



OLR RESEARCH REPORT

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RHODE ISLAND NONPROFIT HOSPITAL CONVERSIONS

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

SUMMARY

Rhode Island law requires the attorney general (AG) and Department of Public Health (DPH) to concurrently review and approve a nonprofit hospital's agreement to transfer 20% or more of its ownership, assets, membership interest, authority, or control ([Rhode Island General Laws, Chapter 23-17.14](#))

Prior to entering into such an agreement, the hospital and purchaser (hereafter called "transacting parties") must apply to both DPH and the AG for approval. Within 30 business days of accepting the application, DPH and the AG must notify the public of the (1) application's acceptance for review, (2) date and process for submitting public comments, and (3) public informational meeting they must hold within 60 days after the notice date.

The AG and DPH must concurrently review the application using a range of criteria specified by law and may (1) conduct investigations or (2) contract with experts or consultants for assistance at the transacting parties' expense.

If the proposed conversion will result in the elimination or significant reduction of emergency or primary care services to the uninsured or underinsured, the nonprofit hospital must submit a written plan to DPH for approval.

In addition, if the purchaser applies to convert an additional nonprofit hospital in the same year, DPH must consider additional factors when reviewing the application, such as the purchaser's performance in providing community benefits in the state or its prior compliance with local, state, and federal licensure and regulatory requirements.

Both the AG and DPH must approve, conditionally approve, or disapprove the application within 120 days of accepting it. Any transacting party aggrieved by the decision of the AG or DPH can appeal to Superior Court. The court may affirm, modify, or reverse the decision.

Once an application is approved, the AG and DPH must monitor and evaluate the (1) purchaser's compliance with any conditions of approval and (2) conversion's impact on health care costs and services in the affected communities. They must do this for three years after the conversion's effective date at the purchaser's expense. During this period, the purchaser must also annually report to the AG and DPH on its compliance with the agreement.

The law requires transferring the proceeds of the conversion and any of the nonprofit hospital's endowments and specific purpose funds to an independent 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. The board must annually (1) hold a public hearing on the foundation's activities and (2) submit a report and tax information to the court, governor, AG, and legislature.

RHODE ISLAND'S NONPROFIT HOSPITAL CONVERSION REVIEW PROCESS

Initial Application

Before entering into an agreement, the transacting parties must simultaneously send an initial application to both DPH and the AG that includes a detailed summary of the proposed nonprofit hospital conversion. Among other things, the summary must include contact information for each transacting party's board members, officers, and executives; conflict of interest statements; audited financial statements; a description of real estate and equipment needs; patient statistics; and uncompensated care plans (see Table 1 for a complete list of required

information). The application and supporting documents are publicly available, upon request, except for information the AG determines is proprietary or confidential.

Table 1: Initial Application Required Information

<ul style="list-style-type: none"> • detailed summary of the proposed conversion 	<ul style="list-style-type: none"> • transacting parties' contact information
<ul style="list-style-type: none"> • contact information, occupation, and tenure of all officers, board members, trustees, executives, and senior managers holding these positions during the past two years 	<ul style="list-style-type: none"> • a list of all committees, task forces, or similar entities of the board or trustees, including a description of their purpose and members' contact information, occupation, and tenure
<ul style="list-style-type: none"> • agendas and minutes for all board or trustee meetings and any committees or similar entities related to the conversion held during the two years before the application submission (excluding meetings focused on peer review and confidential medical matters) 	<ul style="list-style-type: none"> • articles and certificates of incorporation
<ul style="list-style-type: none"> • bylaws and organizational charts 	<ul style="list-style-type: none"> • organizational structure for existing transacting parties and each partner, affiliate, parent, subsidiary or related corporate entity in which the purchaser has a 20% or greater ownership interest
<ul style="list-style-type: none"> • conflict of interest statements, policies, and procedures 	<ul style="list-style-type: none"> • contact information for any professional consultants employed in connection with the conversion
<ul style="list-style-type: none"> • copies of audited financial statements and management letters for the prior three years and, if public, audited interim financial and income statements 	<ul style="list-style-type: none"> • a detailed description of the conversion's financing structure including equity contribution, debt restructuring, stock issuance, partnership interests, and stock offerings
<ul style="list-style-type: none"> • a detailed description of real estate issues including title reports for land owned and lease agreements concerning the conversion 	<ul style="list-style-type: none"> • detailed description of equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, pension plan descriptions and employee benefits, environmental reports, assessments and organizational goals
<ul style="list-style-type: none"> • copies of reports analyzing the conversion during the past three years including reports by appraisers, accountants, investment bankers, actuaries, and other experts 	<ul style="list-style-type: none"> • copies of any opinions or memoranda addressing the state and federal tax consequences of the conversion prepared for a transacting party by an attorney, accountant, or other expert
<ul style="list-style-type: none"> • a description of how the price was determined, including the methodology and data used, and the contact information for the preparers of these documents 	<ul style="list-style-type: none"> • patient statistics for the past three years and patient projections for the next one year including patient visits, admissions, emergency room visits, clinical visits, visits to each hospital department, nursing care admissions, and visits by affiliated home health care entities
<ul style="list-style-type: none"> • contact information for all licensed facilities in which the purchaser maintains an ownership or controlling interest or operating authority 	<ul style="list-style-type: none"> • a list of pending or adjudicated citations, violations or charges against any of the purchaser's facilities within the past three years and their status with regard to patient care and charitable assets
<ul style="list-style-type: none"> • a list of uncompensated care provided over the past three years by each of the purchaser's facilities and how it was calculated 	<ul style="list-style-type: none"> • copies of all documents related to charitable assets
<ul style="list-style-type: none"> • a description of charity and uncompensated care provided by the nonprofit hospital for the previous three years including a dollar amount and description of services provided to patients 	<ul style="list-style-type: none"> • a description of the nonprofit hospital's bad debt incurred during the previous three years for which payment was anticipated but not received

Table 1 (continued)

<ul style="list-style-type: none"> • a description of the purchaser's plan for providing community benefits and charity care during the first three years of operation 	<ul style="list-style-type: none"> • the names of current executives and managers, whether they will maintain their position with the new hospital, and whether they will receive any current or deferred financial gain due to the conversion
<ul style="list-style-type: none"> • copies of capital and operating budgets, financial projections, and staffing plans for the new hospital during the first three years of operation 	<ul style="list-style-type: none"> • a list of all medical, clinical, and administrative services and departments that will be (1) maintained or (2) eliminated or significantly reduced at the new hospital
<ul style="list-style-type: none"> • a description of criteria the nonprofit hospital's board used for pursuing a proposed conversion with one or more health care providers 	<ul style="list-style-type: none"> • copies of reports of any transacting party's review of the conversion (these reports are generally held by the AG and DPH as confidential)
<ul style="list-style-type: none"> • a description of request for proposals issued by the nonprofit hospital related to the conversion 	<ul style="list-style-type: none"> • copies of reports analyzing affiliations, mergers, or other similar transactions considered by the transacting parties during the past three years
<ul style="list-style-type: none"> • a copy or description of proposed contracts or arrangements with the nonprofit hospital's senior managers, board members, and executives for severance consulting services or non-compete agreements following the conversion's completion 	<ul style="list-style-type: none"> • a copy or description of all actual or proposed agreements on any current or future employment or compensation between the purchaser and any executive, board member, or manager of the nonprofit hospital (or their related entities)
<ul style="list-style-type: none"> • a copy or description of all actual or expected agreements by the transacting parties related to the conversion 	<ul style="list-style-type: none"> • copies of documents or proposed plans for any entity to be created for charitable assets
<ul style="list-style-type: none"> • description of current staffing levels for all nonprofit hospital employees, including contract employees, and any anticipated or proposed changes to these levels 	<ul style="list-style-type: none"> • copies of current conflict of interest forms from all incumbent or recently incumbent (i.e., within the last year) officers, board members, executives, and managers
<ul style="list-style-type: none"> • if the purchaser already acquired a nonprofit hospital, a complete statement of its performance during the preceding one year with regard to the prior conversion's terms and conditions 	<ul style="list-style-type: none"> • copies of IRS Form 990 for any transacting party required to file it for each of the three years prior to the application's submission

Source: <http://webserver.rilin.state.ri.us/Statutes/TITLE23/23-17.14/23-17.14-6.HTM>

Within 30 days of receiving the application, the AG and DPH must jointly advise the applicant in writing if the application is complete. If additional information is required, the applicant must submit it within 30 business days or the application is rejected. The AG and DPH have 10 business days after receiving the additional information to determine whether it is acceptable. If so, they must notify the applicant in writing of the date the application was accepted.

Notice

Within 30 business days after accepting the application, the (1) AG must determine which information contained in the initial application is proprietary and confidential and (2) AG and DPH must publish notice of the application in a general circulation newspaper and notify by mail anyone requesting notice of the filing.

The notice must include (1) that the application has been received and accepted for review; (2) the names of the transacting parties; (3) the date by which public comments can be submitted to the AG and DPH; and (4) the date, time, and location of a public informational meeting on the application, which must be held within 60 days after the notice date.

Review

The AG and DPH must concurrently conduct their review of the application and cannot delay doing so because the other has not completed it. Each must approve, approve with conditions (see below), or disapprove the application within 120 days of accepting it. Any transacting party aggrieved by the decision of the AG or DPH can appeal to Superior Court.

The law requires the AG, when reviewing the application, to consider 30 criteria, such as its impact on uncompensated and charity care, whether it was properly negotiated, and whether any conflicts of interest exist (see Table 2 for a complete list of these criteria). DPH must consider whether:


1. the character, commitment, competence, and standing in the communities served by the transacting parties are satisfactory;
2. the plan includes sufficient safeguards to ensure the affected community has continued access to affordable health care;
3. the transacting parties provided clear and convincing evidence that the new hospital will provide underserved populations appropriate access to health care;
4. procedures or safeguards ensure that ownership interests will not be used as incentives for hospital employees or physicians to refer patients to the new hospital;
5. the transacting parties committed to continuing collective bargaining rights, if applicable, and workforce retention policies;
6. the transacting parties appropriately accounted for employment needs, including workforce training, resulting from any proposed restructuring;

7. the conversion demonstrates that the public interest will be served considering the essential medical services needed to provide safe and adequate treatment, appropriate access, and balanced health care delivery to state residents; and
8. the purchaser demonstrated that it satisfactorily met the terms and conditions for approval in any previous conversion application.

Table 2: Criteria the AG Must Consider When Reviewing an Application

<ul style="list-style-type: none"> • whether the proposed conversion will harm the public's interest in trust property given or bequeathed to the nonprofit hospital for charitable, educational, or religious purposes 	<ul style="list-style-type: none"> • whether a trustee of the nonprofit hospital or any charitable trust in the state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the conversion
<ul style="list-style-type: none"> • whether the nonprofit hospital board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes 	<ul style="list-style-type: none"> • whether the board formulated and issued appropriate requests for proposals in pursuing the conversion
<ul style="list-style-type: none"> • whether the board considered the proposed conversion as the only or best alternative in carrying out its mission and purposes 	<ul style="list-style-type: none"> • if any conflict of interest exists concerning the conversion related to board members, officers, directors, senior management, experts, or consultants
<ul style="list-style-type: none"> • if any board members, officers, directors, senior management, experts, or consultants received financial benefits based on the conversion's completion 	<ul style="list-style-type: none"> • whether the board exercised due care in (1) using consultants with the appropriate level of independence, education, and experience and (2) accepting their assumptions and conclusions
<ul style="list-style-type: none"> • whether the board exercised due care in assigning a value to the nonprofit hospital and its charitable assets before negotiating the conversion 	<ul style="list-style-type: none"> • if the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion, future or contingent value based on the new hospital's success
<ul style="list-style-type: none"> • if officers, directors, board members, or senior management will receive future contracts in existing, new, or affiliated hospitals or foundations 	<ul style="list-style-type: none"> • whether any board members retain authority in the new hospital
<ul style="list-style-type: none"> • whether the board accepted fair consideration and value for any management contracts made part of the conversion 	<ul style="list-style-type: none"> • whether individual officers, directors, board members, or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the conversion

Table 1 (continued)

<ul style="list-style-type: none"> • whether the proposed conversion will result the abandonment of the nonprofit hospital's original purposes to the extent that a cy pres proceeding would be necessary 	<ul style="list-style-type: none"> • if the conversion (1) reflects the nonprofit hospital's appropriate and reasonable fair market value and (2) was based on appropriate valuation methods
<ul style="list-style-type: none"> • whether the conversion complies with the Rhode Island Nonprofit Corporation Act 	<ul style="list-style-type: none"> • whether the conversion (1) complies with the state tax code and (2) jeopardizes the nonprofit hospital's tax status
<ul style="list-style-type: none"> • if the nonprofit hospital's representatives avoided conflicts of interest in negotiations 	<ul style="list-style-type: none"> • whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that negatively impacted the nonprofit hospital's value or purchase price
<ul style="list-style-type: none"> • whether the formula used to determine the nonprofit hospital's value was appropriate and reasonable 	<ul style="list-style-type: none"> • if the conversion appropriately provides for the disposition of proceeds from the transaction
<ul style="list-style-type: none"> • if the transacting parties comply with the Charitable Trust Act 	<ul style="list-style-type: none"> • whether a right of first refusal to repurchase the assets has been retained
<ul style="list-style-type: none"> • whether the character, commitment, competence and standing in the communities served by the transacting parties are satisfactory 	<ul style="list-style-type: none"> • whether a control premium is an appropriate component of the conversion
<ul style="list-style-type: none"> • whether the value of assets factored in the conversion is based on past performance or future potential performance 	

Source: <http://webserver.rilin.state.ri.us/Statutes/TITLE23/23-17.14/23-17.14-7.HTM>

The law allows the AG and DPH to contract with experts or consultants to review the agreement at the transacting parties' expense. Copies of all reports prepared by these experts or consultants, including their associated costs, are available to the transacting parties and the public.

Investigations

When reviewing an application, the AG and DPH may conduct investigations and 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 DPH must notify a person in writing at least 14 days before he or she is required to appear. If the person fails to appear or refuses to provide requested information, the AG or DPH can apply to Superior Court for an order to comply.

Terminating or Significantly Reducing Medical Services

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 DPH 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.

The department may issue public notice and allow a written comment period within 60 days after receiving the proposal. It must issue a decision within 90 days or the plan is deemed approved.

Converting More Than One Hospital In The Same Year

The law allows a for-profit hospital to convert more than one non-profit hospital in the same year. If it applies to convert an additional hospital, DPH must determine, in addition to the above requirements, whether the for-profit hospital:

1. met all prior licensure requirements and conditions, including the provisions of community benefits;
2. complied with all federal, state, and local laws, regulations, and ordinances during any prior license period;
3. planned, implemented, monitored, and reviewed a community benefit program during the prior license period;
4. maintained, enhanced, or disrupted the essential medical services in the affected community or the state;
5. provided an appropriate amount of charity care to maintain or enhance a safe and accessible health care delivery system in the affected community or the state; and
6. demonstrated a substantial link between the hospital and affected community by providing one or more of the following: (a) uncompensated or charity care, (b) cash or in kind donations to community programs, (c) community health education and training for professionals, (d) relevant research initiatives, or (e) essential but unprofitable medical services.

DPH can hold a public hearing to assess the performance of the for-profit hospital, or its affiliates or subsidiaries, in providing community benefits in the affected community or the state.

Conditional Approval

An application's approval is subject to any related conditions imposed by the AG or DPH. For example, the AG may require the purchaser to make a minimum investment to protect the new hospital's assets, financial health, and well-being. DPH may require, among other things, that the purchaser keep the new hospital open and operating for a minimum time period or report to DPH on annual profit distributions to owners.

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. 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.

Appeals

By law, any transacting party aggrieved by the decision of the AG or DPH can appeal to Superior Court. The court must give priority to such an appeal and consider certain factors before deciding to affirm, modify, or reverse the decision. Specifically, the court must consider and balance the reasonable interests of the transacting parties and the public. The court may reverse or modify the decision if substantial rights of the appellant had been prejudiced because the AG's or DPH's findings, conclusions, or decisions exceed their authority or are:

1. unreasonable or violate the law,
2. made using unlawful procedures,
3. clearly erroneous considering the evidence in the whole record,
4. affected by another error, or
5. arbitrary or characterized by an abuse of or clearly unwarranted exercise of discretion.

Conversion Proceeds Transferred To Independent Foundations

The law requires transferring the proceeds of the conversion and any of the nonprofit hospital's endowments and specific purpose funds to a charitable foundation operated by a board of directors. The Superior Court must appoint the initial board members within 60 days of the conversion's approval, after which vacancies are filled by a majority vote of the remaining board members. The board must include at least seven members and the DPH director, who serves as an ex-officio member. No more than three members may be prior board members of the nonprofit hospital.

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 of creating the board, and annually thereafter. The board must submit an annual report and a copy of its IRS Form 990 to the court, governor, AG, and legislature.

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