

2014 -- S 2517

=====
LC004775
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

—————
A N A C T

RELATING TO HEALTH AND SAFETY - DETERMINATION OF NEED FOR NEW
HEALTHCARE EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES

Introduced By: Senator Roger Picard

Date Introduced: February 27, 2014

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-15-2 and 23-15-6.1 of the General Laws in Chapter 23-15
2 entitled "Determination of Need for New Health Care Equipment and New Institutional Health
3 Services" are hereby amended to read as follows:

4 **23-15-2. Definitions.** -- As used in this chapter:

5 (1) "Affected person" means and includes the person whose proposal is being reviewed,
6 or the applicant, health care facilities located within the state which provide institutional health
7 services, the state medical society, the state osteopathic society, those voluntary nonprofit area-
8 wide planning agencies that may be established in the state, the state budget office, the office of
9 health insurance commissioner, any hospital or medical service corporation organized under the
10 laws of the state, the statewide health coordinating council, contiguous health systems agencies,
11 and those members of the public who are to be served by the proposed new institutional health
12 services or new health care equipment.

13 (2) "Cost impact analysis" means a written analysis of the effect that a proposal to offer
14 or develop new institutional health services or new health care equipment, if approved, will have
15 on health care costs and shall include any detail that may be prescribed by the state agency in
16 rules and regulations.

17 (3) "Director" means the director of the Rhode Island state department of health.

18 (4) (i) "Health care facility" means any institutional health service provider, facility or

1 institution, place, building, agency, or portion of them, whether a partnership or corporation,
2 whether public or private, whether organized for profit or not, used, operated, or engaged in
3 providing health care services, which are limited to hospitals, nursing facilities, home nursing
4 care provider, home care provider, hospice provider, inpatient rehabilitation centers (including
5 drug and/or alcohol abuse treatment centers), certain facilities providing surgical treatment to
6 patients not requiring hospitalization (surgi-centers, multi-practice physician ambulatory surgery
7 centers in excess of two (2) operating rooms and multi-practice podiatry ambulatory surgery
8 centers in excess of two (2) operating rooms) and facilities providing inpatient hospice care.
9 Single-practice physician or podiatry ambulatory surgery centers (with two (2) or less operating
10 rooms) (as defined in subdivisions 23-17-2(13) and 23-17-2(14), respectively) are exempt from
11 the requirements of chapter 15 of this title; provided, however, that such exemption shall not
12 apply if a single-practice physician or podiatry ambulatory surgery center is established by a
13 medical practice group (as defined in section 5-37-1) within two (2) years following the
14 formation of such medical practice group, when such medical practice group is formed by the
15 merger or consolidation of two (2) or more medical practice groups or the acquisition of one
16 medical practice group by another medical practice group. The term "health care facility" does
17 not include Christian Science institutions (also known as Christian Science nursing facilities)
18 listed and certified by the Commission for Accreditation of Christian Science Nursing
19 Organizations/Facilities, Inc.

20 (ii) Any provider of hospice care who provides hospice care without charge shall be
21 exempt from the provisions of this chapter.

22 (5) "Health care provider" means a person who is a direct provider of health care
23 services (including but not limited to physicians, dentists, nurses, podiatrists, physician assistants,
24 or nurse practitioners) in that the person's primary current activity is the provision of health care
25 services for persons.

26 (6) "Health services" means organized program components for preventive, assessment,
27 maintenance, diagnostic, treatment, and rehabilitative services provided in a health care facility.

28 (7) "Health services council" means the advisory body to the Rhode Island state
29 department of health established in accordance with chapter 17 of this title, appointed and
30 empowered as provided to serve as the advisory body to the state agency in its review functions
31 under this chapter.

32 (8) "Institutional health services" means health services provided in or through health
33 care facilities and includes the entities in or through which the services are provided.

34 (9) "New health care equipment" means any single piece of medical equipment (and any

1 components which constitute operational components of the piece of medical equipment)
2 proposed to be utilized in conjunction with the provision of services to patients or the public, the
3 capital costs of which would exceed two million two hundred fifty thousand dollars (\$2,250,000);
4 provided, however, that the state agency shall exempt from review any application which
5 proposes one for one equipment replacement as defined in regulation. Further, beginning July 1,
6 2012 and each July thereafter the amount shall be adjusted by the percentage of increase in the
7 consumer price index for all urban consumers (CPI-U) as published by the United States
8 department of labor statistics as of September 30 of the prior calendar year.

9 (10) "New institutional health services" means and includes:

10 (i) Construction, development, or other establishment of a new health care facility.

11 (ii) Any expenditure except acquisitions of an existing health care facility which will not
12 result in a change in the services or bed capacity of the health care facility by or on behalf of an
13 existing health care facility in excess of five million two hundred fifty thousand dollars
14 (\$5,250,000) which is a capital expenditure including expenditures for predevelopment activities;
15 provided further, beginning July 1, 2012 and each July thereafter the amount shall be adjusted by
16 the percentage of increase in the consumer price index for all urban consumers (CPI-U) as
17 published by the United States department of labor statistics as of September 30 of the prior
18 calendar year.

19 (iii) Where a person makes an acquisition by or on behalf of a health care facility or
20 health maintenance organization under lease or comparable arrangement or through donation,
21 which would have required review if the acquisition had been by purchase, the acquisition shall
22 be deemed a capital expenditure subject to review.

23 (iv) Any capital expenditure which results in the addition of a health service or which
24 changes the bed capacity of a health care facility with respect to which the expenditure is made,
25 except that the state agency may exempt from review by rules and regulations promulgated for
26 this chapter any bed reclassifications made to licensed nursing facilities and annual increases in
27 licensed bed capacities of nursing facilities that do not exceed the greater of ten (10) beds or ten
28 percent (10%) of facility licensed bed capacity and for which the related capital expenditure does
29 not exceed two million dollars (\$2,000,000).

30 (v) Any health service proposed to be offered to patients or the public by a health care
31 facility which was not offered on a regular basis in or through the facility within the twelve (12)
32 month period prior to the time the service would be offered, and which increases operating
33 expenses by more than one million five hundred thousand dollars (\$1,500,000), except that the
34 state agency may exempt from review by rules and regulations promulgated for this chapter any

1 health service involving reclassification of bed capacity made to licensed nursing facilities.
2 Further beginning July 1, 2012 and each July thereafter the amount shall be adjusted by the
3 percentage of increase in the consumer price index for all urban consumers (CPI-U) as published
4 by the United States department of labor statistics as of September 30 of the prior calendar year.

5 (vi) Any new or expanded tertiary or specialty care service, regardless of capital expense
6 or operating expense, as defined by and listed in regulation, the list not to exceed a total of twelve
7 (12) categories of services at any one time and shall include full body magnetic resonance
8 imaging and computerized axial tomography; provided, however, that the state agency shall
9 exempt from review any application which proposes one for one equipment replacement as
10 defined by and listed in regulation. Acquisition of full body magnetic resonance imaging and
11 computerized axial tomography shall not require a certificate of need review and approval by the
12 state agency if satisfactory evidence is provided to the state agency that it was acquired for under
13 one million dollars (\$1,000,000) on or before January 1, 2010 and was in operation on or before
14 July 1, 2010.

15 (11) "Person" means any individual, trust or estate, partnership, corporation (including
16 associations, joint stock companies, and insurance companies), state or political subdivision, or
17 instrumentality of a state.

18 (12) "Predevelopment activities" means expenditures for architectural designs, plans,
19 working drawings and specifications, site acquisition, professional consultations, preliminary
20 plans, studies, and surveys made in preparation for the offering of a new institutional health
21 service.

22 (13) "State agency" means the Rhode Island state department of health.

23 (14) "To develop" means to undertake those activities which, on their completion, will
24 result in the offering of a new institutional health service or new health care equipment or the
25 incurring of a financial obligation, in relation to the offering of that service.

26 (15) "To offer" means to hold oneself out as capable of providing, or as having the
27 means for the provision of, specified health services or health care equipment.

28 **23-15-6.1. Action subsequent to review.** -- Development of any new institutional health
29 services or new health care equipment approved by the state agency must be initiated within one
30 year of the date of the approval and may not exceed the maximum amount of capital expenditures
31 specified in the decision of the state agency without prior authorization of the state agency. The
32 state agency, with the advice of the health services council, shall adopt procedures for the review
33 of the applicant's failure to develop new institutional health services or new health care
34 equipment within the timeframe and capital limitation stipulated in this section, and for the

1 withdrawal of approval in the absence of a good faith effort to meet the stipulated timeframe. [The](#)
2 [director of health is authorized to impose fines of up to two thousand five hundred dollars](#)
3 [\(\\$2,500\) on all applicants that fail to comply with the conditions for approval of institutional](#)
4 [health services or healthcare equipment pursuant to the provisions of § 23-15-4.](#)

5 SECTION 2. Sections 23-17.14-3, 23-17.14-8, 23-17.14-11, 23-17.14-12.1 and 23-17.14-
6 34 of the General Laws in Chapter 23-17.14 entitled "The Hospital Conversions Act" are hereby
7 amended to read as follows:

8 **23-17.14-3. Purpose of provisions.** -- The purpose of this chapter is to:

9 (1) Assure the viability of a safe, accessible and affordable healthcare system that is
10 available to all of the citizens of the state [with an emphasis on population health improvement as](#)
11 [the overriding objective](#);

12 (2) To establish a process to review whether for-profit hospitals will maintain, enhance,
13 or disrupt the delivery of healthcare in the state and to monitor hospital performance to assure that
14 standards for community benefits continue to be met;

15 (3) To establish a review process and criteria for review of hospital conversions;

16 (4) To clarify the jurisdiction and the authority of the department of health to protect
17 public health and welfare and the department of attorney general to preserve and protect public
18 and charitable assets in reviewing both hospital conversions which involve for-profit corporations
19 and hospital conversions which include only not-for-profit corporations; and

20 (5) To provide for independent foundations to hold and distribute proceeds of hospital
21 conversions consistent with the acquiree's original purpose or for the support and promotion of
22 health care and social needs in the affected community.

23 **23-17.14-8. Review process and review criteria by department of health for**
24 **conversions involving for-profit corporation as acquiror.** -- (a) The department shall review

25 all proposed conversions involving a hospital in which one or more of the transacting parties
26 involves a for-profit corporation as the acquiror and a not-for-profit corporation as the acquiree.

27 (b) In reviewing an application for a conversion involving hospitals in which one or
28 more of the transacting parties is a for-profit corporation as the acquiror the department shall
29 consider the following criteria:

30 (1) Whether the character, commitment, competence, and standing in the community, or
31 any other communities served by the proposed transacting parties, are satisfactory;

32 (2) Whether sufficient safeguards are included to assure the affected community
33 continued access to affordable care;

34 (3) Whether the transacting parties have provided clear and convincing evidence that the

1 new hospital will provide health care and appropriate access with respect to traditionally
2 underserved populations in the affected community;

3 (4) Whether procedures or safeguards are assured to insure that ownership interests will
4 not be used as incentives for hospital employees or physicians to refer patients to the hospital;

5 (5) Whether the transacting parties have made a commitment to assure the continuation
6 of collective bargaining rights, if applicable, and retention of the workforce;

7 (6) Whether the transacting parties have appropriately accounted for employment needs
8 at the facility and addressed workforce retraining needed as a consequence of any proposed
9 restructuring;

10 (7) Whether the conversion demonstrates that the public interest will be served
11 considering the essential medical services needed to provide safe and adequate treatment,
12 appropriate access and balanced health care delivery to the residents of the state; and

13 (8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and
14 conditions of approval for any previous conversion pursuant to an application submitted under
15 section 23-17.14-6.

16 [\(9\) Whether the conversion is consistent with a state health plan or community health
17 needs assessment officially adopted by the department of health.](#)

18 **23-17.14-11. Criteria for the department of health -- Conversions limited to not-for-**
19 **profit corporations.** -- In reviewing an application of a conversion involving a hospital in which
20 the transacting parties are limited to not-for-profit corporations, the department shall consider the
21 following criteria:

22 (1) Whether the character, commitment, competence, and standing in the community, or
23 any other communities served by the proposed transacting parties are satisfactory;

24 (2) Whether sufficient safeguards are included to assure the affected community
25 continued access to affordable care;

26 (3) Whether the transacting parties have provided satisfactory evidence that the new
27 hospital will provide health care and appropriate access with respect to traditionally underserved
28 populations in the affected community;

29 (4) Whether procedures or safeguards are assured to insure that ownership interests will
30 not be used as incentives for hospital employees or physicians to refer patients to the hospital;

31 (5) Whether the transacting parties have made a commitment to assure the continuation
32 of collective bargaining rights, if applicable, and retention of the workforce;

33 (6) Whether the transacting parties have appropriately accounted for employment needs
34 at the facility and addressed workforce retraining needed as a consequence of any proposed

1 restructuring;

2 (7) Whether the conversion demonstrates that the public interest will be served
3 considering the essential medical services needed to provide safe and adequate treatment,
4 appropriate access and balanced health care delivery to the residents of the state.

5 [\(8\) Whether the conversion is consistent with a state health plan or community health](#)
6 [needs assessment officially adopted by the department of health.](#)

7 **23-17.14-12.1. Expedited review for unaffiliated community hospitals. --** (a)

8 Notwithstanding subsection 23-17.14-6(a) and section 23-17.14-10 of this chapter if a proposed
9 conversion involves: (1) Two (2) or more hospitals that are not in common control with another
10 hospital; or (2) One hospital not under common control with another hospital and a hospital
11 system parent corporation; or (3) Two (2) affiliated hospitals the conversion of which was
12 previously approved in accordance with chapter 23-17.14 and another hospital or hospital system
13 parent corporation, such conversion will be reviewed under an expedited review process
14 conducted solely by the department of health (without derogation of the authority of the attorney
15 general in accordance with section 23-17.14-21), only if the acquiree and acquiror are both
16 nonprofit corporations exempt from taxation under section 501(a) of the United States Internal
17 Revenue Service Code as organizations described in section 501(c)(3) of such code, or any
18 successor provisions, and:

19 (1) The acquiree and acquiror are both nonprofit corporations that have directly or
20 indirectly continuously operated at least one licensed hospital for at least the preceding three (3)
21 years; and

22 (2) The acquiree operates a ~~distressed~~ Rhode Island hospital, ~~facing significant financial~~
23 ~~hardship that may impair its ability to continue to operate effectively without the proposed~~
24 ~~conversion and has been determined to be distressed by the director of health based upon whether~~
25 ~~the hospital meets one or more of the following criteria:~~

26 ~~(i) Operating loss for the two (2) most recently completed fiscal years;~~

27 ~~(ii) Less than fifty (50) days cash on hand;~~

28 ~~(iii) Current asset to liability ratio of less than one point five (1.5);~~

29 ~~(iv) Long term debt to capitalization greater than seventy five percent (75%);~~

30 ~~(v) Inpatient occupancy rate of less than fifty percent (50%);~~

31 ~~(vi) Would be classified as below investment grade by a major rating agency.~~

32 (b) The transacting parties shall file an initial application pursuant to this section which
33 shall include the following information with respect to each transacting party and the proposed
34 conversion:

- 1 (1) A detailed summary of the proposed conversion;
- 2 (2) Charter, articles of incorporation or certificate of incorporation for the transacting
3 parties and their affiliated hospitals, including amendments thereto;
- 4 (3) Bylaws and organizational charts for the transacting parties and their affiliated
5 hospitals;
- 6 (4) Organizational structure for the transacting parties and each partner, affiliate, parent,
7 subsidiary or related legal entity in which either transacting party has a twenty percent (20%) or
8 greater ownership interest or control;
- 9 (5) All documents, reports, meeting minutes and presentations relevant to the transacting
10 parties' board of directors' decision to propose the conversion;
- 11 (6) Conflict of interest policies and procedures;
- 12 (7) Copies of audited income statements, balance sheets, and other financial statements
13 for the past three (3) years for the transacting parties and their affiliated hospitals where
14 appropriate and to the extent they have been made public, audited interim financial statements
15 and income statements together with detailed descriptions of the financing structure of the
16 proposed conversion including equity contribution, debt restructuring, stock issuance and
17 partnership interests;
- 18 (8) Copies of reports analyzing the proposed conversion during the past three (3) years
19 including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and
20 other experts;
- 21 (9) Copies of current conflict of interest forms from all incumbent or recently incumbent
22 officers, members of the board of directors or trustees and senior managers of the transacting
23 parties; "incumbent or recently incumbent" means those individuals holding the position at the
24 time the application is submitted and any individual who held a similar position within one year
25 prior to the application's acceptance;
- 26 (10) Copies of all documents related to: (i) Identification of all current charitable assets;
27 (ii) Accounting of all charitable assets for the past three (3) years; and (iii) Distribution of
28 charitable assets for the past three (3) years including, but not limited to, endowments, restricted,
29 unrestricted and specific purpose funds as each relates to the proposed conversion;
- 30 (11) A description of the plan as to how the affiliated hospitals will provide consolidated
31 healthcare services during the first three (3) years following the conversion;
- 32 (12) Copies of plans for all hospital departments and services that will be eliminated or
33 significantly reduced during the first three (3) years following the conversion; and
- 34 (13) Copies of plans relative to staffing levels for all categories of employees during the

1 first three (3) years following the conversion.

2 (c) In reviewing an application under an expedited review process, the department shall
3 consider the criteria in section 23-17.14-11.

4 (d) Within twenty (20) working days of receipt by the department of an application
5 satisfying the requirements of subsection (b) above, the department will notify and afford the
6 public an opportunity to comment on the application.

7 (e) The decision of the department shall be rendered within ninety (90) days of
8 acceptance of the application under this section for a financially distressed hospital, or within one
9 hundred twenty (120) days of acceptance for a hospital that is not financially distressed and
10 otherwise eligible under this section.

11 (f) Costs payable by the transacting parties under section 23-17.14-13 in connection with
12 an expedited review by the department under this section shall not exceed twenty-five thousand
13 dollars (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service
14 revenue of the acquiree and acquiror in the most recent fiscal year for which audited financial
15 statements are available.

16 (g) Following a conversion, the new hospital shall provide on or before March 1 of each
17 calendar year a report in a form acceptable to the director containing all updated financial
18 information required to be disclosed pursuant to subdivision 23-17.14-12.1(b)(7).

19 (h) If an expedited review is performed by the department pursuant to this section, the
20 department of attorney general shall perform a review of the proposed transaction as it deems
21 necessary, including, at a minimum, its impact upon the charitable assets of the transacting
22 parties. The attorney general's review shall be done concurrently with the department of health
23 review and shall not extend the length of the review process. For this review, the department of
24 attorney general shall be entitled to costs in accordance with section 23-17.14-13 and subsection
25 23-17.14-12.1(f).

26 (i) For purposes of this section, a financially distressed hospital is defined as facing
27 significant financial hardship that may impair its ability to continue to operate effectively without
28 the proposed conversion and has been determined to be distressed by the director of health based
29 upon whether the hospital meets one or more of the following criteria:

30 (1) Operating loss for the two (2) most recently completed fiscal years;

31 (2) Less than fifty (50) days cash-on-hand;

32 (3) Current asset to liability ratio of less than one and five tenths (1.5);

33 (4) Long-term debt to capitalization greater than seventy-five percent (75%);

34 (5) Inpatient occupancy rate of less than fifty percent (50%); or

1 [\(6\) Would be classified as below investment grade by a major rating agency.](#)

2 **23-17.14-34. Judicial review.** -- ~~(a)~~ Notwithstanding any other provision of the general
3 laws, any transacting party aggrieved by a final order of the department of health or the attorney
4 general under this chapter may seek judicial review ~~by original action filed in the superior court~~
5 [in the superior court in accordance with § 42-35-15.](#) ~~Any preliminary, procedural, or intermediate~~
6 ~~agency act or ruling with respect to the filing of an application for conversion, including the~~
7 ~~completeness of the application, confidentiality of any information or documents produced in~~
8 ~~connection with a conversion, approval or disapproval of a conversion and conditions or~~
9 ~~restrictions proposed or determined with the respect to the approval of a proposed conversion, is~~
10 ~~immediately reviewable.~~

11 ~~(b) Any action brought under this section shall be given priority by the superior court.~~

12 ~~(c) In performing such review the superior court shall consider and balance the~~
13 ~~reasonable interests of the transacting parties and the reasonable interest of the citizens of the~~
14 ~~state in a safe, accessible, and affordable healthcare system.~~

15 ~~(d) The court may affirm the decision of the agency or remand the case for further~~
16 ~~proceedings, or it may reverse or modify the decision if substantial rights of the appellant have~~
17 ~~been prejudiced because the administrative findings, inferences, conclusions, or decisions are:~~

- 18 ~~(1) Unreasonable;~~
- 19 ~~(2) In violation of constitutional or statutory provisions;~~
- 20 ~~(3) In excess of the statutory authority of the agency;~~
- 21 ~~(4) Made upon unlawful procedure;~~
- 22 ~~(5) Affected by other error or law;~~
- 23 ~~(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the~~
24 ~~whole record; or~~
- 25 ~~(7) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted~~
26 ~~exercise of discretion.~~

27 SECTION 3. This act shall take effect on January 1, 2015.

=====
LC004775
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - DETERMINATION OF NEED FOR NEW
HEALTHCARE EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES

1 This act would exempt certain surgi-centers, multi-practice physician, ambulatory
2 surgery centers, single practice physician or podiatry ambulatory surgery centers with two (2) or
3 fewer operating rooms from the requirements of the determination of need for new healthcare
4 equipment and new institutional health services pursuant to chapter 23-15. It would also provide
5 penalties for persons who violate the provisions of said chapter and would require an emphasis be
6 placed on population health improvement under the provisions of chapter 23-17.14 which relates
7 to hospital conversions and would add criteria for the department of health to review when
8 reviewing conversions involving a hospital and a for-profit corporation as the acquiror and would
9 further amend the period of review for unaffiliated community hospitals provided under section
10 23-17.14-12.1.

11 This act would take effect on January 1, 2015.

=====
LC004775
=====