

# Commencement of Evaluation for Conversion to a Private, Nonprofit Corporation

*(Larry Antonucci, MD, President/CEO)*

*Lee Memorial Health System Board of Directors Meeting  
August 31, 2023*

# *Overview of HB 227, Section 18, Conversion to Nonprofit Entity*

*Presented by:*

Larry Antonucci, MD, President & CEO

- **HB 227, Section 18: Conversion to Nonprofit Entity**
  - What it does and does not do
  - How it differs from Section 155.40, Florida Statutes
  - How it works

## *A Brief Overview*

- **What it does:**

- Authorizes the District to evaluate the potential benefits of converting to a private, non-profit entity.
- If, after evaluation, the District determines the best interests of residents are best served by converting, authorizes the District to attempt to negotiate and draft a proposed agreement with the County Commission setting out the terms of the conversion.
- Upon agreement to terms, District would convert to non-profit entity subject to the terms of the agreement, and the District is dissolved automatically upon providing notice of the transfer of assets and liabilities to the Department of Economic Opportunity.

## *A Brief Overview*

- **What it does not do:**

- Voluntary. Does not require the District to do anything.
- Even if conversion is found to be in the best interests of the residents of the District, the District is not required to proceed if an acceptable agreement cannot be reached with the County Commission.
- If no agreement is ultimately reached with the County Commission concerning the potential conversion, District shall continue to exist.
- Not a sale or lease of the District's assets.

## *A Brief Overview*

- **How it differs from Section 155.40:**

- Section 155.40, as amended by HB 711 in 2012, required the District to commence an evaluation of continued ownership of hospitals by the District.
  - HB 227 has no similar mandatory action requirement.
- Section 155.40 authorizes the District to sell or lease a hospital or hospitals if found to be in the best interests of the affected community.
  - HB 227 is not a sale or lease of facilities; it is a conversion of the entire District, which will then cease to exist upon conversion.

## *How it Works*

- **Step One – Elect to Conduct Evaluation:**

- District may, by majority vote of the members present and voting, elect to commence an evaluation of the benefits to the residents of Lee County of converting the District to a non-profit entity.
- If yes, proceed to step two. If no, end of process.

## *How it Works*

- **Step Two – Evaluate Benefits of Conversion:**
  - In evaluating the potential benefits, District must:
    - Conduct a public hearing to allow residents an opportunity to be heard
    - Contract with an experienced entity to conduct an evaluation
    - Publish all documents considered by the District on the District website
  - Evaluation must be completed, and final report presented to the Board within 180 days of decision to conduct evaluation.



## *How it Works*

- **Step Three – Best Interests of Residents**

- Within 120 days of the Board's receipt of the final evaluation report, the District must, by majority vote, determine whether the interests of the residents of the District are best served by converting the District to a non-profit entity.
- If yes, proceed to step four. If no, end of process.

## *How it Works*

- **Step Four – Negotiate Agreement:**

- Within 120 days of the District's determination that conversion is in the best interests of the residents of the District, the District must negotiate, draft, and complete a proposed agreement with the County Commission.

## *How it Works*

- **Step Four – Negotiate Agreement [continued]:**
  - The agreement must dispose of all assets and liabilities of the District and include:
    - A description and estimated value of all assets and liabilities that will be transferred to or assumed by the non-profit entity and/or the county, and if any debts remain, how those will be resolved;
    - An enforceable commitment that programs and services provided by the District will continue to be provided in perpetuity, or if otherwise agreed, until the non-profit entity has met all obligations in the agreement;
    - A provision transferring the agreed rights and obligations to the non-profit entity; and
    - Any other terms mutually agreed between the District and County Commission.

## *How it Works*

- **Step Five – Approval of Agreement:**

- In a properly noticed public meeting, the District may approve, by a majority vote plus one, the agreement, which approval shall constitute approval of the conversion of the District to a nonprofit entity.
- In a properly noticed public meeting, the agreement negotiated between the District and the County Commission must be approved by the County Commission.
- If either the District or County Commission fail to approve the agreement, then conversion does not occur, and the District shall continue to exist.

- **Additional Considerations:**

- All documents relating to conversion must be posted on District and County website 45 days before voting on proposed conversion.
- No current member of the County Commission may serve on the board of the succeeding nonprofit entity.
- A current or former member of the District board may serve on the succeeding nonprofit entity
- Board members for both boards must disclose conflicts of interest.
  - Including whether conversion will result in a special private gain or loss to any member of either Board.
  - If any member of the District Board will serve on the Board of the successor non-profit entity, that must be disclosed.

# HB 227, Section 18: Conversion to Nonprofit Entity



## RECAP

- **Steps:**
  - Elect to Conduct an Evaluation
  - Evaluate the Benefits of Conversion
  - Determine if Conversion is in the Best Interests of Residents
  - Negotiate an Agreement with the County Commission
  - Final Vote to Approve Agreement / Conversion
- **Each step presents an opportunity to reassess the pros and cons and either proceed forward or stop the process.**

## LEE HEALTH LEGAL SERVICES DEPARTMENT MEMORANDUM

**TO:** Dr. Larry Antonucci  
President/CEO

**CC:** Lee Memorial Health System Board of Directors

**FROM:** Mary McGillicuddy, Esq.  
General Counsel

**DATE:** August 24, 2023

**SUBJECT:** Commencement of an Evaluation

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### **Question Addressed**

Executive leadership of Lee Memorial Health System (“Lee Health”) asked the Lee Health Legal Services Department to provide legal advice regarding the following issue: whether there are any barriers that preclude the Lee Health Board of Directors from evaluating the benefit of converting Lee Health from a Florida governmental entity to a private non-profit entity under the health system’s recently amended Enabling Legislation.

### **Conclusion**

The Legal Services Department identified no legal barriers that should prevent the Board from evaluating the benefits of conversion. While conversion would require the health system to address numerous legal, regulatory, and financial impacts, none of them should prevent the Board from evaluating the conversion process if it so desires. The evaluation process would permit the Board to fully consider the merits of a potential conversion and allow an in-depth analysis, particularly in the areas of safety net programs and finance.

### **Discussion**

In providing the requested advice, the Legal Services Department reviewed the potential legal impact of an evaluation process on the following areas: (1) governance, (2) safety net programs, (3) finance, (4) sovereign immunity, and (5) other considerations (medical staff, community programs, operations, property ownership and human resources). We emphasize that the Florida Sunshine Law and Public Records Act continue to apply throughout this process.

#### **(1) Governance**

Converting from a governmental entity to a private entity would require changes to the health system’s Board governance structure. As a public entity, Lee Health’s governance structure is dictated by its Enabling Legislation. This includes such key areas as the public election of Board members, the health system’s boundaries, powers and authority, and oversight of health system finances and investments.

After conversion, Lee Health would be subject to Florida business law. Florida has a well-established body of statutory and case law that regulates private business entities that transact business in Florida. As of 2022, over half-a-million such corporate entities operated in Florida. Florida business law and the current Enabling Legislation are similar in many key aspects, including requiring Board oversight and establishing core authorities.

In addition, Florida business law requires private entities to enact their own governance documents, which could be modeled on elements of the Enabling Legislation as the Board directs. Perhaps most significantly, adopting a private status would remove restrictions on health care business and better position the health system to react quickly to the ever-changing healthcare landscape under the Board’s leadership. Please see the Health

## LEE HEALTH LEGAL SERVICES DEPARTMENT MEMORANDUM

System Governance Enabling Act Comparison, attached. The act of evaluating such a conversion would have no legal impact on the health system's current governance structure.

### (2) Safety Net Programs

Lee Health's commitment to supporting and participating in safety net healthcare programs is at the core of its duty to the people of Southwest Florida. That commitment will not change, regardless of whether Lee Health is a public or private entity.

Lee Health is an active participant in Florida's Medicaid program, and the evaluation of the conversion process will have no legal impact on that Medicaid participation. Similarly, the evaluation process will have no impact on the health system's continued participation in the 340B pharmacy program (which permits health systems serving large low-income populations to purchase certain medications at a discount), however the full impact of conversion will need to be considered during the evaluation process.

With regard to the federally qualified health center look-alike program ("FQHC"), the health system's current FQHC co-applicant designation is predicated on its status as a public entity. While the evaluation process will have no impact on the health system's FQHC program, the full impact of conversion on the health system's FQHC program will require in-depth analysis during the evaluation process.

The implications of the FQHC and 340B issues may have downstream effects for Specialty Pharmacy, but no independent issues have been identified with the specialty pharmacy service line related to conversion.

### (3) Finance

Lee Health's continued financial viability is critically important. The health system's finance personnel are best equipped to advise on the financial impact of a potential conversion. Even so, we identified no legal issues with the health system's finances that would preclude the Board from beginning the evaluation process.

As a public entity, the health system can directly issue tax exempt bonds to help fund capital projects. This ultimately enables the health system to repay its bond obligations at lower interest rates than general commercial bonds. As a nongovernmental entity, the health system would need to partner with a governmental entity to issue tax exempt debt for the health system's benefit. By way of example, Orlando Health (a private entity) uses this model to participate in tax exempt financing. Significantly, outside bond counsel has advised that the act of evaluating the benefits of a conversion process *would not* require any sort of action regarding the health system's existing bonds. System counsel has requested that outside bond counsel prepare a voluntary disclosure communication regarding the evaluation process to Lee Health's bond holders if the Board votes to commence the evaluation process.

Similarly, the act of evaluating a conversion would not impact the health system's ongoing use of intergovernmental transfer ("IGT") funding. If a conversion occurs, the health system's ability to participate in IGT funding would likely require new legal structures. But the evaluation process itself would have no impact one way or the other.

### (4) Sovereign Immunity

As a public entity, Lee Health is protected by Florida's sovereign immunity laws. In its current form as a public governmental entity, sovereign immunity provides Lee Health legal and financial protections for the entity and its employees. For employees, it means all negligence lawsuits must be brought against Lee Health and not against any of its employees. For Lee Health, potential damages are limited to \$200,000 per claim with an aggregate limit of \$300,000. Currently, Lee Health has a self-insured program combined with insurance protection for claims that exceed the sovereign immunity limits for covered losses.



## LEE HEALTH LEGAL SERVICES DEPARTMENT MEMORANDUM

If Lee Health converts to a private nonprofit entity, sovereign immunity would not apply to Lee Health or its employees. Lee Health would modify its insurance program to cover the nonprofit entity and its employees, just like all other non-government hospitals and health systems in Florida. That means, all Lee Health employees would be protected against personal financial liability in the same way they are today.

We are currently exploring whether sovereign immunity protections could be available through other options. We understand that some Florida safety net health systems have contracted with sovereign entities to provide safety net services. The Board may want to consider whether such a structure would be possible for Lee Health.

While sovereign immunity is a key issue to consider, evaluating the conversion process will not impact the health system's existing sovereign immunity protections.

### (5) Other Considerations

The following topics were reviewed and, based upon the preliminary analysis, it does not appear that conversion would materially impact these areas. Further, initiating the evaluation process does not have any impact on these areas.

- A. Medical Staff: There is no significant legal difference in how public and private health systems' medical staffs operate. Therefore, the current medical staff rules, regulations, and processes would remain compliant.
- B. Community Programs: A conversion should not impact the health system's community programs, including the Lee Health Foundation, its financial assistance program, or its Community Health Needs Analysis ("CHNA") requirements. The evaluation process would not impact these programs either.
- C. Clinical Operations: Conversion is not expected to materially impact the health system's residency programs, affiliation agreements, or occupational licenses. Initiating the evaluation process would have no legal impact on any of these areas.
- D. Property Ownership: Evaluating the conversion process would not impact the health system's current property ownership. We note that if a conversion occurs, the health system may not be eligible for the full range of property tax exemptions that it qualifies for as a governmental entity. That is one of the considerations the evaluation process would address.
- E. Human Resources: Converting from public to private status would result in the health system being subject to the same set of employment laws and regulations as other Florida private non-profit health systems. While conversion would not be expected to materially impact the health system's human resources practices, there will be operational impacts related to new laws and regulations applicable to private non-profit entities that differ from those governing a public entity. Evaluating the costs and benefits of conversion would have no legal impact.

# Health System Governance Enabling Act Comparison

	<b>Special District</b>	<b>Florida Non-Profit Corporation</b>
<b>Enabling Act Governs</b>	<ul style="list-style-type: none"> <li>• Yes. Chapter 2000-439, Laws of Florida, as amended by Chapter 2023-326, Laws of Florida (Enabling Act).</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> <li>• Chapter 617, Florida Statutes, governing corporations not for profit (NFP).</li> <li>• Subject to any applicable terms of negotiated agreement with Lee County Commission.</li> </ul>
<b>Entity Name</b>	<ul style="list-style-type: none"> <li>• Lee Memorial Health System d/b/a Lee Health. Enabling Act, Section 2.</li> </ul>	<ul style="list-style-type: none"> <li>• NFP decides the corporate name.</li> <li>• Subject to name limitations as set forth in section 617.0401, Florida Statutes (i.e., must contain “corporation” or “incorporated” or “Corp.” or “Inc.,” may not contain the word “company” or “co.,” and must be unique).</li> </ul>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>• The operation and maintenance of the public health system and the construction of health system facilities. Enabling Act, Section 3 &amp; Section 4.</li> </ul>	<ul style="list-style-type: none"> <li>• NFP sets forth the purpose or purposes for which the corporation is organized in the articles of incorporation. § 617.0202(1)(c), Fla. Stat.</li> </ul>
<b>Board of Directors</b>	<ul style="list-style-type: none"> <li>• Publicly elected. Enabling Act, Section 6.</li> </ul>	<ul style="list-style-type: none"> <li>• Not publicly elected.</li> <li>• Subject to Chapter 617, Florida Statutes. Many aspects are left to the choice of the entity through incorporation of such requirements in the Articles of Organization or Bylaws of the entity. For example, Directors can be appointed or elected by the Directors, or by Members of the Corporation, or by a class, chapter, or other organizational unit, or by region or other geographic grouping.</li> </ul>

<b>Eminent Domain</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 5.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>
<b>Public Records Act</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 7; Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>
<b>Public Meetings (Sunshine Law)</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 7; Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>
<b>Annual Audit Required</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 7.</li> </ul>	<ul style="list-style-type: none"> <li>• Not as a matter of law.</li> <li>• Could be required through the corporate documents or lenders. Different auditing standards would apply.</li> </ul>
<b>Board Officers</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 7.</li> </ul>	<ul style="list-style-type: none"> <li>• A corporation shall have the officers described in its articles of incorporation or its bylaws who shall be elected or appointed at such time and for such terms as provided in the articles or bylaws. In the absence of any such provisions, all officers shall be elected or appointed by the board of directors annually. § 617.0840, Fla. Stat.</li> </ul>
<b>Board Member Compensation and Benefits</b>	<ul style="list-style-type: none"> <li>• As designated in the enabling act. Enabling Act, Section 8.</li> </ul>	<ul style="list-style-type: none"> <li>• Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may fix the compensation of directors. § 617.08101, Fla. Stat.</li> </ul>
<b>Sovereign Immunity</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 10(8); Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>
<b>District Boundaries</b>	<ul style="list-style-type: none"> <li>• Lee County and as set forth in the Enabling Act, Sections 4 &amp; 11.</li> </ul>	<ul style="list-style-type: none"> <li>• Any state, territory, district, or possession of the United States or any foreign country. § 617.0302, Fla. Stat.</li> </ul>
<b>Establish a Medical Staff</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 9.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 395.0191, Fla. Stat.; 42 C.F.R § 482.12 (Conditions of Participation for Hospitals).</li> </ul>
<b>CEO/President</b>	<ul style="list-style-type: none"> <li>• Authorized by the enabling act. Enabling Act, Section 12.</li> </ul>	<ul style="list-style-type: none"> <li>• A corporation shall have the officers described in its articles of incorporation or its bylaws who shall be elected or appointed at such time and for such terms as provided in the articles or bylaws. In the absence of any such provisions, all officers shall be elected or appointed by the board of directors annually. § 617.0840, Fla. Stat.</li> </ul>

<b>Investments</b>	<ul style="list-style-type: none"> <li>As described in the Enabling Act, the Florida Constitution and Florida law governing local government investments and ventures. Enabling Act, Sections 4 and 13; Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>Generally, any legal investments and ventures. Certain loans prohibited where conflicts of interest exist between lender and borrower.</li> </ul>
<b>Revenue Bonds</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Sections 14 &amp; 17; Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>NFP utilizes private financing and may partner with government entities to issue tax exempt bonds.</li> </ul>
<b>General Obligation Bonds Subject to Voter Approval</b>	<ul style="list-style-type: none"> <li>As authorized in the enabling act. Enabling Act, Sections 15, 16 &amp; 17.</li> </ul>	<ul style="list-style-type: none"> <li>Not available directly to NFP corporation.</li> </ul>
<b>Powers – to pay necessary expenses</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(1).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – sue and be sued</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(2).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – create or participate in other entities to further the purposes and best interests of the system</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(3).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – to make or authorize the CEO to make, contracts of all kinds.</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(4)</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – accept gifts or other conveyances</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(5).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – borrow money</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(6); Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – derivative agreements</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(7).</li> </ul>	<ul style="list-style-type: none"> <li>Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – settle claims consistent with the Florida Waiver of</b>	<ul style="list-style-type: none"> <li>Yes. Enabling Act, Section 10(8).</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable to private entity.</li> </ul>

<b>Sovereign Immunity Act</b>		
<b>Powers – take any other action consistent with the efficient operation of the system</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 10(9); Florida Constitution and laws of Florida.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – establish policies to provide treatment without charge to those found to be without means to pay</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 11.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – establish charges</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 11.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – Adopt bylaws, rules, guidelines or policies</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 12.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 617.0302, Fla. Stat.</li> </ul>
<b>Powers – authorize fund payment methods</b>	<ul style="list-style-type: none"> <li>• Yes. Enabling Act, Section 13.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. § 617.0302, Fla. Stat.</li> </ul>

*LMHS Enabling Legislation*  
*Chapter 2023-326*  
*Independent Evaluation*

*Presented by:*

Michael Nachev, Vice President Government Relations

# Overview of Independent Evaluation Entity



- In evaluating the benefits of converting Lee Memorial Health System to a nonprofit entity, the system board must:
- (2)(b) Contract with an independent entity that has at least five years of experience conducting comparable evaluations of hospital organizations similar in size and function to Lee Memorial Health System to conduct the evaluation according to applicable industry best practices. The independent entity may not have any current affiliation with or financial involvement in Lee Memorial Health System or with any current member of the system board.
- (3) The evaluation must be completed and a final report presented to the system board no later than 180 days after the date on which the vote is taken by the system board to evaluate the conversion.

# The Enabling Act Sets the Qualifications for the Independent Evaluator

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- Known independent entities with relevant evaluation experience:
  - (1) Deloitte
  - (2) Ernst & Young
  - (3) Kaufman Hall
  - (4) KPMG
  - (5) Ponder & Co.
  - (6) PWC



# Evaluation Process



- One of the potential independent evaluator entities, Kaufman Hall, is presenting today.
- Kaufman Hall conducted recent reviews of public health systems contemplating or executing conversions to nonprofit entities nationally.
- Kaufman Hall will present information to the Board about the evaluation process and engage the Board in a discussion about what evaluation entails. Neither Kaufman Hall nor any other firm has been engaged to conduct an evaluation.
- If the Board determines to commence an evaluation, two motions are presented for the Board's consideration to enable the commencement.



# Kaufman Hall Evaluation Process

*KaufmanHall*



# Lee Memorial Health System Non-Profit Conversion Evaluation

Fort Myers, FL | August 2023

# Our Understanding of the Situation

- ✓ Recent updates to **Lee Health's Enabling Legislation** authorizes the **Board of Directors ("Board") to evaluate the benefits** of converting to a private, non-profit entity
- ✓ Amidst the backdrop of broader industry transformation, the **Board is considering a motion to authorize an evaluation of such implications**
- ✓ To support this process, the **Board must engage an independent entity to conduct a 180-day evaluation**, at which point the Board will vote on whether to proceed
- ✓ If the evaluation indicates a positive community impact, the District may choose to negotiate with the County Commission to reach an agreement in support of the conversion
- ✓ Lee Health is considering alternatives to support the evaluation process, of which Kaufman Hall has been asked to share our experience in a similar matter
- ✓ The following pages outline (1) **key questions** the Board will need to answer along the way, (2) **how Kaufman Hall has recently supported** a similar conversion process, and (3) a **straw model timeline**, for consideration and discussion

# Key Questions to Address During the Initial 180-Day Non-Profit Conversion Evaluation Process

Developing a succinct, carefully articulated response to each of the below questions will be critical to the public evaluation process



**Why Now?**



**What are Impacts to Our Community?**



**What Are the Benefits for Lee Health?**



**What Does Lee Health Give Up?**



**How Does this Impact our Mission?**

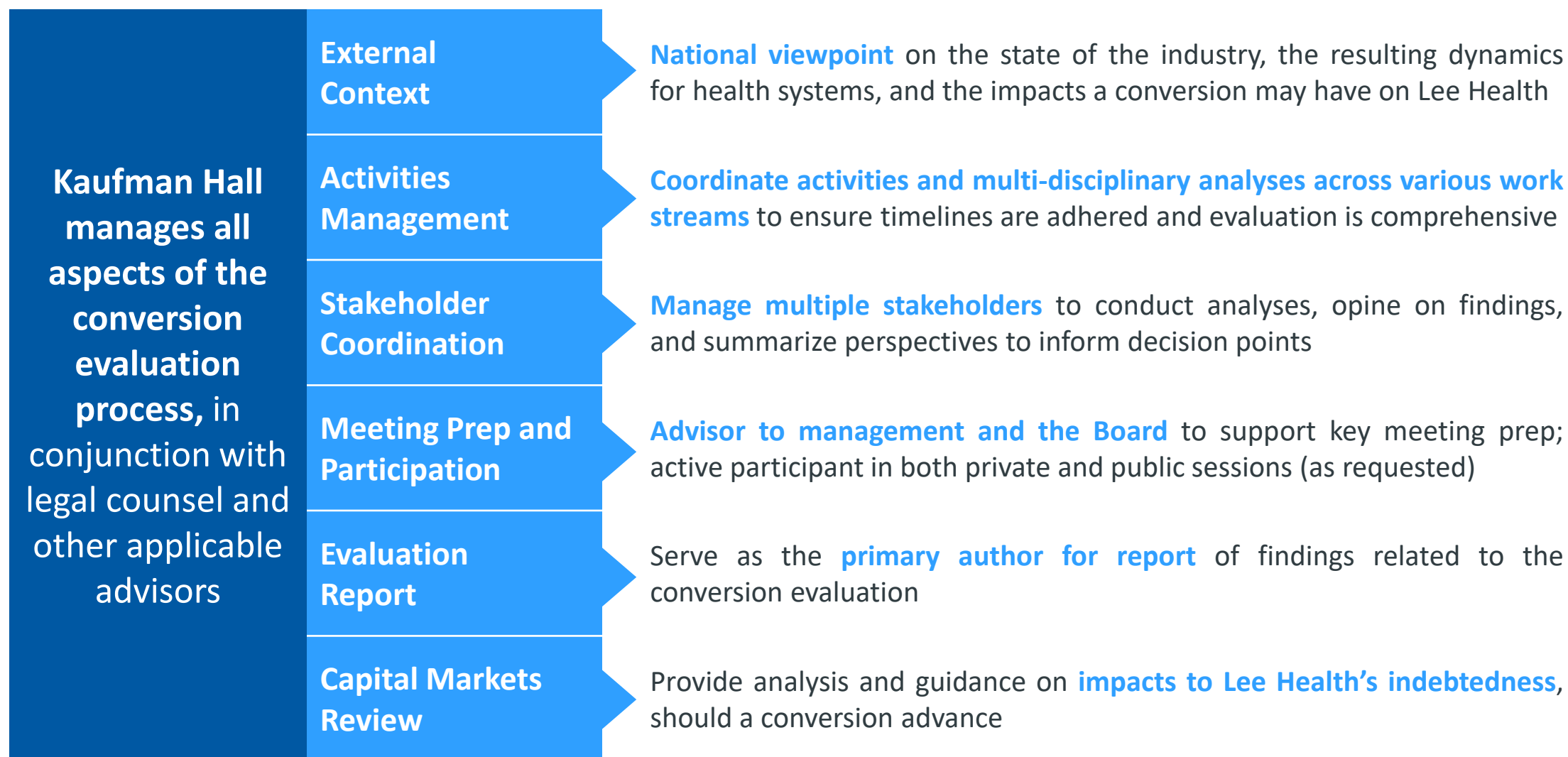


**How Does a Conversion Occur?**



**Should Lee Health Proceed?**

# Kaufman Hall's Recent Role in a Similar Conversion Processes



# Sample Evaluation Deliverable: Kootenai Health's "White Paper" to Evaluate Conversion from a Public District Hospital to a Non-Profit

## Representative Excerpts from White Paper

### Organizational Background

#### The Kootenai Health Transformation

	2010	2022
Hospitals	1 owned	3 owned, 1 managed
Beds	246	392
Employed Specialties	Less than 10	30+
Employed Providers	Less than 50	300+
Discharges	13,000	16,000+
ER Visits	49,000	60,000+
Revenue	\$282M	\$800M+
Employees	1,800	4,000+

**Outpatient Services:** Ambulatory Surgery Center, Urgent Care Clinics, Infusion Centers, Endoscopy Center, Hand Surgery Center, Wound Care Center, Advanced Imaging, Retail Pharmacy

**Capital Investments:** More than \$350M in strategic investment since 2012 funded by operations, Kootenai Health Foundation contributions (\$30M), and debt, with no property taxes levied since 1995

**Kootenai Health is the only full service hospital in North Idaho providing Emergency Medicine, Level II Trauma, Intensive Care, and Behavioral Health services. The next two largest hospitals, St. Joseph Regional Medical Center and NW Specialty Hospital are owned by out-of-state, for-profit corporations.**

### Strategic Considerations

#### How Could a Conversion Be Better for Our Patients and Community?

KEY ELEMENT	IMPLICATIONS
<b>Critical Provider for North Idaho</b>	<ul style="list-style-type: none"> <li>KH's clinical offering and geographic positioning has outgrown the District Hospital model: KH is the comprehensive regional health system for patients across all of North Idaho (regardless of ability to pay), and the patient base has broadened beyond Kootenai County</li> <li>During the COVID-19 pandemic in 2021, Washington stopped accepting critical care patients from North Idaho, which reinforced KH's role as a "safety net" provider for our patients and communities</li> </ul>
<b>Ongoing Community Benefit</b>	<ul style="list-style-type: none"> <li>KH provides \$230+ million in subsidized community benefit annually through numerous programs such as charity care, subsidized community services (e.g., Idaho Crisis Center), medical transportation services, free health screenings, and support groups</li> <li>Community benefit programs would be continued with potential to expand community partnerships</li> <li>All KH excess revenue would continue to be reinvested into the community's healthcare needs or set aside in reserve for future investment</li> </ul>
<b>Long-Term Viability for an Economic Engine</b>	<ul style="list-style-type: none"> <li>KH would be better positioned to execute on various strategic and operational initiatives that support the organization's long-term viability</li> <li>KH generates significant economic value for its community, estimated at \$500 million!</li> <li>KH is the largest employer in the county with more than 4,000 employees and \$354 million<sup>1</sup> in payroll and payroll taxes to the community annually</li> <li>Long-term viability protects North Idaho's access to critical healthcare services</li> </ul>
<b>Access to New Capabilities</b>	<ul style="list-style-type: none"> <li>KH would be better positioned to develop new capabilities in partnership with healthcare organizations</li> </ul>

### Conversion Trends

#### Governmental Ownership Has Decreased Over Time and Now Represents 19% of Community Hospitals Across the U.S.

**Community Hospital Ownership in Idaho & United States (2000-2020)**

- Idaho - Public: 21% (2000) to 19% (2020)
- Idaho - Private Non-Profit: 26% (2000) to 37% (2020)
- U.S. - Public: 67% (2000) to 37% (2020)

**Governmental ownership has decreased over time and now represents 19% of community hospitals across the U.S.**

**Community Hospital Ownership in Idaho & United States (2000-2020)**

- As organizations navigate the current and future operating environment, public / governmental ownership of hospitals continues to decrease in favor of private ownership / operation
- When compared to their for-profit counterparts, a majority of hospitals converting to non-profit were larger, located in more populated areas, and in more competitive markets
- In the Pacific Northwest, there are only two government / district owned community hospitals with 300+ beds
- Select empirical outcomes from the conversions include:

Category	Idaho - Public	Idaho - Private Non-Profit	U.S. - Public
Increase in Operating Margins	6.1%	-	-
Reduction in Length of Stay	12%	-	-
Uncompensated Charity Care / Bad Debt	No Change	-	-
Increased Financial Asset Efficiency	-	Increased	-

### A Decade of Major Investments in Growth

#### Strategic Growth Initiatives and Financial Impact (\$550M in Strategic Capital Investments 2013-2021)

2013-2015	2016-2018	2019-2023
<b>MFP 1 - East Expansion \$37M</b> <ul style="list-style-type: none"> <li>11: Birthing Center, NICU</li> <li>20: 32-bed Ortho/Neuro Unit</li> <li>31: Shelled out space</li> </ul>	<b>MFP 2 - MDR/ED Expansion \$40M</b> <ul style="list-style-type: none"> <li>Expanded ED and added 11 treatment rooms</li> <li>Expanded Pre-Op/PACU space and added 3 operating rooms</li> </ul> <b>Foot Path Medical Park Expansion \$11M</b> <ul style="list-style-type: none"> <li>Expanded primary and specialty care services, expanded subspecialty and ancillary services</li> </ul> <b>MFP 3 - SE Inpatient Unit Build-Out \$12M</b> <ul style="list-style-type: none"> <li>Added 23-bed inpatient units</li> </ul>	<b>MFP 4 - MDR / Heart Center Expansion \$40M</b> <ul style="list-style-type: none"> <li>Expanding MDR to add 2 additional operating rooms (2023)</li> <li>Adding additional Card Lab and EP Lab (2023)</li> </ul> <b>Eng. Construction Unit \$6M</b> <ul style="list-style-type: none"> <li>Implemented Epic across Kootenai Health, Kootenai Clinic, KIC, and KIC</li> </ul>

**While operating revenue has increased by 140% since 2013, KH has not assessed any property taxes in 25+ years.**

### What Are the Benefits for Kootenai Health?

KEY ELEMENT	IMPLICATIONS
<b>Nimble, More Durable Governance Structure</b>	<ul style="list-style-type: none"> <li>Enables governance continuity and longer-term strategic planning focus without the limitations of a two-year election cycle</li> <li>Streamlines process to seat experienced, qualified individuals from a broader geography, consistent with the stakeholders KH serves across North Idaho, to help navigate the growing industry complexity</li> <li>Ability to convene without being subject to open meeting requirements that may otherwise hinder nimble decision-making, hinder discussion of sensitive topics, and/or require disclosure of competitively sensitive material</li> </ul>
<b>Strategic Planning Efficiency and Effectiveness</b>	<ul style="list-style-type: none"> <li>By removing open meeting requirements and/or public records disclosures, supports more candid communication between management, community members, and the KH Board of Trustees, improving decision-making efficiency</li> <li>Eliminates in- and out-of-state competitor access to the Board of Trustees' deliberations and strategic decisions</li> </ul>
<b>Financial Flexibility</b>	<ul style="list-style-type: none"> <li>Enhances access to capital with a more investor-friendly structure and a larger investor universe</li> <li>Improve access to diversified investment opportunities prohibited by the Hospital District structure</li> </ul>
<b>Organizational Stability</b>	<ul style="list-style-type: none"> <li>Supports leadership recruitment and retention efforts that have historically been influenced by the instability caused by election cycle fluctuation</li> <li>Enhances physician recruitment efforts due to a more durable governance and leadership construct that is not subject to the political election cycle</li> </ul>

### Only 2.3% of Government Owned Hospitals Share Similar Characteristics to Kootenai Health as a District-Owned 300+ Bed Hospital

#### U.S. Hospitals by Ownership Type

**Of the 950+ hospitals with public / governmental ownership, only 2.3% are hospital districts with 300+ beds (i.e., similar to KH)**

- Government institutions are actively evaluating hospital transitions to non-profit status as:
  - Operating environment faces increasing financial pressure
  - Substantial liability loads further augment risk and increasing interest rates
  - The largest portion of Americans since 2020 have expressed preference for reduced tax burden according to the Gallup Poll
- Several public / government owned hospitals of similar characteristics to Kootenai Health are evaluating and/or have recently executed 501(c)(3) transitions

# Sample Evaluation Deliverable: Kootenai Health's "White Paper" to Evaluate Conversion from a Public District Hospital to a Non-Profit (continued)

## Representative Excerpts from White Paper

### Overview of State Statute

#### Background on the Idaho Statutes

**Statement of Purpose** This joint legislative statute to all district hospitals the same options already available to county hospitals (since 1986) to lease or convey property to a qualified nonprofit for the continuity of service in the community provides options for district hospitals to enable them to address current and future fiscal challenges.

**The Idaho Statutes became effective on July 1, 2022 following:**

- FEB. 10 Law introduced to Idaho House Health & Welfare Committee
- FEB. 23 Approved in the Idaho House of Representatives 6 (68)
- MAR. 16 Approved in the Idaho Senate (84-1)
- MAR. 18 Signed by Speaker of the Idaho House
- MAR. 21 Signed by President of the Idaho Senate
- MAR. 24 Signed into law by Governor of Idaho
- JULY 1 Law became effective

Acting in the best interest of their constituents, the elected Representatives and Senators of Kootenai County and North Idaho joined their fellow legislators in unanimously passing the Idaho Statutes. Additionally, the elected Governor, acting on behalf of Idaho constituents, signed the act into law.

### Conversion Merits & Considerations

#### Select Merits and Strategic Benefits for Kootenai Health

- 1 Create more flexibility to meet the growing needs of North Idahoans
- 2 Strengthen governance through greater continuity, enhanced nimbleness, longer-term commitments, and broader community representation
- 3 Streamline strategic opportunities by protecting competitively sensitive information
- 4 Increase financial flexibility to support long-term strategic objectives

### Diligence Summary

#### Overview of the Evaluation Process

Kootenai Health investigated and evaluated the merits & considerations of the potential conversion across numerous workstreams

Work Streams to Address Key Diligence Questions	Working Group Participants Consist of Numerous Subject Matter Experts																				
<ol style="list-style-type: none"> <li>1 Legal &amp; Regulatory: What is the optimal structural approach and the related considerations?</li> <li>2 Governance: What is the proposed governance structure?</li> <li>3 Affiliated Partners: How would a conversion impact our strategic partnerships?</li> <li>4 Contracts / Agreements: What are the impacts on our contracts and the related remedies?</li> <li>5 Employment: How would staff and employment practices be impacted?</li> <li>6 Foundation: What are the implications for the Kootenai Health Foundation?</li> <li>7 Finance: How does a conversion impact the financial structure / profile?</li> <li>8 Community: How does a conversion impact our ability to serve the community?</li> </ol>	<table border="1"> <thead> <tr> <th>Participant</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>Kootenai Health management</td> <td>Mission and vision alignment</td> </tr> <tr> <td>Poisinelli</td> <td>Legal: transaction advisory &amp; diligence</td> </tr> <tr> <td>Kaufman Hall</td> <td>Advisor: process management and capital markets support</td> </tr> <tr> <td colspan="2"><b>Special Counsels / Advisors</b></td> </tr> <tr> <td>Dorsey Whitney</td> <td>Transaction structure, legal and regulatory impacts</td> </tr> <tr> <td>Witherspoon Kelley</td> <td>Employment matters &amp; general counsel support</td> </tr> <tr> <td>Davis Wright Tremaine</td> <td>Benefits</td> </tr> <tr> <td>Stoe Rives</td> <td>Legal: foundation advisory &amp; diligence</td> </tr> <tr> <td>Chapman and Cutler</td> <td>Bond advisory</td> </tr> </tbody> </table>	Participant	Role	Kootenai Health management	Mission and vision alignment	Poisinelli	Legal: transaction advisory & diligence	Kaufman Hall	Advisor: process management and capital markets support	<b>Special Counsels / Advisors</b>		Dorsey Whitney	Transaction structure, legal and regulatory impacts	Witherspoon Kelley	Employment matters & general counsel support	Davis Wright Tremaine	Benefits	Stoe Rives	Legal: foundation advisory & diligence	Chapman and Cutler	Bond advisory
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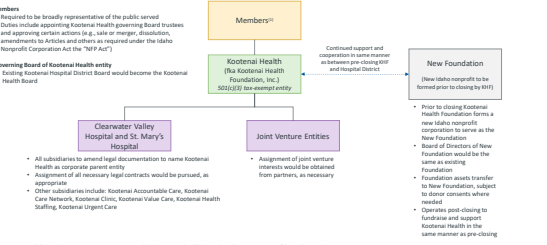
#### Summary of Select Key Elements in the Idaho Statutes

- The elected board of trustees of a hospital district may convey or lease hospital district real property, facilities, and the personal property and equipment therein subject to the following conditions:
- ✓ The conveyance or lease shall be to a nonprofit corporation.
  - ✓ The governing body of the nonprofit corporation must be composed initially of the incumbent trustees of the hospital district board of trustees as individuals.
  - ✓ The articles of incorporation must provide for a membership of the corporation (the "Member(s)") that is: (i) broadly representative of the public it serves; or (ii) a single nonprofit corporate member having articles of incorporation that provide for a membership of the corporation that is broadly representative of the public it serves.
  - ✓ The articles must further provide for the selection of the governing body by the Members or exclusively by a parent corporation that itself is the Member, with voting power & not by the governing body itself, except to fill a vacancy for an unexpired term.
  - ✓ The Idaho Statutes provide that the Members would appoint individuals to serve on the Kootenai Health Foundation (dba Kootenai Health) Board of Trustees.
  - ✓ The Foundation (dba Kootenai Health) must continue to provide care for indigent patients and receive any person falling sick or maimed within the hospital district.
  - ✓ The conveyance or lease agreement must provide for the transfer of patients, staff, and employees and for the continuing administration of any trusts or bequests pertaining to the existing hospital district.
  - ✓ If a conveyed hospital ceases to be used as a non-profit hospital, then it shall revert to the ownership of the hospital district. If the hospital is sold, the proceeds shall be used to erect or enlarge another non-profit hospital.

#### Strategic Considerations for the Community

- 1 **Elimination of taxing authority.** While KH has not utilized this ability since 1995, other similarly situated health systems have done so (e.g., Evergreen Health in Kirkland, WA generates \$28 million of tax revenue). Further, taxes are limited to residents in Kootenai County, despite KH serving a broader set of stakeholders and their respective healthcare needs.
- 2 **Elimination of sovereign immunity.** As a public hospital district, KH currently enjoys certain protections such as those outlined in the Idaho Tort Claims Act. Examples of key protections include no punitive damages allowed against KH, etc.
- 3 **Elimination of eminent domain.** As a public hospital district, KH has the ability to utilize eminent domain, which allows KH to take private property for public use for appropriate compensation. As a private institution, KH would no longer have this ability.
- 4 **Promote long-term viability of local healthcare.** Enabling the aforementioned benefits would support KH's long-term success as a healthcare system serving the community of greater Kootenai County.

#### Contemplated Future Legal State for Kootenai Health





# Straw Model Evaluation Timeline: For Discussion

Activity	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Current state orientation and onboarding	Active					
Develop working group and engage other advisors	Active					
Conduct diligence on potential conversion		Active	Active	Active		
Board conducts a public hearing				Active	Active	
Develop and review draft reports with key stakeholders					Active	Active
Publish final report for Board review						Active

# Kaufman Hall: A Healthcare Focused Integrated Advisory Services Platform to Address the Industry's Toughest Challenges

For almost 40 years, Kaufman Hall has provided independent, objective insights grounded in sound data and analysis to help clients fulfill their missions, achieve their goals, and tackle their toughest problems.



## Strategy

- Enterprise strategy
- Partnership strategy
- Organizational design and operating strategy
- Integrated strategic financial planning
- Payer-provider strategy and partnerships
- Consumer-centric transformation
- Clinical excellence
- Business growth
- Private equity assessment

## Partnerships, Mergers & Acquisitions

- Sell-side services
- Facilitated partnerships
- Buy-side services
- Affiliations and joint ventures

## Treasury & Capital Markets

- Credit and capital management
- Treasury operations
- Debt and derivative advisory
- Strategic resource allocation
- Invested asset strategy
- Real estate capital markets

## Performance Improvement

- Workforce
- Non-labor strategy
- Care transitions
- Revenue cycle process
- Clinical variation
- Merger-integration services
- Delivery network optimization

## Financial Planning

- Integrated strategic financial planning
- Capital planning solutions
- Business case and project ROI analysis
- Strategic partnership analytics and synergies analysis

## Clinical Documentation Improvement

- Inpatient
- Outpatient
- Professional fee

## Physician Enterprise

- Structure
- Operations
- Alignment
- Partnerships

## Real Estate

- Investment sales & institutional monetization
- Sale/leasebacks
- Partnership ownership recapitalization
- Joint venture capital raising
- Debt capital raising
- Developer/capital selection
- Owned portfolio strategic assessment and valuation

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**LEE HEALTH**  
**BOARD OF DIRECTORS**  
**RECOMMENDED FOR BOARD ACTION**

(Action includes Acceptance, Approval, Adoption, etc.)

Keep form to **one** page, **EMAIL to: [boardofdirectors@leehealth.org](mailto:boardofdirectors@leehealth.org)** by Noon  
Eight (8) days PRIOR to presenting.

**DATE: August 31, 2023**

**LEGAL SERVICE REVIEW? YES\_X\_ NO\_\_**

**SUBJECT: Independent Evaluation of Health System Conversion**

**REQUESTOR & TITLE: Dr. Larry Antonucci, President and Chief Executive Officer**

**PREVIOUS BOARD ACTION ON THIS ITEM (IF ANY)**

*(justification and/or background for recommendations – internal groups which support the recommendation)*  
None.

**SPECIFIC PROPOSED MOTIONS:**

- (1) Motion to authorize an evaluation of the benefits to the residents of Lee County of converting Lee Health to a Florida not-for-profit corporation, in accordance with section 18(2) of the Enabling Legislation.
- (2) Motion to authorize the President/CEO to execute a contract with an independent entity to conduct the evaluation, in accordance with section 18(2)(b) of the Enabling Legislation, and subject to review by board counsel and system counsel.

**FINANCIAL IMPLICATIONS** Budgeted Account \_\_\_\_ Non-Budgeted X  
*(Annual Project Budget and Total Project Budget)*

**STAFFING & OPERATIONAL IMPLICATIONS**

*(including FTEs, facility needs, etc.)*  
None.

**PURPOSE/REASON FOR RECOMMENDATION**

The recent updates to Lee Health’s Enabling Legislation authorize the Lee Health Board of Directors to commence an evaluation of the benefits to the residents of Lee County of converting Lee Memorial Health System to a nonprofit entity (Florida not-for-profit corporation operating under chapter 617, Florida Statutes). Preliminary research identified no barriers that would prevent the Board from evaluating the potential benefits of conversion.

**SUMMARY**

If the Board of Directors elects to conduct an evaluation under Section 18 of the Enabling Legislation, the Board must:

1. Conduct a public hearing to allow Lee County residents an opportunity to be heard;
2. Contract with a qualified experienced independent entity to conduct an evaluation; and
3. Publish all documents considered by the Board on the Lee Health website.

The evaluation must be completed, and a final report presented to the Board within 180 days of the decision to conduct the evaluation. Within 120 days of the Board’s receipt of the final evaluation report, the Board would determine whether the interests of the Lee County residents are best served by converting to a nonprofit entity.

Administration identified evaluation firms with experience in evaluating conversions of public entities to nonprofit organizations. One of those firms, Kaufman Hall, will present information to the Board about the evaluation process and engage the Board in a discussion about what evaluation entails. Neither Kaufman Hall, nor any other firm has been engaged to conduct an evaluation.

If the Board determines to commence an evaluation, two motions are presented for the Board’s consideration to enable the commencement.

