



## NONPROFIT HOSPITAL CONVERSION LAWS IN OTHER STATES

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### ISSUE

Describe other states' laws regarding hospital conversions from nonprofit to for-profit entities.

### SUMMARY

Like Connecticut, several states have laws requiring nonprofit hospitals to apply for approval before the hospital can be sold to a for-profit entity or otherwise convert to for-profit status. In general, these laws set out procedural requirements and timelines for the review process, as well as the criteria that the regulating entity must consider when reviewing the application. The attorney general (AG) is typically charged with reviewing the transaction; in some states, the health department or a similar state agency also must do so. Some states require court approval.

Even in those states without laws specifically addressing nonprofit hospital conversions, the AG typically has oversight over these transactions as part of his or her general authority over charitable organizations and nonprofit institutions. Thus, even if the law does not require prior approval of the transaction, the AG may require notice of the transaction or challenge it under certain circumstances (e.g., under the theory that the nonprofit hospital board breached its fiduciary duty).

Below, we summarize common features of state laws that specifically address nonprofit hospital conversions. We then provide more detailed information for a sample of state laws on certain aspects of the process.

In some states, hospital sales also require approval under certificate of need (CON) laws. This report does not include information on such laws. For an overview of state CON requirements, see the National Conference of State Legislatures' website at <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>.

## **STATE LAWS ON NONPROFIT HOSPITAL CONVERSIONS**

We found laws in over 20 states specifically addressing nonprofit hospital conversions to for-profit status. The laws typically apply to sales, transfers, mergers, or other transactions that would result in for-profit ownership. Some states specify a threshold percentage of ownership change that triggers the approval requirements.

In most cases, the basic features of these laws are similar to Connecticut's. For example, most such states:

1. require the hospital or buyer to notify and obtain approval from the AG, state health department, or both prior to the transaction;
2. require the transacting parties or regulating entity to publish information about the proposal in a newspaper in the affected area;
3. require the regulating entity to hold a public hearing before making a decision on the application;
4. set timeframes for the application review process;
5. specify the criteria that the regulating entity must consider in its review;
6. grant the regulating entity subpoena power or similar authority to gather additional information when reviewing the application;
7. allow the regulating entity to contract with outside experts to assist in its review and bill the purchaser or nonprofit hospital for the costs within certain limits;
8. allow the regulating entity to revoke a hospital's license or impose other penalties for transactions occurring without the required notice and approval;
9. specify the transacting parties' right to appeal; and
10. specify that these laws do not limit the AG's other statutory or common law authority.

The specific requirements vary in several respects. For example, while states generally condition approval on whether the transaction is in the public interest, the specific approval factors vary. For another example, a few states (such as Arizona and Delaware) require the parties to notify the state but not seek prior approval (the state can challenge the transaction after its review).

Table 1 below compares certain basic features of several other states' laws on nonprofit hospital conversions. Please note that the table is not exhaustive of all states with such laws.

Unlike Connecticut, some states require (1) specific monitoring of the hospital after the conversion and (2) nonprofit hospitals to apply for approval even if the sale is to another nonprofit entity. The table includes information on both of these issues.

For information on Connecticut's law on nonprofit hospital conversions, see OLR Report [2014-R-0185](#). For more information on such laws in Massachusetts and Rhode Island, see OLR Reports [2013-R-0321](#), [2013-R-0322](#), and [2013-R-0323](#).

**Table 1: Examples of Other States' Laws on Nonprofit Hospital Sales**

<b>State</b>	<b>Applicability</b>	<b>Notice to State and Approval Requirements*</b>	<b>Public Hearing Required?</b>	<b>Specific Requirements for Post-Transaction Monitoring of Hospital?</b>
Arizona <a href="#">Ariz. Rev. Stat. § 10-11251 et seq.</a>	Conversions to for-profit or transactions between nonprofits.	The hospital must provide written notice to the Corporation Commission, director of the Department of Health Services, and AG, at least 90 days before the anticipated closing of the intended transaction.  The law does not require approval, but the AG can challenge the transaction based on other laws.	Yes, a hearing officer must hold a public hearing within 10 days of the last publication of the public notice of the hearing.	No
California <a href="#">Ca. Corp. Code § 5914 et seq.</a>	Conversions to for-profit or transactions between nonprofits.	The hospital must provide prior written notice to the AG.  The AG must consent, give conditional consent, or deny consent to the transaction within 60 days after receiving notice.	Yes, the AG must conduct at least one public meeting before issuing a decision, including one in the county where the hospital is located.	No

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Colorado</p> <p><a href="#">Colo. Rev. Stat. § 6-19-101 et seq.</a></p>	<p>Conversions to for-profit or certain transactions between nonprofits.</p> <p>The AG has discretion to review a transaction between two nonprofits if it will result in (1) a material change in the charitable purposes to which the hospital's assets have been dedicated or (2) termination of the AG's jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside the state.</p>	<p>The parties must notify the AG in writing at least 60 days before the transaction's closing date.</p> <p>The AG must issue a decision within 60 days after receiving the completed filing (different process applies if both parties are nonprofit).</p>	<p>For conversion to for-profit: the AG must hold at least one public hearing in the hospital's service area within 30 days after receiving the completed notice and filing.</p> <p>For transaction between nonprofits: AG can require a hearing.</p>	<p>The for-profit buyer must submit annual reports detailing its activities to satisfy specified requirements. The AG can also require the for-profit buyer to pay for monitoring to ensure compliance with those requirements, for up to five years.</p> <p>The AG can hold a hearing and bring court proceedings for corrective action if he or she receives information that the buyer is not meeting these requirements.</p>
<p>Delaware</p> <p><a href="#">29 Del. Code § 2530 et seq.</a></p>	<p>Conversions to for-profit.</p>	<p>The hospital must notify the AG in writing at least 180 days before the closing date of the proposed transaction.</p> <p>The law does not require approval, but AG can challenge the transaction based on other laws.</p>	<p>No</p>	<p>No</p>
<p>Georgia</p> <p><a href="#">Ga. Code § 31-7-400 et seq.</a></p>	<p>Conversions to for-profit.</p>	<p>The parties must notify the AG at least 90 days before the transaction would be completed.</p> <p>The law does not require approval, but the AG can challenge transaction based on other laws.</p> <p>The AG must issue a report within 30 days after the hearing.</p>	<p>Yes, the AG must hold a public hearing in the county where the hospital's main campus is located, within 60 days of receiving notice of the proposed transaction.</p>	<p>No</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Hawaii</p> <p><a href="#">Haw. Rev. Stat. § 323D-71 et seq.</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The buyer must notify the AG and State Health Planning and Development Agency.</p> <p>The agency must approve or disapprove the acquisition within 90 days after receiving the complete application.</p> <p>The AG must determine whether a review is appropriate within 20 days after receiving the complete application. If so, the AG must approve or disapprove the application within 90 days after receiving it.</p>	<p>The agency, after consulting with the AG, must hold a public hearing “if appropriate.” The hearing must be held within 60 days after they receive the complete application.</p>	<p>The agency must hold a hearing and can revoke the hospital’s license if it receives information that the buyer is not fulfilling specified commitments to the affected community.</p> <p>Prior approval by the agency is needed before the buyer can substantially reduce or eliminate direct patient care services at the hospital below the levels at which those services were available at the time of the acquisition.</p>
<p>Idaho</p> <p><a href="#">Idaho Code § 48-1501 et seq.</a></p>	<p>Conversions to for-profit.</p>	<p>The hospital must provide prior written notice to the AG.</p> <p>The AG must issue an opinion within 90 days of receiving notice. If the AG opposes the transaction, he or she has discretion to file a lawsuit to block it, within 14 days. If the AG does so, the court reviews the transaction anew.</p>	<p>The AG has discretion to hold public meetings. If held, one must be in the county where the hospital’s assets to be transferred are currently located.</p>	<p>No</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Louisiana</p> <p><a href="#">La. Rev. Stat. § 40:2115.11 et seq.</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The buyer must give 30 days' notice to AG.</p> <p>The AG must approve or disapprove the acquisition within 60 days after receiving the completed application.</p>	<p>Yes, the AG must hold a public hearing in the municipality where the hospital is located (or the nearest municipality or hospital itself), within 30 days of receiving the completed application.</p>	<p>The AG may require annual reports from the parties for up to five years after the acquisition to ensure compliance with commitments made to the AG.</p> <p>The AG must hold a hearing and can revoke the hospital's license if he or she receives information that the buyer is not fulfilling specified commitments to the affected community.</p>
<p>Maryland</p> <p><a href="#">Md. Code Ann., State Gov't § 6.5-101 et seq.</a></p>	<p>Conversions to for-profit or transfers to mutual benefit corporations.</p>	<p>The buyer must notify the AG and Department of Health and Mental Hygiene.</p> <p>The AG, in consultation with the department, must approve the acquisition (with or without modifications) or disapprove it within 60 days after the record (including the public hearing process) has been closed.</p>	<p>Yes, the AG and department must hold a public hearing, in the jurisdiction where the hospital is located, as soon as practicable and within 90 days of receiving a complete application.</p>	<p>No</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Massachusetts</p> <p><a href="#">Mass. Gen. Laws ch. 180, § 8A(d)</a></p>	<p>Conversions to for-profit.</p>	<p>The hospital must give 90 days' written notice to AG.</p> <p>AG must issue findings and recommendations; purchaser must then file motion for court approval of the transaction.</p>	<p>Yes, the AG must hold a public hearing in a location convenient to the population served by the hospital.</p>	<p>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.</p>
<p>Nebraska</p> <p><a href="#">Neb. Rev. Stat. § 71-20,102 et seq.</a></p>	<p>Conversions to for-profit (sales to other nonprofits generally exempt).</p>	<p>The buyer must notify the AG and Department of Health and Human Services.</p> <p>The department must approve the application (with or without modifications) or disapprove the acquisition within 60 days of receiving the application.</p> <p>The AG has 20 days after receiving the application to determine whether to review it; if so, he or she must issue a decision within 60 days of receiving it.</p>	<p>Yes, the department and AG (if he or she decides to review the application) must hold a public hearing, within 30 days after receiving the application.</p>	<p>The department must hold a hearing and can revoke the hospital's license if it receives information that the buyer is not fulfilling specified commitments to the affected community.</p> <p>The law also specifies that the AG has the authority to ensure compliance with commitments which inure to the public interest.</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>New Hampshire</p> <p><a href="#">N.H. Rev. Stat. § 7:19-b</a></p>	<p>Conversions to for-profit or transactions between nonprofits (law specifically applies to acquisition of health care charitable trusts, including hospitals).</p>	<p>The parties must give written notice of the proposed acquisition to the director of charitable trusts, at least 120 days before the transaction is completed.</p> <p>The director must notify the parties whether he or she objects to the transaction, within a reasonable time but not more than 120 days after receiving notice of the proposal.</p>	<p>The director has discretion whether to hold a hearing. The law requires a public hearing or another means to involve the community in deliberations.</p>	<p>No</p>
<p>New Jersey</p> <p><a href="#">N.J. Stat. § 26:2H-7.11 et seq.</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The hospital must notify the AG and health commissioner.</p> <p>The AG, in consultation with the commissioner, must support the acquisition (with or without modifications) or oppose it, within 90 days after completion of the application.</p> <p>After the AG's review, the hospital must apply to the Superior Court for approval of the acquisition.</p>	<p>Yes, the AG and health commissioner must hold a public hearing, within 60 days after the AG deems the application complete.</p>	<p>If the health commissioner determines it necessary, the buyer must provide funds for the department to hire an independent health care access monitor. The monitor must submit quarterly reports for three years.</p> <p>Following the monitoring period or if no monitoring period is established, the commissioner can order the buyer to comply with a corrective action plan if the buyer is not fulfilling its commitment to the affected service area pursuant to law.</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Ohio</p> <p><a href="#">ORC Ann. Chapter 1 §109.34 et seq.</a></p>	<p>Conversions to for-profit.</p> <p>The law does not apply to transactions between nonprofit health care entities and entities exempt from taxation under section 501(a) of the Internal Revenue Code (nonprofits formed exclusively to promote the welfare of a certain group of people, such as employees).</p>	<p>The nonprofit health care entity must notify the AG in writing of the proposed transaction.</p> <p>The AG must approve or disapprove the proposal within 60 days after receiving written notice and required documentation.</p>	<p>Yes, the nonprofit health care entity must hold a public hearing within 45 days after the AG approves the proposal.</p>	<p>No</p>
<p>Oregon</p> <p><a href="#">ORS § 65.803 et seq.</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The nonprofit hospital must provide the AG written notice of the proposed transaction.</p> <p>The AG must issue a decision to approve, conditionally approve, or disapprove the proposal within 60 days after receiving written notice of the proposed transaction.</p>	<p>Yes, the AG must conduct a public hearing before issuing a decision unless he or she waives this requirement.</p>	<p>No</p>
<p>Pennsylvania</p> <p><a href="#">PCS Title 15 Chapter 59</a></p> <p><a href="#">Pennsylvania Attorney General Protocol</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The parties to the transaction must notify the AG in writing at least 90 days before the proposal takes effect.</p> <p>The AG may request that the parties to the transaction seek approval of the Orphans' Court in the county of the nonprofit charitable corporation's registered office.</p>	<p>No</p>	<p>The AG provides oversight, and may require the resulting entity to report to the AG to ensure the transaction's terms are fulfilled.</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
<p>Rhode Island</p> <p><a href="#">RI General Laws § 23-17.14-1 et seq.</a></p>	<p>Conversions to for-profit or transactions between nonprofits.</p>	<p>The hospital and purchaser must simultaneously send an initial application to both the health department and the AG.</p> <p>The department and the AG must concurrently review the application and approve, conditionally approve, or disapprove it within 120 days of accepting it.</p>	<p>Yes, the AG and department must hold a public informational meeting within 60 days after publishing notice in the newspaper.</p>	<p>For three years after the conversion's effective date, the AG and department 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 department on its compliance with these conditions.</p>
<p>Tennessee</p> <p><a href="#">Tenn. Code § 48-68-201 et seq.</a></p>	<p>Conversions to for-profit.</p>	<p>The nonprofit hospital must provide written notice to the AG.</p> <p>Within 45 days after receiving a complete written notice, the AG must notify the nonprofit hospital of its decision to deny or take no action on the conversion.</p>	<p>No, the public may submit written comments to the AG.</p>	<p>No</p>
<p>Vermont</p> <p><a href="#">18 V.S.A. § 9420 et seq.</a></p>	<p>Conversions to for-profit.</p>	<p>Parties to the transaction must apply to the AG and the commissioner of financial regulation.</p> <p>The application must be approved or denied by the (1) commissioner within 50 days after the final public hearing date and (2) AG within 60 days after such date.</p>	<p>The AG and commissioner must hold at least one public hearing on the proposed conversion within 30 to 60 days after receiving a completed application.</p>	<p>No</p>

Table 1 (continued)

State	Applicability	Notice to State and Approval Requirements*	Public Hearing Required?	Specific Requirements for Post-Transaction Monitoring of Hospital?
Virginia <a href="#">Va. Code. §§ 55-531-533</a>	Conversions to for-profit or transactions between nonprofits.	The nonprofit hospital must notify the AG at least 60 days before the conversion's effective date.	Yes, the nonprofit hospital must hold a public meeting at least 40 days before the conversion takes effect.	No
Washington <a href="#">Rev. Code Wash. Chapter 70.45</a> <a href="#">WAC § 246-312-010 et seq.</a>	Conversions to for-profit.	The purchaser must submit an application to the Department of Health and the AG.  Within 45 days of the first public hearing the AG must issue an opinion to the department indicating whether the conversion meets the statutory requirements for approval.  Within 30 days after receiving the AG's opinion, the department must approve, conditionally approve, or disapprove the conversion.	Yes, the department must hold at least one public hearing in the county where the hospital is located.	The department may require parties to report to the department at least once every three years, but no more than twice per year.  The department may hold a public hearing or conduct an on-site review if it determines the parties are not complying with the terms of the conversion.
Wisconsin <a href="#">Wis. Stat. § 165.40</a>	Conversions to for-profit.	Transaction parties must notify the AG, Department of Health Services (DHS), and Office of the Commissioner of Insurance (OCI) when (1) the purchase offer is made or (2) for hospital system conversions, at least 30 days before the offer date.  The AG, DHS, and OCI must independently review and approve or disapprove the application. They must do this within 60 days after receiving a completed application or, for hospital system conversions, within 150 days.	Yes, the AG must hold a public meeting within (1) 30 days after receiving a completed application or (2) for hospital system conversions, 120 days after receiving a completed application.	No

\* Many states allow for extensions of these timeframes within which the AG or another state entity must render a decision on the application.

Below, we provide more detailed examples of state approaches regarding (1) the application process, (2) substantive factors in reviewing the application, and (3) post-acquisition monitoring.

### ***Application Requirements***

**Colorado.** In Colorado, the parties to a proposed nonprofit hospital conversion must notify the AG and obtain his or her approval. The notice and filing must include:

1. all proposed agreements relating to the proposed transaction,
2. all agreements regarding collateral transactions that relate to the principal transaction,
3. any reports of financial and economic analyses that the nonprofit entity reviewed or relied on in negotiating the proposed transaction, and
4. an explanation of how the completed transaction will comply with the law's substantive requirements for approval of the transaction.

Within 30 days of the initial filing, the AG must notify the parties if the filing is complete or incomplete. If it is incomplete, the AG must specify the omitted documentation. If an initial filing includes a schedule for the submission of subsequently produced or acquired documents, the AG may deem it complete (Colo. Rev. Stat. § 6-19-403).

The notice to the AG must also include a certification that public notice of the transaction will be given within seven days after the notification to the AG (Colo. Rev. Stat. § 6-19-103).

**Hawaii.** In Hawaii, anyone seeking to acquire a nonprofit hospital must (1) apply for and receive approval from the State Health Planning and Development Agency and (2) notify the AG and, if applicable, receive his or her approval.

The application must be submitted to the agency and AG on forms the agency provides. The application must include:

1. the name of the seller, purchaser, and other parties to the acquisition;
2. the terms of the proposed agreement;
3. the sale price;
4. a copy of the acquisition agreement;

5. a financial and economic analysis and report from an independent expert or consultant on the acquisition's effect, under the law's criteria for the AG's determination of whether the acquisition is in the public interest; and
6. all other related documents (Hawaii Rev. Stat. § 323D-72).

**Vermont.** Under Vermont law, parties must apply to the AG and the Commissioner of Financial Regulation for approval of the acquisition of a nonprofit hospital by a for-profit entity. If the proposed conversion involves more than one hospital within a hospital system, the AG and commissioner must determine whether an application is required from the hospital system. The application must include:

1. a detailed summary of the proposed conversion's purpose and material terms;
2. the names and addresses of parties created as part of the conversion, including those selected as directors, officers, or board members;
3. copies of all organizational documents related to the parties;
4. copies of all contracts and agreements related to the conversion;
5. copies of the most recent audited financial reports of the entities involved;
6. a detailed description of all the nonprofit hospital's assets, including their value and the basis of that valuation;
7. the nature of any restrictions on these assets and purposes for which they were received;
8. a statement indicating whether the assets will be converted to cash in connection with the conversion;
9. a detailed description of all proposed changes in control or ownership of the assets;
10. an explanation of how the nonprofit hospital's charitable assets will continue to be used in a manner consistent with their intended charitable purpose;
11. a description of and all documents relating to the nonprofit hospital's process for choosing the conversion and selecting the purchaser;
12. the amount, source, and nature of any consideration to be paid to the nonprofit hospital's leadership and staff, including prospective employment or consultation;

13. a detailed description of any charitable foundation that will receive the conversion's proceeds, including its assets, mission, and expected uses of the assets, among other things;
14. a certified board resolution or other document demonstrating each party's approval of the conversion;
15. a certification signed by the nonprofit hospital's governing body or other individuals approving the conversion on the hospital's behalf indicating that the parties considered in good faith and complied with all standards the AG must consider in his application review;
16. a separate certification from each member of the nonprofit hospital's governing board and officers stating whether that director or officer is currently, or may become within three years of the conversion's completion, a member or shareholder in, or receive any compensation or benefits, directly or indirectly, from any party;
17. a statement from any party specifying the manner in which it proposes to continue to fulfill the nonprofit hospital's charitable obligations, if applicable; and
18. any additional information the attorney general or commissioner deems necessary.

If any material change occurs in the application, the parties must file an amendment with the AG and the commissioner within two business days, or as soon after as is practicable, after learning of the change. The AG, with the commissioner's agreement, must notify the parties of the date the application is deemed complete. He must do this within (1) 30 days after receiving the application or (2) 10 days after receiving an amendment to the application (18 V.S.A. § 9420 et seq.).

### ***Review Criteria***

***California.*** California law requires the AG, when reviewing a proposed sale of a nonprofit hospital to a for-profit entity, to consider any factors he or she deems relevant, including whether the:

1. terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit hospital;
2. agreement or transaction will result in inurement to a private person or entity (i.e., improper benefit to insiders);

3. agreement or transaction is for fair-market value (the most likely price that the assets would bring in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller, each acting prudently, knowledgeably, and in their own best interest, and a reasonable time allowed for exposure in the open market);
4. parties manipulated the market value in a manner that causes the value of the assets to decrease;
5. proposed use of the proceeds is consistent with the charitable trust on which the assets are held;
6. agreement or transaction involves or constitutes a breach of trust;
7. hospital provided the AG with sufficient information and data to evaluate adequately the agreement or transaction or its effects on the public;
8. agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community; and
9. proposed agreement or transaction is in the public interest (Calif. Corp. Code § 5917).

The same factors apply for nonprofit hospital sales to other nonprofit entities (Calif. Corp. Code § 5923).

The law prohibits the AG from consenting to a nonprofit hospital's sale (whether to a for-profit or nonprofit entity) in which the seller restricts the type or level of medical services that may be provided at the facility (Calif. Corp. Code § 5917.5).

**Maryland.** Under Maryland law, the AG (in consultation with the Department of Health and Mental Hygiene) must not approve the acquisition of a nonprofit hospital by a for-profit entity unless he or she finds the acquisition is in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to ensure that:

1. the value of public or charitable assets is safeguarded;
2. the public or charitable assets' value is spent in a manner that corresponds with the potential risk associated with the acquisition;
3. 40% of those assets' fair value will be distributed to the Maryland Health Care Trust and 60% will be distributed to a public or nonprofit charitable entity or trust that is independent of the transferee and dedicated to (a) serving the unmet health care needs of the affected community, (b) promoting health care access in that community, and (c) improving health care quality in that community;

4. 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. no officer, director, or trustee of the nonprofit hospital receives any immediate or future compensation as the result of an acquisition or proposed acquisition except in the form of compensation paid for continued employment with the acquiring entity.

In determining whether the acquisition is in the public interest, the AG must also consider whether:

1. the transferor exercised due diligence in deciding to engage in an acquisition, selecting the transferee, and negotiating the acquisition's terms and conditions (the AG may not determine that the hospital exercised due diligence unless it considered the risks of an acquisition, including whether an acquisition would reduce the economic benefit derived from the scale of the hospital's operations or violate federal or state antitrust laws);
2. the procedures the hospital used in making the decision were appropriate, including whether the hospital used appropriate expert assistance;
3. whether any conflicts of interest were disclosed, including those of board members, executives, and experts retained by the transferor, transferee, or any other parties to the acquisition;
4. whether the hospital will receive fair value for its public or charitable assets (see below);
5. whether public or charitable assets are placed at unreasonable risk if the acquisition is financed in part by the transferor;
6. whether the acquisition will likely create a significant adverse effect on the availability or accessibility of health care services in the affected community;
7. whether the acquisition includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care; and
8. whether any management contract under the acquisition is for fair value.

In determining fair value, the AG may consider all relevant factors, including, as he or she determines:

1. the value of the hospital or an affiliate or the assets of such an entity, determined as if the entity had voting stock that was all 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 (Md. Code Ann., State Gov't §§ 6.5-301, -302).

**Wisconsin.** Wisconsin law requires the AG, Department of Health Services, and Office of the Commissioner of Insurance to independently review a proposed sale of a nonprofit hospital to a for-profit entity. When doing so, each reviewer must consider whether the following standards are met:

1. the acquisition is permitted under the state's nonprofit corporation law or any other relevant statute;
2. the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the sale's terms and conditions;
3. the nonprofit hospital's procedure for deciding to sell was adequate, including whether it used appropriate expert assistance;
4. conflicts of interest were disclosed, including those related to board members, executives, or experts employed or retained by the (a) nonprofit hospital, (b) purchaser, or (c) other parties related to the sale;
5. charitable funds are not placed at unreasonable risk if the conversion is financed in part by the nonprofit hospital;
6. any management contract under the conversion is for reasonably fair value;
7. the sale proceeds will be (a) used for appropriate charitable health care purposes, including health promotion, in the affected community and (b) controlled as charitable funds independent of the purchaser or parties to the conversion; and
8. if the hospital is acquired by or merged with another entity, a right of first refusal is retained to repurchase it by (a) a successor nonprofit corporation; (b) the city, county, or state; or (c) the University of Wisconsin Hospitals and Clinics Authority (Wis. Stat. § 165.40).

## **Post-Acquisition Monitoring**

**Rhode Island.** For three years after a nonprofit hospital conversion's effective date, Rhode Island law requires the AG and Department of Public Health to (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.

The purchaser must also annually report to the AG and department 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 (Rhode Island General Laws, Title 23, Chapter 17.14).

**Washington.** Once the Department of Health issues its final decision to approve a nonprofit to for-profit hospital conversion, it must require the (1) nonprofit hospital, (2) purchaser, or (3) both parties to periodically report to the department on their compliance with the conversion's terms and conditions. State regulations allow the department to require transaction parties to report at least once every three years, but no more than semiannually (WAC § 246-312-100 et seq.).

Washington law and regulations allow any person, regardless of whether he or she is a party of the conversion, to submit information to the department on whether the purchaser is fulfilling the conversion's terms or any conditions the department imposed. The department may conduct an on-site review to determine the validity of the information.

If the department determines that there is reasonable cause to believe the information reported is valid, it must hold a public hearing after at least 10 days' notice to the affected parties, including the local community in which the hospital is located.

If the department subsequently determines that the parties to the conversion failed to comply with the terms and conditions of the transaction, it may (1) revoke or suspend the for-profit hospital's license, (2) refer the matter to the AG for appropriate action, or (3) both. The AG may seek a court order compelling the purchaser to comply with the conversion agreement.

The purchaser must pay the cost of the public hearing and any related on-site reviews the department conducts (Rev. Code Wash. Chapter 70.45.090).

## **ADDITIONAL READING**

Columbia Law School, National State Attorneys General Program, Healthcare and Hospital Conversion. <http://web.law.columbia.edu/attorneys-general/policy-areas/charities-law-project/resources/publications/healthcare-hospital-conversion>

Zall, Richard J. and Kinsella, Brian J, Proskauer Rose LLP, New York. *Going Private: Navigating State Review of Nonprofit Hospital Conversions*.  
<http://www.healthlawyers.org/Events/Programs/2014/Documents/InHouseLegal/Proskauer.pdf>

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