



OLR RESEARCH REPORT

October 22, 2013

2013-R-0324

NONPROFIT HOSPITAL CONVERSIONS IN CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND

By: Nicole Dube, Principal Analyst

This report provides a brief comparison of nonprofit hospital conversion laws in Connecticut, Massachusetts, and Rhode Island.

SUMMARY

Generally, certain states require a nonprofit hospital to obtain state approval before entering into an agreement to sell, lease, or transfer a substantial amount (typically 20% or more) of its assets or operations. The application and review processes vary across states. Connecticut, Massachusetts, and Rhode Island each require the attorney general (AG) to review and approve such an agreement. Connecticut and Rhode Island also require the Department of Public Health's (DPH) and Department of Health's (DOH) approval, respectively, whereas Massachusetts requires the Supreme Judicial Court's approval.

Prior to entering into such an agreement, all three states require (1) one or both transacting parties (i.e., the hospital and purchaser) to submit an application to the appropriate state entities detailing the proposed conversion and (2) a public hearing or public informational meeting to solicit public input.

Each state's law sets out the criteria and time periods for review. Both Connecticut and Rhode Island require the AG and DPH to approve, conditionally approve, or disapprove an application within 120 days of accepting it. Massachusetts law does not specify a timeframe. All three states require entities reviewing an application to consider numerous factors, such as detailed financial statements, the impact of the conversion on health care costs and services in the affected communities, and conflicts of interest. Massachusetts and Rhode Island require the purchaser to pay the state for any consultants or experts it hires to help conduct the review; Connecticut requires the purchaser to pay up to \$500,000 for this purpose.

Connecticut and Rhode Island allow a transacting party aggrieved by the AG's or health department's final decision to appeal to the Superior Court. Massachusetts requires the Supreme Judicial Court to approve the conversion.

Massachusetts and Rhode Island specify requirements for monitoring approved conversions (Connecticut has no such requirement). Massachusetts requires the AG, in consultation with DPH, to determine if the purchaser needs an independent health care access monitor. If so, the purchaser must pay DPH to hire the person for three years after the conversion's effective date. The monitor must report quarterly to the AG, DPH, and legislature on community health care access.

Similarly, Rhode Island requires the AG and DOH to monitor and evaluate an approved conversion for three years after its effective date at the purchaser's expense. During this period, the purchaser must also annually report to the AG and DOH on its compliance with the agreement.

Table 1 provides a comparison of the application, review, appeal, and monitoring requirements in these three states. For a description of each state's nonprofit hospital conversion laws, please see OLR Reports [2013-R-0322](#), [2013-R-0321](#), and [2012-R-0031](#).

Table 1: Comparison of Nonprofit Hospital Conversion Laws in Connecticut, Massachusetts, and Rhode Island

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Statutory Authority	CGS §§ 19a-486 to 486h	Massachusetts General Laws, Chapter 180, Section 8(A)(d)	Rhode Island General Laws, Title 23, Chapter 17.14
Review and Approval Requirements	The Department of Public Health (DPH) commissioner or her designee and the attorney general (AG) must review and approve a hospital's agreement to sell or otherwise transfer a material amount of its assets or operations or to change control of its operations to a for-profit entity.	The AG must review and the Supreme Judicial Court must approve a hospital's agreement to sell, lease, exchange, or otherwise dispose of a substantial amount (generally 20% or more) of its assets or operations.	DOH and the AG must review and approve a hospital's agreement to transfer 20% or more of its ownership, assets, membership interest, authority, or control.
Notice and Application Requirements	The hospital and purchaser must concurrently submit a certificate of need determination letter to DPH and the AG who must then send an application if the agreement requires approval. The hospital and purchaser must file the application with DPH and the AG within 60 days after receiving it.	At least 90 days before the conversion, the hospital must send written notice to the AG that includes a summary statement of the proposed conversion.	The hospital and purchaser must concurrently send an initial application to DOH and the AG that includes a detailed summary of the proposed conversion.

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Application Review and Timeline	<p>Within 20 days of receiving the application, DPH and the AG must give written notice to the purchaser and hospital of any deficiencies, which must be fixed before the application is accepted.</p> <p>The AG and DPH must review the application and issue their decisions within 120 days after receiving the completed application. This deadline can be extended if all parties agree. It is delayed if the AG seeks a court order to enforce a subpoena.</p>	<p>The law does not specify a timeframe for completing the review; presumably, the AG must complete it before the transaction's effective date.</p> <p>Once the AG completes the review, the purchaser must file a motion with the Supreme Judicial Court seeking approval for the conversion.</p>	<p>Within 30 days of receiving the application, DOH and the AG must give written notice to the purchaser and hospital of any deficiencies. The applicant must submit any required information within 30 days.</p> <p>Once the application is accepted, the AG and DOH must notify the applicant. The AG and DOH must review the application and issue their decisions within 120 days after accepting the application.</p>
Public Notice and Hearing Requirements	<p>The AG and DPH must jointly hold at least one public hearing before making their decision on the application. One hearing must be in the hospital's primary service area. Notice of the hearing must be given at least 14 days before by publication in one or more general circulation newspapers in the affected community.</p>	<p>The AG must hold at least one public hearing during the course of her application review. The hospital must publish a hearing notice in a general circulation newspaper at least 21 days before the hearing.</p> <p>The notice must offer for the hospital to provide anyone who requests it, a detailed summary of the conversion and copies of the agreement, except for confidential trade secrets or financial information.</p>	<p>The AG and DOH must publish notice of the application in a general certification newspaper and notify by mail anyone requesting notice of the filing.</p> <p>The notice must include the date by which public comments are due to the AG and DOH and the date, time, and location of a public informational meeting, which must be held within 60 days of the notice date.</p>

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Standards for Review and Approval	The law requires DPH and the AG to consider numerous factors when reviewing and approving an application. Click here for a list of these factors.	The AG must consider any factors she deems relevant, including whether: <ol style="list-style-type: none"> 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 law requires the AG to consider 30 criteria when reviewing an application. Click here for a list of these criteria. DOH must consider eight criteria which are listed here .
Review Costs	The purchaser must pay the AG up to \$500,000 for experts or consultants he contracts with to help review the agreement.	The purchaser must pay the AG all reasonable costs to conduct the review.	The purchaser must pay the AG and DOH for experts or consultants they contract with to help review the agreement.

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Subpoena Power	Both the AG and DPH can issue written subpoenas and interrogatories. The AG can apply to Superior Court to enforce compliance.	The AG can issue written subpoenas and interrogatories and apply to Superior Court to enforce compliance.	The AG and DOH may require any person related to the conversion to appear before them and testify or provide documents on any matters relevant to their review. The AG or DOH must notify the person in writing at least 14 days before they are required to appear. If the person fails to appear or refuses to provide requested information, the AG or DOH can apply to Superior Court to enforce compliance.
Appeals	After exhausting administrative remedies, the hospital or purchaser can appeal the AG's or DPH's decision to Superior Court.	The conversion must be approved by the Supreme Judicial Court.	A hospital or purchaser aggrieved by the decision of the AG or DOH can appeal to Superior Court.

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Medical Service Termination or Reduction	No specific requirement	No specific requirement	If the conversion will result in the elimination or significant reduction of emergency or primary care services to uninsured or underinsured people, the nonprofit hospital must provide DOH a written plan describing the impact of the conversion on (1) access to health care services for underserved populations, (2) healthcare delivery to the affected community, and (3) other licensed hospitals and health care providers in the affected community or in the state.

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Conversion Proceeds	<p>The hospital's assets continue to carry charitable obligations, even when converted to a for-profit entity unless the original charitable purpose becomes impossible or impractical to fulfill, in which case similar charitable purposes must be substituted.</p> <p>In addition, the law allows the precise terms of a charitable trust to change under certain circumstances (e.g., the "approximation doctrine").</p>	<p>If the conversion results in a charitable fund, its governance is subject to the same approval process as the conversion.</p>	<p>The proceeds of the conversion and any of the nonprofit hospital's endowments and specific purpose funds must be transferred to a charitable foundation operated by a board of directors. The Superior Court must appoint the initial board members within 60 days after the conversion's approval.</p> <p>The court must approve, modify, or reject proposed bylaws and articles of incorporation provided by the transacting parties and, subsequently, the initial board of directors. It must also hold a public hearing on the foundation's activities within 180 days after creating the board, and annually thereafter.</p> <p>The board must submit an annual report and a copy of its IRS Form 990 to the court, governor, AG, and legislature.</p>
Conditional Approval	<p>An application's approval is subject to any related conditions imposed by the AG or DPH.</p>	<p>An application's approval is subject to any related modifications imposed by the court.</p>	<p>An application's approval is subject to any related conditions imposed by the AG or DPH.</p>

Table 1 (continued)

	<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
Monitoring	There are no specific requirements, but the AG or DPH could impose such conditions as part of the application's approval.	<p>After the conversion is approved, the AG must determine, in consultation with DPH, whether 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.</p> <p>The monitor must report quarterly to the AG, 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.</p>	<p>For three years after the conversion's effective date, the AG and DPH must (1) monitor, assess, and evaluate the purchaser's compliance with all conditions of approval and (2) annually review the conversion's impact on the health care costs and services in the communities served.</p> <p>The purchaser must also annually report to the AG and DPH on its compliance with these conditions. The purchaser must pay the costs associated with such monitoring and evaluation in an amount the AG and DPH determine.</p>

ND:ro