

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 44.
CHARITABLE AND CURATIVE
INSTITUTIONS.

CHAPTER 6.
HEALTHCARE ENTITY CONVERSION.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 6. HEALTHCARE ENTITY CONVERSION.

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CHAPTER 6. HEALTHCARE ENTITY CONVERSION.

§ 44-601. FINDINGS.

The Council finds and declares the following:

- (1) Charitable healthcare entities hold all their assets in trust, and those assets are irrevocably dedicated, as a condition of their tax-exempt status, to the specific charitable purposes set forth in the articles of incorporation of the entities.
- (2) The public is the beneficiary of that trust.
- (3) Healthcare entities have a substantial and beneficial effect on the quality of life of the people of the District of Columbia, providing as part of their charitable mission a large list of services to low-income families and the poor, elderly, and people with disabilities.
- (4) Transfers of the assets of healthcare entities, such as by sale, joint venture, or other sharing of assets, to for-profit entities directly affect the charitable uses of those assets and may adversely affect the public as the beneficiary of the charitable assets.
- (5) The Attorney General for the District of Columbia is entrusted by common law to bring actions on behalf of the public in the event of a breach of the charitable trust of a healthcare entity and to represent the public in the sale or other transfer of the assets of a healthcare entity.
- (6) It is in the best interest of the public to ensure that the public interest is fully protected whenever the assets or operations of a healthcare entity are transferred, directly or indirectly, from a charitable trust to a for-profit or mutual benefit entity.
- (7) The approval by the Attorney General for the District of Columbia of any transfer of assets or operations is necessary to ensure the protection of these trusts.

(Oct. 23, 1997, D.C. Law 12-32, § 2, 44 DCR 4819; Apr. 20, 1999, D.C. Law 12-264, § 34, 46 DCR 2118; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638; Apr. 24, 2007, D.C. Law 16-305, § 71, 53 DCR 6198.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-551.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

D.C. Law 16-305, in par. (3), substituted "people with disabilities" for "disabled".

Legislative History of Laws

Law 12-32, the "Healthcare Entity Conversion Act of 1997," was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

For Law 15-354, see notes following § 44-212.

For Law 16-305, see notes following § 44-102.01.

§ 44-602. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Applicant" means a healthcare entity or a for-profit entity that applies to the State Health Planning and Development Agency or the Commissioner of Insurance and Securities for approval of a conversion.
- (2) "Authorized person" means a person who (A) controls, is controlled by, or is under common control with, a for-profit entity, directly or indirectly, through one or more intermediaries, (B) has entered into an agreement or contract, including a nonbinding letter of intent to acquire, or be acquired, through merger or other consolidation with a healthcare entity, or (C) a person who is an officer, director, agent, or managing employee of such an entity.
- (3) "Conversion" means any agreement or transaction by a healthcare entity to sell, transfer, lease, exchange, option, convey, or otherwise dispose of, directly or indirectly, all of its assets, or a material amount of its assets, or control, responsibility, or governance of its assets, to a for-profit entity, including one that results from or is created in connection with the transaction or agreement.
- (4) Repealed.
- (5) "For-profit entity" means any corporation, mutual benefit corporation, trust, estate, partnership, limited liability company, or other entities (including associations, joint stock companies, and insurance companies) that is organized and operated for profit; or any incorporated or unincorporated division, subdivision, branch, unit, or part of such an entity including one that results from or is created in connection with the conversion of a nonprofit healthcare entity.
- (6) "Person" means an individual, partnership, association, corporation, or any other organization.

(Oct. 23, 1997, D.C. Law 12-32, § 3, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 69, 53 DCR 6794.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-552.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

D.C. Law 16-19 repealed par. (4) which had read as follows:

"(4) 'Attorney General for the District of Columbia' means the Attorney General for the District of Columbia."

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

For Law 16-191, see notes following § 44-151.02.

§ 44-603. CONVERSION APPROVAL.

- (a) Notwithstanding any other provisions of the law, a healthcare entity shall not execute a conversion to a for-profit entity without the approval of the Attorney General for the District of Columbia.
- (b) The Attorney General for the District of Columbia shall review the conversion to determine whether charitable assets are adequately protected. A conversion shall not be approved unless necessary and appropriate steps have been taken by the healthcare entity, to safeguard the value of its charitable assets.
- (c) In determining whether charitable assets have been adequately protected, the Attorney General for the District of Columbia shall consider the following:
 - (1) Whether the conversion is permitted under § 29-301.01 et seq., and other laws of the District of Columbia governing nonprofit persons, trusts, or charities or under Internal Revenue Service rules or policies governing the disposition of charitable assets;
 - (2) Whether the healthcare entity exercised due diligence in deciding to sell or transfer a material amount of assets or control of operation, in selecting the purchaser, and in negotiating the terms and conditions of the conversion;
 - (3) Whether the procedure used by the healthcare entity in making its decision was fair and objective, and whether appropriate independent expert assistance was used;
 - (4) Whether any authorized person is not in full compliance with any federal, state, or local laws or

requirements in every jurisdiction where the applicant operates or is licensed to do business;

(5) Whether any authorized person has been convicted of violating any federal or state law or regulation (including, without limitation, laws or regulations relating to the delivery of health care items or health care services, reimbursement for health care services, employer/employee relations, and environmental regulation) or has been indicted, is currently being investigated, or has entered into a settlement agreement in connection with the violation of any law or regulation;

(6) Whether the for-profit entity is financially sound and has the financial and management capacity to operate the healthcare entity, a department or division thereof, or any entity resulting from the conversion;

(7) Whether the for-profit entity has disclosed all potential conflicts of interest, including, but not limited to, conflicts of interest related to board members, executives, members of the medical staff of the healthcare entity, and experts retained by the healthcare entity, or the parties to the conversion;

(8) Whether the conversion will result in the enrichment of any person;

(9) Whether the healthcare entity will receive reasonably fair value for its assets and whether the market value of those assets has not been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease;

(10) Whether charitable funds are placed at unreasonable short-term or long term risk;

(11) Whether any management contract under the conversion is for reasonably fair value;

(12) Whether the charitable assets have been placed in a charitable trust controlled independently of the for-profit entity or other parties to the conversion and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community; and

(13) Whether a right of first refusal has been retained by the healthcare entity to permit repurchase of the assets by a successor nonprofit person if and when the for-profit entity that results from conversion is subsequently proposed for sale, conversion, or merger.

(d) The Attorney General for the District of Columbia shall assess the for-profit entity the reasonable costs related to, and shall expend such amounts for, the review of the proposed conversion determined by the Attorney General for the District of Columbia to be necessary or appropriate. Such reasonable costs may include further expert review of the conversion, and a process to educate the public about the conversion and to obtain public comment.

(July 1, 1997, D.C. Law 12-32, § 4, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-553.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Emergency Act Amendments

For temporary (90-day) amendment of section, see § 3 of the East of Anacostia River Acute Care Hospital Services Emergency Amendment Act of 1999 (D.C. Act 13-189, November 22, 1999, 46 DCR 10412).

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

§ 44-604. CHARITABLE TRUSTS.

(a) If the Attorney General for the District of Columbia determines, pursuant to § 44-603(12), that the charitable assets of a healthcare entity have not been placed in a charitable trust controlled independently of the for-profit entity, or other parties to the conversion, and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community, the Attorney General for the District of Columbia shall ensure that a charitable trust is established.

(b) The governance of any charitable trust established to safeguard assets subject to the provisions of this chapter shall be subject to review by the Attorney General for the District of Columbia, who shall ensure the following: that the governance of the charitable trust is broadly based in the community historically served by the healthcare entity; that the participation on the board of the charitable trust be persons involved in negotiating the conversion shall be limited; that such limitations may take the form of restrictions on the number of representatives or their length of services; and that the charitable activities of the nonprofit person shall not be used to satisfy the charitable obligations of the for-profit entity.

(Oct. 23, 1997, D.C. Law 12-32, § 5, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-554.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

§ 44-605. MANDATORY CONDITION PRECEDENT.

The conversion approval required by § 44-603 shall be a condition precedent to the issuance of a Certificate of Need or a Certificate of Authority, permit, license, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project.

(Oct. 23, 1997, D.C. Law 12-32, § 6, 44 DCR 4819.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-555.

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

§ 44-606. PROCESS OF REVIEW.

(a) The Attorney General for the District of Columbia shall approve or disapprove a conversion within 60 days of receiving a request from the applicable agency.

(b) Prior to issuing a decision, the Attorney General for the District of Columbia shall publish the request in at least two newspapers of general publication and may hold a public hearing to receive public testimony. Notice of a public hearing shall be published at least 10 days prior to the hearing. The Attorney General for the District of Columbia may increase the number days of review provided such request will not unnecessarily delay the applicable agency's decision. The Attorney General for the District of Columbia shall hold a public hearing if requested by any interested person. The Attorney General for the District of Columbia may request or subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for the purpose of the public hearing.

(c) The Attorney General for the District of Columbia shall employ the services of an independent expert to assess the value of the charitable assets. If the conversion is approved, the Attorney General for the District of Columbia may issue conditions and recommendations regarding the charitable assets. The costs of the review required by this section shall be assessed against the applicant.

(Oct. 23, 1997, D.C. Law 12-32, § 7, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-556.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

§ 44-607. DECLARATORY JUDGMENT.

A for-profit entity or healthcare entity that has participated in the review process may bring an action for declaratory judgment against the decision of the Attorney General for the District of Columbia and may appeal the decision to the Superior Court according to the standards set forth in § 2-510.

(Oct. 23, 1997, D.C. Law 12-32, § 8, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-557.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

§ 44-608. CONVERSION FEE.

If a nonprofit entity is a party to a conversion approved pursuant to § 44-603, the District shall make an assessment, to recover part of the charitable assets, equal to 10% of the amount of the real property tax the healthcare entity would have paid during the past 5 years had it not been exempt from federal income taxation under sections 501(c) or (e) of the Internal Revenue Code. Such amount shall be paid in three equal installments.

(July 1, 1997, D.C. Law 12-32, § 9, 44 DCR 4819.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-558.

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

References in Text

Section 501 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501.

§ 44-609. VIOLATIONS AND PENALTIES FOR NONCOMPLIANCE.

(a) The Attorney General for the District of Columbia may seek injunctive relief if the Attorney General for the District of Columbia determines that a person is offering, developing, or operating an entity in violation of this chapter.

(b) Any person, including the principal officers or agents of the for-profit entity, the healthcare entity, or any other party to a conversion subject to the provisions of this chapter, who violates any provision of this chapter by the willful failure to obtain the approval of the Attorney General for the District of Columbia required by § 44-603, or who deviates from the provision of any decision approving a conversion issued pursuant to § 44-603, upon conviction, shall be subject to a fine of not less than \$2,500 and not more than \$10,000. Each day of a continuing violation shall constitute a separate offense.

(Oct. 23, 1997, D.C. Law 12-32, § 10, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-559.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.

§ 44-610. RULES.

The requirements of this chapter shall become fully operative on October 23, 1997, without adoption by the Attorney General for the District of Columbia of implementing regulations. In its discretion, the Attorney General for the District of Columbia may issue emergency or proposed rules to implement the provisions of this chapter. The proposed rules, if issued, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved.

(Oct. 23, 1997, D.C. Law 12-32, § 11, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 32-560.

Effect of Amendments

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative History of Laws

For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

For Law 15-354, see notes following § 44-212.