



OLR RESEARCH REPORT

September 19, 2013

2013-R-0323

2012 RHODE ISLAND LEGISLATION ON NONPROFIT HOSPITAL CONVERSIONS

By: Nicole Dube, Principal Analyst

This report provides a brief summary of 2012 Rhode Island legislation that changed the process by which a nonprofit hospital becomes 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. The law specifies the application, review, and appeals processes, including the factors DPH and the AG must consider when reviewing an application ([Rhode Island General Laws, Chapter 23-17.14](#)). (For a detailed description of Rhode Island's nonprofit hospital conversion law, see OLR Report [2013-R-0322](#)).

In 2012, the Rhode Island legislature passed [SB 2180](#), which took effect on June 19, 2012 without the governor's signature. The bill made several changes to the state's nonprofit hospital conversion process. Among other things, the legislation (1) altered the information nonprofit hospitals and purchasers (i.e., transacting parties) must include in their initial application, (2) required DPH and the AG to conduct their application review concurrently and within 120 days of accepting the application, (3) allowed DPH and the AG to impose any related conditions when approving an application, and (4) required the Superior Court to give priority to transacting parties who appealed DPH's or the AG's final decision and specified certain factors the court must consider before issuing its determination.

The 2012 legislation also allowed a for-profit hospital or its affiliates to acquire more than one nonprofit hospital in a year, eliminating the three-year waiting period required under prior law.

2012 LEGISLATIVE CHANGES TO RHODE ISLAND'S NONPROFIT HOSPITAL CONVERSION PROCESS

Initial Applications

By law, a nonprofit hospital and purchaser must apply to and receive approval from the AG and DPH before a conversion can occur. The application must provide a detailed summary of the proposed conversion and include several types of information. The 2012 legislation required the application to include:

1. the names and contact information for all officers, seniors managers, executives, board members, and trustees that held these positions during the past two years, instead of three years;
2. agendas and minutes of all the non-profit hospital's board meetings related to the conversion, except for those focused on peer review and confidential medical matters;
3. current conflict of interest forms for the transacting parties' medical directors, in addition to those individuals specified under existing law (e.g., board members, executives, trustees); and
4. for the previous three years, instead of five years, (a) a description of the nonprofit hospital's charity and uncompensated care and bad debt, (b) the new hospital's plan to provide community benefit and charity care, and (c) copies of the nonprofit hospital's IRS Form 990.

It also allowed transacting parties to file an application electronically if it is acceptable to the AG or DPH.

Review

By law, the AG and DPH must review an application and issue a decision to approve it, approve it with conditions, or disapprove it. The 2012 legislation required this review to occur concurrently and prohibited either party from delaying the review because the other had

not completed it. It also allowed an applicant to request that this review occur concurrently with the review of any relevant federal regulatory authority.

The legislation required the AG and DPH to issue their final decisions within 120 days, instead of 180 days, after accepting the application.

Conditional Approval

When approving an application, the 2012 legislation allowed the AG and DPH to impose any related conditions they choose. It expressly allowed DPH to impose conditions requiring the purchaser to:

1. maintain a governing body for each converted hospital whose membership includes uncompensated, independent Rhode Island residents;
2. make financially reasonable contributions to support the state's coordinated health planning process;
3. adhere to reasonable restrictions on financial incentives to patients or health plan enrollees to receive hospital services out-of-state;
4. keep the new hospital open and operating for a reasonable minimum time period;
5. make a reasonable minimum investment to support primary care in the communities served by the new hospital;
6. not enter into any contract or arrangement with an affiliate except for those to provide services or products reasonably necessary to accomplish the hospital's purposes and that are consistent with fair market value;
7. report to DPH on annual profit distributions to owners; and
8. prohibit any corporate allocation or equivalent charge to any affiliate from exceeding fair market value for the services provided or the assets purchased or leased.

For three years after the conversion's effective date, the 2012 legislation also required the AG and DPH to (1) monitor, assess, and evaluate the purchaser's compliance with all conditions imposed and (2) annually review the conversion's impact on the health care costs and services in the communities served. It also required the purchaser to (1)

annually report to the AG and DPH on its compliance with these conditions and (2) pay the costs associated with such monitoring and evaluation.

Judicial Review

By law, any transacting party aggrieved by the decision of the AG or DPH can appeal to Superior Court. The 2012 legislation required the court to give priority to such an appeal and consider certain factors before deciding to affirm, modify, or reverse the decision. Specifically, it required the court to consider and balance the reasonable interests of the transacting parties and the public. It allowed the court to 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 in violation of 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 or clearly unwarranted exercise of discretion.

Converting More Than One Hospital in the Same Year

The 2012 legislation allowed a for-profit hospital or its affiliates to acquire more than one nonprofit hospital in a year. Prior law did not allow a for-profit hospital or its affiliates to apply for a second nonprofit hospital conversion in the state for at least three years after the initial conversion took effect. The legislation also removed DPH's authority to prohibit a for-profit hospital or its affiliates from filing an application for up to 10 years for good cause.

ND:ts