requests it, a detailed summary of the proposed transaction and copies of

all transaction and collateral agreements. However, the law does not require the hospital to disclose any confidential trade secrets or financial information. The attorney general reviews the transaction summary before it is given to the public.

Court Approval

Once the attorney general completes the review, she must issue a statement with her findings and recommendations. The purchaser must then file a motion with the Supreme Judicial Court seeking the transaction's approval. The court may approve it, approve it with modifications, or disapprove it.

Independent Health Care Access Monitor

If the court approves the transaction, the attorney general must determine, in consultation with the DPH commissioner, if the purchaser needs an independent health care access monitor. If she determines the monitor is necessary, the purchaser must pay DPH the funds to hire the person. The monitor must report quarterly to the attorney general, DPH, and the legislature's Health Care Committee on community health care access, including levels of free care. The purchaser must provide this funding for three years following the hospital conversion.

RESOURCES

Attorney General's Guidelines for Transfers of Nonprofit Acute Care Hospitals and HMOs:
<http://www.mass.gov/ago/docs/nonprofit/nashoba/ags-guide-for-transfers-of-non-profit-acute-care-hospitals-and-hmos.pdf>, last visited on August 9, 2013.

Office of the Massachusetts Attorney General:
<http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/hospital-conversions/hospital-conversions.html>, last visited on August 9, 2013.

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