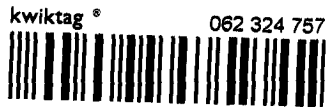


ENROLLMENT(S)



(5)

AN ACT
D.C. ACT 12-128

*Codification
District of
Columbia
Code
1998 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 17, 1997

To establish procedures to ensure the protection of charitable assets held in the public trust by healthcare entities when those assets are transferred to entities that are for-profit and to make conforming amendments to the Health Services Planning Program Re-establishment Act of 1996, the Hospital and Medical Services Corporation Regulatory Act of 1996, and the Health Maintenance Organization Act of 1996, and to authorize the Corporation Counsel to approve all conversions.

**New Chapter
5A,
Title 32**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the "Healthcare Entity Conversion Act of 1997".

Sec. 2. Findings.

The Council finds and declares the following:

**New Section
32-551**

(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 disabled.

(4) Transfers of the assets of healthcare entities, such as by sale, joint venture, or other sharing of assets, to the for-profit entities directly affect the charitable use of those assets and may adversely affect the public as the beneficiary of the charitable assets.

(5) The Corporation Counsel 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 Corporation Counsel of any transfer of assets or operations is necessary to ensure the protection of these trusts.

Sec. 3. Definitions.

New Section
32-552

For the purposes of this act, 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) "Corporation Counsel" means the Corporation Counsel of the District of Columbia.

(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.

Sec. 4. Conversion approval.

New Section
32-553

(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 Corporation Counsel.

(b) The Corporation Counsel 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 Corporation Counsel shall consider the following:

(1) Whether the conversion is permitted under the District of Columbia

ENROLLED ORIGINAL

Nonprofit Corporation Act, approved August 6, 1942 (76 Stat. 265; D.C. Code § 29-501 *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 Corporation Counsel 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 Corporation Counsel 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.

Sec. 5. Charitable trusts.

New Section
32-554

(a) If the Corporation Counsel determines, pursuant to section 4(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 Corporation Counsel 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 act shall be subject to review by the Corporation Counsel, 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.

Sec. 6. Mandatory condition precedent.

New Section
32-555

The conversion approval required by section 4 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.

Sec. 7. Process of review.

New Section
32-556

(a) The Corporation Counsel shall approve or disapprove a conversion within 60 days of receiving a request from the applicable agency.

(b) Prior to issuing a decision, the Corporation Counsel 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 Corporation Counsel may increase the number days of review provided such request will not unnecessarily delay the applicable agency's decision. The Corporation Counsel shall hold a public hearing if requested by any interested person. The Corporation Counsel 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 Corporation Counsel shall employ the services of an independent expert to assess the value of the charitable assets. If the conversion is approved, the Corporation Counsel may issue conditions and recommendations regarding the charitable assets. The costs of the review required by this section shall be assessed against the applicant.

Sec. 8. Declaratory judgment.

New Section
32-557

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 Corporation Counsel and may appeal the decision to the Superior Court according to the standards set forth in section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code § 1-1510).

Sec. 9. Conversion fee.

New Section
32-558

If a nonprofit entity is a party to a conversion approved pursuant to section 4, 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.

Sec. 10. Violations and penalties for noncompliance.

New Section
32-559

(a) The Corporation Counsel may seek injunctive relief if the Corporation Counsel determines that a person is offering, developing, or operating a entity in violation of this act.

(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 act, who violates any provision of this act by the willful failure to obtain the approval of the Corporation Counsel required by section 4, or who deviates from the provision of any decision approving a conversion issued pursuant section 4, 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.

Sec. 11. Rules.

New Section
32-560

The requirements of this act shall become fully operative on the effective date of this act without adoption by the Corporation Counsel of implementing regulations. In its discretion, the Corporation Counsel may issue emergency or proposed rules to implement the provisions of this act. 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.

Sec. 12. Conforming amendments.

(a) The Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Code § 32-351 *et seq.*), is amended as follows:

(1) Section 2(1) (D.C. Code § 32-351(1)) is amended by adding a new subparagraph (D) to read as follows:

Section
32-351

"(D) Any conversion which results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, as defined by section 3 of the Healthcare Entity Conversion Act of 1997, of a nonprofit HCF to a for-profit entity whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including such an entity that results from or is created in connection with, the conversion."

Section
32-356

(2) Section 7 (D.C. Code § 32-356) is amended as follows:

(A) Subsection (b)(2) is amended by striking the phrase "two-year period" and inserting the phrase "five-year period" in its place.

(B) A new subsection (d) is added to read as follows:

"(d) A conversion or acquiring of effective control, as defined in section 2(1), of a nonprofit HCF shall not be approved by the Corporation Counsel unless charitable assets of the HCF have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997."

Section
32-359

(3) Section 10 (D.C. Code § 32-359) is amended by adding a new subsection (k) to read as follows:

"(k) SHPDA shall require that all prospective certificate of need applicants certify, in writing, that for the five-year period following the award of the certificate of need the percentage of uncompensated care (charity and bad-debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the 2 fiscal years immediately preceding the review of an application for a certificate of need pursuant to this section."

(b) Section 3 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Code § 35-4702), is amended as follows:

Section
35-4702

(1) The existing text is designated as subsection (a).

(2) The newly designated subsection (a) is amended by striking the phrase "A corporation" and inserting the phrase "Except as provided in subsection (b) of this section, a corporation" in its place.

(3) A new subsection (b) is added to read as follows:

"(b)(1) A conversion or management or service contract with a for-profit entity shall not be approved by the Corporation Counsel unless charitable assets, if any, have been adequately protected. In determining whether charitable assets have been adequately protected, the Corporation Counsel shall apply the standard enumerated in section 4(c) of the Healthcare

Entity Conversion Act of 1997.

"(2) The Commissioner of Insurance and Securities, in consultation with the Corporation Counsel, shall assess the for-profit entity the necessary or appropriate costs related to, and shall expend such amounts for, the review of the conversion or management or service contract with a for-profit entity. Such costs may include the costs of expert review, educating the public, or obtaining public comments.

"(3) The provisions of sections 6 and 8 of the Healthcare Entity Conversion Act of 1997 shall apply to any conversions or management or service contracts with a for-profit entity."

(c) Section 19 of the Health Maintenance Organization Act of 1996, effective April 9, 1997 (D.C. Law 11-235; D.C. Code § 35-4518), is amended by adding a new subsection (g) to read as follows:

Section
35-4518

"(g) A conversion of a nonprofit health maintenance organization to a for-profit corporation, or the acquisition of a nonprofit health maintenance organization or a management or service contract by a for-profit entity, shall not be approved by the Corporation Counsel unless charitable assets have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997."

Sec. 13. Applicability.

(a) Except as provided in subsection (b) of this section, section 4 shall apply as of July 1, 1997.

Note Section
32-553

(b) Except for sections 9 and 12(a)(2)(A), this act shall not apply to a conversion substantially consummated or pending the approval of the Commissioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

Note Section
32-551,
32-558,
32-559

(c) Section 9 shall apply as of July 1, 1997.

Note Section
32-558

(d) Section 12(a)(2)(A) shall apply as of June 3, 1997.

Note Section
32-559

Sec. 14. Fiscal impact statement.

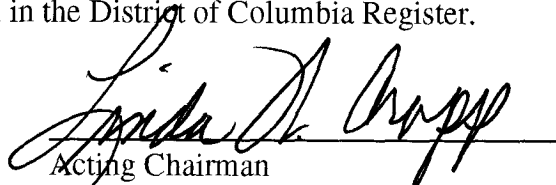
This legislation will have a positive fiscal impact on the District of Columbia. All costs associated with implementing the legislation are intended to be assessed against the converted for-profit entity. In addition, the District will receive additional revenue for charitable purposes as a result of charitable assets recovery.

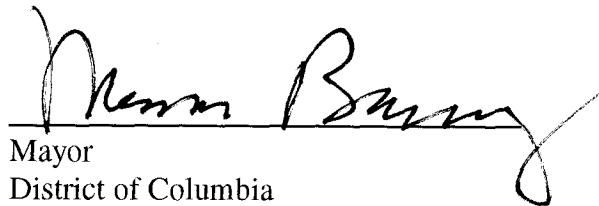
Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995

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(109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.


Acting Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: July 17, 1997



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B12-112

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 06-03-97

VOICE VOTE RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ALL PRESENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Evans					Smith, Jr.				
Allen					Jarvis					Thomas, Sr.				
Ambrose					Mason									
Brazil					Patterson									
Chavous					Schwartz									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

July 7, 1997 Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 07-01-97

VOICE VOTE RECORDED VOTE ON REQUEST

APPROVED

ABSENT

JARVIS

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Evans					Smith, Jr.				
Allen					Jarvis					Thomas, Sr.				
Ambrose					Mason									
Brazil					Patterson									
Chavous					Schwartz									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

Secretary to the Council

July 7, 1997 Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Evans					Smith, Jr.				
Allen					Jarvis					Thomas, Sr.				
Ambrose					Mason									
Brazil					Patterson									
Chavous					Schwartz									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date