

Preserving a Legacy

By establishing a foundation, nonprofit hospitals can put their charitable assets to work after a sale

By Betsy Chapin Taylor

In today's environment of change and transformation, some nonprofit hospitals and health systems are considering the possibility of selling to for-profit providers. A central concern for boards engaged in strategic deliberations about a potential sale is preserving the charitable mission, values and legacy of their nonprofit health care organization.

Nonprofit hospitals and health systems almost always have significant assets resulting from tax exemptions and other benefits of nonprofit status or because of voluntary giving. When an organization converts from nonprofit to for-profit status, its charitable assets can't be assumed by the for-profit entity.

Most states' laws require the full value of a nonprofit health care organization be directed toward charitable purposes. Therefore, many nonprofits preserve their mission by directing charitable assets after a sale into a "conversion" or "legacy" foundation to provide public benefit within the geographic footprint of the original health care provider.

Legacy foundations generally make grants rather than operate their own programs, and they generally do not

seek additional charitable contributions from the community. According to the Washington, D.C.-based nonprofit group Grantmakers in Health, more than 300 of these foundations existed as of October 2014, and they pack a powerful punch with grants of more than \$1 billion annually.

In the midst of the legal and logistical complexities of a sale, donor stakeholders might be overlooked, sometimes with unintended consequences.

Health care organizations considering whether to become part of a for-profit corporation should address three primary concerns if they want to extend their mission to a legacy foundation: how to define its future mission, how to provide for future governance and how to include the entire organizational family.

Mission statement

Trustees face a fundamental decision when defining a legacy foundation's mission. Many legacy foundations

maintain the health care organization's core purpose by focusing on health and wellness.

While each state's attorney general generally has the power to interpret what is an "appropriate" use of proceeds from a sale to a for-profit provider, most decisions follow the legal doctrine of "cy pres." This doctrine says charitable assets must fulfill a purpose as near as possible to the intent expressed in the nonprofit organization's original articles of incorporation when it is no longer practical or possible for the nonprofit to continue.

However, as definitions of "health care" broaden to allow for social determinants of health, some organizations are following a more expansive understanding of the term that remains consistent with the original health care organization's history, beliefs and philosophical commitments. For example, advancing population health by addressing the root causes of health problems in populations can embrace a broad range of social, educational, economic and quality of life issues that ultimately influence health.

Governing body

Leadership selection is another key decision when establishing a legacy foundation. While the process or criteria for selecting trustees will often be outlined in the terms of sale, each organization can have discretion.

Some organizations have free rein to select future leaders. In this situation, most organizations appoint trustees who have previously served the health care organization and have a deep sense of its history and values.

Some organizations choose new leaders to represent a region or for particular expertise or competencies. Other organizations will be required



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to have trustees appointed by another entity — such as a state legislature — or to meet specific criteria.

The whole family

Boards don't just have to make decisions about the use of charitable assets from the sale of their health care organization. In many cases, charitable assets held by an affiliated foundation also must be considered.

In the midst of the legal and logistical complexities of a sale, donor stakeholders might be overlooked, sometimes with unintended consequences. It's essential to remember their commitment and share with them the rationale for the sale and the future direction of the legacy foundation.

Organizations should also anticipate questions on the minds of donors, such as the use of existing charitable contributions and endowments and whether donors will still be recognized in the purchased facility. Proactively addressing financial and relationship issues not only helps maintain the goodwill of key advocates but also the positive legacy of the health care organization. In some cases, an existing health care foundation can be repurposed to become the new legacy foundation.

The sale of nonprofit, mission-driven health care organizations to for-profit health care providers is part of the reality of the changing health care environment. Legacy founda-

tions are bound by a variety of requirements, regulations and oversight and must carefully balance the politics, practicalities and legalities of their relationship with the purchasing corporation. The creation of a legacy foundation, however, can extend the traditions and values of the original nonprofit organization's mission and continue its commitment to serve, strengthen and sustain its communities. **T**

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