Nonprofit Hospital Conversions
- Statutory Factors in DPH Review
- Overview of Stipulations in OHCA's Approval of Sharon Hospital Conversion

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DPH Application Review

The law specifies the criteria that the Department of Public Health (DPH) must consider when reviewing an application by a nonprofit hospital to sell or transfer a material amount of its assets or operations or change control of its operations to a for-profit entity (CGS § 19a-486d, as amended by PA 14-168).

DPH Application Review Factors

- The commissioner must deny an application unless she finds that:
  - the affected community will be assured of continued access to <u>high quality</u> and affordable health care <u>after accounting for any proposed change impacting hospital staffing</u> (PA 14-168 (§ 11) added the underlined conditions);
  - the purchaser has committed to providing health care to uninsured or underinsured people, if the asset or operation being transferred provides or has provided health care to these people;
  - safeguards are in place to avoid a conflict of interest in patient referral if health care providers or insurers will be offered investment or ownership opportunities in the purchaser or a related entity; and
  - certificate of need (CON) authorization is justified according to law.

CON Review Factors

- When reviewing a CON application, DPH's Office of Health Care Access (OHCA) must consider and make written findings on the following guidelines and principles:
  - whether the proposed project is consistent with any applicable policies and standards in DPH regulations;
  - the relationship of the proposal to the statewide health care facilities and services plan;
  - whether there is a clear public need for the proposed health care facility or services;

CON Review Factors cont.

- whether the applicant has satisfactorily demonstrated (a) how the proposal will affect the financial strength of the state’s health care system or (b) that the proposal is financially feasible for the applicant;

- whether the applicant has satisfactorily demonstrated how the proposal will improve the quality, accessibility, and cost-effectiveness of health care delivery in the region, including the (a) provision of or change in access to services for Medicaid recipients and indigent people and (b) impact on the cost effectiveness of providing access to Medicaid services;

CON Review Factors cont.

- the applicant's past and proposed provision of health care services to relevant patient populations and payer mix, including access to services by Medicaid recipients and indigent people;
- whether the applicant has satisfactorily (a) identified the population to be served by the proposed project and (b) demonstrated that this population needs the proposed services;
- the use of existing health care facilities and services in the applicant's service area;

CON Review Factors cont.

- whether the applicant has satisfactorily demonstrated that the proposed project will not result in unnecessary duplication of existing or approved health care services or facilities;
- whether an applicant who failed to provide, or reduced access to, services by Medicaid recipients or indigent people demonstrated good cause for doing so (good cause is not demonstrated solely based on differences in reimbursement rates between Medicaid and other payers);

CON Review Factors cont.

- whether the applicant has satisfactorily demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region; and

- whether the applicant has satisfactorily demonstrated that any consolidation resulting from the proposal will not adversely affect health care costs or accessibility to care.
    - (The last two factors were added by PA 14-168 (§ 7), amending CGS § 19a-639).

OHCA Approval of Sharon Hospital Conversion

On October 17, 2001, OHCA issued a final decision approving Essent Healthcare, Inc.'s purchase of Sharon Hospital under the nonprofit conversion law.

On December 14, 2001, OHCA issued a revised final decision, after the parties sought reconsideration. The revised decision eliminated and modified certain stipulations concerning matters also addressed in the AG's decision.

OHCA's final decision includes extensive findings of fact. This presentation will focus on the stipulations in OHCA's order, as set forth in the revised final decision.

OHCA Approval of Sharon Hospital Conversion: Context

- At the time, OHCA was an independent agency (OHCA was merged with DPH in September 2009).
- Under the nonprofit conversion law in 2001, to approve the agreement, the OHCA commissioner had to find that:
    1. the affected community will be assured of continued access to affordable health care,
    2. the purchaser has committed to providing health care to uninsured and underinsured people, and
    3. safeguards are in place to avoid a conflict of interest in patient referral if health care providers or insurers are offered investment or ownership opportunities in the purchaser or a related entity.
- The nonprofit conversion law did not reference the CON factors. (OHCA issued a separate CON approval for the Sharon Hospital sale in March 2002).

OHCA Approval of Sharon Hospital Conversion: Stipulations

- **<u>Cash Contribution/ No Additional Debt/ Retiring Debt</u>**
  - The purchase price paid by Essent had to be a cash contribution to Sharon Hospital, Inc. and not result in Sharon Hospital issuing any additional debt or preferred stock with debt-like features to Essent or any third party.
  - The cash capital contribution had to be used to retire the entire $11.4 million debt with Fleet Bank and fund the escrow account as described in the Asset Purchase Agreement.
  - A transaction audit verifying this information was required within 30 days of the asset transfer.

OHCA Approval of Sharon Hospital Conversion: Stipulations cont.

- **$8 Million Investment/ Business and Facilities Plan**
  - Essent had to invest $8 million in the hospital for the renovations, clinical equipment acquisitions, and programs it promised.
  - A detailed business plan and facilities improvement plan for the entire $8 million investment had to be submitted for OHCA's approval within 90 days of the official date of OHCA's revised final decision.
  - If Essent could not document the $8 million investment after five years, the difference would have to be turned over to the Sharon Area Community Healthcare Foundation (SACHF) to spend on the hospital or programs and services to benefit the area's citizens.

OHCA Approval of Sharon Hospital Conversion: Stipulations cont.

- **<u>Escrow Account</u>**
  - Essent had to establish a $2.1 million escrow account, with two components (funds).
  - The first fund consisted of the $500,000 recommended by Essent to defray costs associated with any extraordinary monitoring and compliance not otherwise addressed by OHCA funding. This fund could also be used to pay any penalties for failure to comply with the stipulations.
    - As part of the monitoring and compliance activities, OHCA would have complete access to all activities of Essent and the hospital concerning the hospital's operation (including financial and utilization data).
    - After five years, any monies remaining in this fund would be returned to Essent.
  - The second fund ($1.6 million) was for capital improvements as identified in the facilities improvement plan. The fund had to be maintained at $1.6 million for five years or until Essent spent $8 million on approved capital expenditures, whichever was earlier.

OHCA Approval of Sharon Hospital Conversion: Stipulations cont.

- **Tertiary Care Agreement**
  - Within 180 days, Essent had to establish a tertiary care agreement with a hospital, health system, or facility that provided the full range of health care services legally permissible and clinically available in Connecticut, taking into consideration traditional referral patterns. (Generally, “tertiary care” means a specialized level of care available only in larger healthcare institutions.)
  - The proposed Essent-Saint Francis Hospital affiliation was held in abeyance until such a contract was in place. (On July 27, 2001, Essent and Saint Francis Hospital executed a Tertiary Support Agreement.)

OHCA Approval of Sharon Hospital Conversion: Stipulations cont.

- **Clinical Care Work Force**
  - For five years, Essent could not reduce the size or qualifications of the hospital's clinical care work force, or reduce any services or service availability, without OHCA's thorough review and approval.
  - Reductions in non-clinical areas were allowed so long as they did not impact the delivery of patient care.

- **Providing Care to all Patients/ Charity Care Policy**
  - Under Essent's ownership, Sharon Hospital had to provide appropriate care to any patient regardless of his or her ability to pay, to the extent that the hospital offered those services.
  - Within 90 days, Essent had to give OHCA its free and charity care and bad debt policies for the hospital, which were subject to OHCA's approval.

OHCA Approval of Sharon Hospital Conversion: Stipulations cont.

- **Applicability of Other Laws**
  - Essent and the hospital would continue to be subject to the same laws as all other acute care hospitals in the state, including all financial and statistical reporting.
- **Future Purchasers/ Right of First Refusal**
  - If Essent sold the hospital during the next five years (or if Essent's owners sold Essent Healthcare), the unexpired terms of the order would be binding on the purchaser.
  - SACHF had to be given the right of first refusal to buy the hospital for at least the next 10 years if Essent decided to sell it.
- **Approval Before Selling Transferred Assets**
  - For five years, Essent generally had to get OHCA's approval to sell, transfer, or liquidate any assets transferred to it from the hospital sale, including real estate. This requirement did not apply to transactions (a) requiring CON approval or (b) to replace obsolete or worn equipment in the ordinary course of business.