

## Massachusetts Legislative Committee Approves Legislation Expanding Regulatory Oversight of Healthcare Organizations

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Legislation under consideration in Massachusetts would increase the regulatory oversight of hospitals, other healthcare providers and healthcare insurers. On Tuesday, March 20, 2012, the Massachusetts Joint Committee on Public Health unanimously approved a bill that would, among other features:

1. establish a new Office of State Health Resource Planning to which hospitals located in the Commonwealth would be required to submit certain information and projections;
2. amend the factors triggering a determination of need by the Department of Public Health for the establishment or expansion of certain healthcare facilities; and
3. subject to review by the Attorney General certain transactions between and among non-profit hospitals and health plans.

The bill, sponsored by Representative Jeffrey Sanchez (D-Jamaica Plain), is intended to better track the availability of healthcare in Massachusetts, to address gaps in access to healthcare and to avoid unnecessary duplications in service.

Features of the legislation that may be of particular interest to healthcare organizations are:

### Establishment of an Office of State Health Resource Planning

The bill establishes, within the Executive Office of Health and Human Services, an Office of State Health Resource Planning. The Office of State Health Resource Planning would be charged primarily with administering and overseeing a state healthcare resource plan to inventory healthcare availability and deficiencies statewide.

Under the proposed legislation, the Office of State Health Resource Planning would be advised by a Health Resource Planning Council comprised of, among other individuals, the commissioner of the Department of Public Health, the director of the Office of Medicaid and three appointees of the governor. Also as part of the bill, the Health Resource Planning Council would be advised by a 15-member advisory committee whose membership would include practicing physicians and other members of the healthcare industry.

### Five-year Institutional Master Plans

Of particular relevance to hospitals, the proposed legislation authorizes the Office of State Health Resource Planning to solicit from hospitals "institutional master plans" based on five-year projections for planned service and facility expansions. The proposed legislation specifies that required disclosures under the master plans will include, but not be limited to:

- A statement defining the organization's mission and objectives
- A description of the organization's current facilities and uses
- A summary of current and projected service needs in the organization's region
- Descriptions of proposed future projects
- A description of the organization's current workforce and projected future employment needs

- Identification of community benefits arising from those projects

Failure or refusal to submit these master plans would constitute grounds for inclusion in a publicly-available list of hospitals that have not complied with the regulations. The information to be included in these master plans overlaps with new disclosure requirements in IRS Form 990, Schedule H, applicable to tax-exempt hospitals. A previous Foley Hoag Nonprofit Alert describes these new federal reporting requirements.

## Modification of Factors Triggering “Needs” Assessments

Under current state law, hospitals are generally required to apply to the Department of Public Health for a needs determination prior to making substantial capital expenditures for construction of a new healthcare facility or prior to making changes to an existing facility. Under the legislation, the substantial capital expenditure trigger would be replaced by factors including whether a new healthcare facility is being built, whether an essential hospital service is being terminated, and whether bed or operating capacity is being increased.

## Extension of Review by the Attorney General to Transactions Among Nonprofit Hospitals or Nonprofit Healthcare Insurers

At present, the Attorney General has authority to review certain transactions in which a nonprofit hospital or nonprofit health maintenance organization transfers a substantial amount of its assets or operations to an entity other than a public charity. Under the legislation, the exemption for transactions with public charities would be removed, and the Attorney General would be required to investigate any such transaction between a nonprofit hospital or nonprofit health maintenance organization and a public charity.

In conducting an investigation of the transaction, the Attorney General would be required to hold a public hearing and consider, among other factors, whether fair value will be received for the nonprofit assets and whether the proposed transaction is in the public interest. The Attorney General would be permitted to assess the costs of the investigation to the entity receiving the nonprofit assets, and disclosures made during the course of the investigation by the parties would be made publicly-available.

The Attorney General has recently conducted investigations of transactions involving Steward Health Care System LLC’s acquisition of nonprofit health care providers Caritas Christi Health Care, Quincy Medical Center and Morton Hospital and Medical Center. The reviews have been thorough and lengthy. Requiring transactions among charitable institutions to undergo this review may add another layer of complexity to these transactions yet will create uniformity to the regulatory oversight of transactions involving nonprofit health care organizations.

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