

## **Issues Raised**

### **When a Nonprofit Hospital or Health Insurer Proposes to Convert to For-Profit Status**

When a nonprofit hospital or health insurer proposes to convert to for-profit status, consumers should be wary. Unlike nonprofits, which are required by law to serve the community, for-profits answer only to private investors or shareholders. Regulators should critically examine any conversion proposal to ensure that it is in the public interest. Following is a summary of some of the issues raised when a nonprofit hospital or health insurer proposes to convert to for-profit status.

- ❖ ***Health Impact*** State regulators should not approve a conversion unless it will preserve or improve the availability, affordability and quality of health care in the community. Will the conversion result in a reduction in health services, like reproductive care or emergency services? Will charity care levels be cut? Will any hospitals close? Often times, when a hospital chain buys two hospitals in the same community, it will close the less-profitable hospital shortly after the deal is approved by regulators. If the conversion involves a nonprofit health insurer, will it raise premiums? Will the conversion increase the number of uninsured in the community? Regulators should commission an independent health impact study to answer these questions, and only approve a conversion where the access to affordable quality health care will be maintained or expanded.
- ❖ ***An Open and Fair Public Process:*** Regulators should hold public hearings throughout the service area. Community groups asserting a “significant interest” in the transaction should be granted intervener status.
- ❖ ***Anti-Trust:*** The conversion should not reduce competition. Regulators should refer cases involving potential anti-trust violations to the Federal Trade Commission.
- ❖ ***Conflicts of Interest:*** Regulators must not approve a conversion if there were any conflicts of interest leading to the decision to convert.
- ❖ ***Fiduciary Duty/Due Diligence/Private Inurement:*** The board has a fiduciary duty to act in the best interests of the nonprofit hospital or health insurer, and to maintain the nonprofit mission unless it has become impossible, impractical or unlawful. Did they exercise “due diligence” in deciding to convert and/or in selecting a buyer? Is anyone privately benefiting from the deal?
- ❖ ***Fair Market Value:*** Under the law, the assets of any nonprofit essentially belong to the community. If the nonprofit closes its doors, or converts to a for-profit, all of the assets of the nonprofit must continue to serve its charitable mission. Regulators should commission an independent valuation to ensure that the community receives fair market value for the nonprofit.
- ❖ ***Creation of an Independent Foundation:*** If the conversion is approved, the full value of the charitable assets must go to an independent foundation to continue to serve the health needs of the community. This foundation should be entirely free of influence from the former nonprofit or from the successor for-profit. The mission, structure and governance of this foundation should be determined by the community.