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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO HEALTH AND SAFETY - THE HOSPITAL CONVERSION ACT

Introduced By: Senators Euer, Goodwin, Conley, Pearson, and Nesselbush

Date Introduced: March 20, 2018

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-17-13.1 of the General Laws in Chapter 23-17 entitled
2 "Licensing of Health-Care Facilities" is hereby amended to read as follows:
3 **23-17-13.1. Health services council.**
4 (a) There shall be established a health services council consisting of ~~twelve (12)~~
5 ~~members, four (4) of whom shall be appointed by the speaker of the house, one who shall be an~~
6 ~~expert in healthcare economic and policy matters, and a second who shall represent the insurance~~
7 ~~business; four (4) of whom shall be appointed by the president of the senate, one who shall~~
8 ~~represent the business community, and a second who shall represent the general public; and four~~
9 ~~(4) of whom shall be appointed by the governor, one who shall represent the office of the health~~
10 ~~insurance commissioner, a second who shall represent the executive office of health and human~~
11 ~~services, a third who shall represent the health insurance business, and a fourth who shall~~
12 ~~represent the executive office of commerce. All members shall serve until the first day of July in~~
13 ~~the third year after appointment or until their respective successors are appointed and qualified.~~
14 ~~Any vacancy of a member appointed that may occur in the council shall be filled by appointment~~
15 ~~by the respective appointing authority for the remainder of the unexpired term. The council may~~
16 ~~also serve as an advisory council as authorized by § 23-16-3. twenty-four (24) members, eight (8)~~
17 ~~of whom shall be appointed by the speaker of the house, one of whom shall represent hospital~~
18 ~~service corporations, six (6) of whom shall be appointed by the president of the senate, one of~~
19 ~~whom shall represent hospitals and a second who shall represent the business community, and ten~~

1 (10) of whom shall be appointed by the governor, one of whom shall represent the state budget
2 office, one of whom shall represent the department of human services and two (2) shall be
3 members of the general public that maintain their principal residence within fifteen hundred feet
4 (1500') of a licensed hospital. The governor shall appoint members of the council in staggered
5 appointments, three (3) members one year, two (2) members the next year, and two (2) members
6 the year after that. All members shall serve until their successors are appointed and qualified. In
7 the month of February in each year, the governor shall appoint successors to the members of the
8 council whose terms shall expire in that year, to hold office commencing on the first day of
9 March in the year of appointment until the first day of March in the third year after appointment
10 or until their respective successors are appointed and qualified. Legislative members shall serve
11 until the end of their legislative term. Any vacancy of an appointed member which may occur in
12 the commission shall be filled by appointment by the respective appointing authority for the
13 remainder of the unexpired term. The council may also serve as an advisory council as authorized
14 by § 23-16-3.

15 ~~(b) A person may not be a member of the health services council if the person is required~~
16 ~~to register as a lobbyist as defined under chapter 139 of title 42.~~

17 ~~(c) Notwithstanding any laws, rules, or regulations to the contrary, all recommendations~~
18 ~~of the health services council shall be by a majority vote of its members present at the time the~~
19 ~~vote is taken.~~

20 SECTION 2. Sections 23-17.14-6, 23-17.14-7, 23-17.14-8, 23-17.14-11, 23-17.14-12.1,
21 23-17.14-14, 23-17.14-17, 23-17.14-28 and 23-17.14-30 of the General Laws in Chapter 23-17.14
22 entitled "The Hospital Conversions Act" are hereby amended to read as follows:

23 **23-17.14-6. Initial application -- Conversions involving for-profit corporations or**
24 **not-for-profit as acquirors.**

25 (a) No person shall engage in a conversion with a for profit corporation as the acquiror
26 and a not-for-profit corporation as the acquiree involving the establishment, maintenance, or
27 operation of a hospital or a conversion subject to § 23-17.14-9 without prior approval of both the
28 department of attorney general and the department of health. The review of the two (2)
29 departments shall occur concurrently, and neither department shall delay its review or
30 determination because the other department has not completed its review or issued its
31 determination. The applicant may request that the review by the departments occur concurrently
32 with the review of any relevant federal regulatory authority. The transacting parties shall file an
33 initial application in accordance with subsection (b) of this section that shall, at minimum,
34 include the following information with respect to each transacting party and to the proposed new

1 hospital:

2 (1) A detailed summary of the proposed conversion;

3 (2) Names, addresses and phone numbers of the transacting parties;

4 (3) Name, address, phone number, occupation, and tenure of all officers, members of the
5 board of directors, trustees, executives, and senior managers, including for each position, current
6 persons and persons holding such position during the past two (2) years;

7 (4) A list of all committees, subcommittees, task forces, or similar entities of the board of
8 directors or trustees, including a short description of the purpose of each committee,
9 subcommittee, task force, or similar entity and the name, address, phone number, occupation, and
10 tenure of each member;

11 (5) Agenda and minutes of all meetings of the board of directors or trustees and any of its
12 committees, subcommittees, task forces related to the conversion, or similar entities excluding
13 those focused on peer review and confidential medical matters, that occurred within the two (2)
14 year period prior to submission of the application, including, upon the request of the department
15 or attorney general, any meeting packages;

16 (6) Articles of incorporation and certificate of incorporation;

17 (7) Bylaws and organizational charts;

18 (8) Organizational structure for existing transacting parties and each partner, affiliate,
19 parent, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or
20 greater ownership interest;

21 (9) Conflict of interest statements, policies and procedures;

22 (10) Names, addresses and phone numbers of professional consultants engaged in
23 connection with the proposed conversion;

24 (11) Copies of audited income statements, balance sheets, other financial statements, and
25 management letters for the past three (3) years and to the extent they have been made public,
26 audited interim financial statements and income statements together with detailed description of
27 the financing structure of the proposed conversion including equity contribution, debt
28 restructuring, stock issuance, partnership interests, stock offerings and the like;

29 (12) A detailed description of real estate issues including title reports for land owned and
30 lease agreements concerning the proposed conversion;

31 (13) A detailed description as each relates to the proposed transaction for equipment
32 leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory
33 citations, ~~pension~~ current retirement plan descriptions and other employee ~~benefits~~ benefit plan
34 descriptions, as well as any planned changes there to, environmental reports, assessments and

1 organizational goals;

2 (14) Copies of reports analyzing the proposed conversion during the past three (3) years
3 including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and
4 other experts;

5 (15) Copies of any opinions or memoranda addressing the state and federal tax
6 consequences of the proposed conversion prepared for a transacting party by an attorney,
7 accountant, or other expert;

8 (16) A description of the manner in which the price was determined including which
9 methods of valuation and what data were used, and the names and addresses of persons preparing
10 the documents, and this information is deemed to be proprietary;

11 (17) Patient statistics for the past three (3) years and patient projections for the next one
12 year including patient visits, admissions, emergency room visits, clinical visits, and visits to each
13 department of the hospital, admissions to nursing care or visits by affiliated home health care
14 entities;

15 (18) The name and mailing address of all licensed facilities in which the for-profit
16 corporation maintains an ownership interest or controlling interest or operating authority;

17 (19) A list of pending or adjudicated citations, violations, [deficiencies](#) or charges against
18 the facilities listed in subdivision (a)(18) brought by any governmental agency or accrediting
19 agency, [including all documentation and communications to and from the joint commission on](#)
20 [accreditation of health care organizations relative thereto](#) within the past ~~three (3)~~ [ten \(10\)](#) years
21 and the status or disposition of each matter with regard to patient care and charitable asset
22 matters;

23 (20) A list of uncompensated care provided over the past three (3) years by each facility
24 listed in subdivision (a)(18) and detail as to how that amount was calculated;

25 (21) Copies of all documents related to:

26 (i) Identification of all charitable assets

27 (ii) Accounting of all charitable assets for the past three (3) years; and

28 (iii) Distribution of the charitable assets including, but not limited to, endowments,
29 restricted, unrestricted and specific purpose funds as each relates to the proposed transaction;

30 (22) A description of charity care and uncompensated care provided by the existing
31 hospital for the previous three (3) year period to the present including a dollar amount and a
32 description of services provided to patients;

33 (23) A description of bad debt incurred by the existing hospital for the previous three (3)
34 years for which payment was anticipated but not received;

- 1 (24) A description of the plan as to how the new hospital will provide community benefit
2 and charity care during the first three (3) years of operation;
- 3 (25) A description of how the new hospital will monitor and value charity care services
4 and community benefit;
- 5 (26) The names of persons currently holding a position as an officer, director, board
6 member, or senior manager who will or will not maintain any position with the new hospital and
7 whether any said person will receive any salary, severance stock offering or any financial gain,
8 current or deferred, as a result of or in relation to the proposed conversion;
- 9 (27) Copies of capital and operating budgets or other financial projections for the new
10 hospital during the first three (3) years of operation;
- 11 (28) Copies of plans relative to staffing during the first ~~three (3)~~ ten (10) years at the new
12 hospital;
- 13 (29) A list of all medical services, departments and clinical services, and administrative
14 services which will be maintained at the new hospital and the estimated length of time such
15 services shall be maintained;
- 16 (30) A description of criteria established by the board of directors of the existing hospital
17 for pursuing a proposed conversion with one or more health care providers;
- 18 (31) Copies of reports of any due diligence review performed by each transacting party in
19 relation to the proposed conversion. These reports are to be held by the attorney general and
20 department of health as confidential and not released to the public regardless of any determination
21 made pursuant to § 23-17.14-32 and notwithstanding any other provision of the general laws;
- 22 (32) A description of request for proposals issued by the existing hospital relating to
23 pursuing a proposed conversion;
- 24 (33) Copies of reports analyzing affiliations, mergers, or other similar transactions
25 considered by any of the transacting parties during the past three (3) years, including, but not
26 limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
- 27 (34) A copy of proposed contracts or description of proposed contracts or arrangements
28 with senior managers, board members, officers, or directors of the existing hospital for severance
29 consulting services or covenants not to compete following completion of the proposed
30 conversion;
- 31 (35) A copy or description of all agreements or proposed agreements reflecting any
32 current and/or future employment or compensated relationship between the acquiror (or any
33 related entity) and any officer, director, board member, or senior manager of the acquiree (or any
34 related entity);

1 (36) A copy or description of all agreements executed or anticipated to be executed by
2 any of the transacting parties in connection with the proposed conversion;

3 (37) Copies of documents or description of any proposed plan for any entity to be created
4 for charitable assets, including but not limited to, endowments, restricted, unrestricted and
5 specific purpose funds, the proposed articles of incorporation, by-laws, mission statement,
6 program agenda, method of appointment of board members, qualifications of board members,
7 duties of board members, and conflict of interest policies;

8 (38) Description and detailed justification of all departments, clinical, social, or other
9 services or medical services that will be eliminated or significantly reduced at the new hospital
10 and a transition plan ensuring existing patients' continued access to such services moving forward
11 and continued employment for those who lose their jobs;

12 (39) Description of staffing levels of all categories of employees, including full-time,
13 part-time, and contract employees currently working at or providing services to the existing
14 hospital and description of any anticipated or proposed changes in current staffing levels;

15 (40) Copies of current conflict of interest forms from all incumbent or recently incumbent
16 officers, members of the boards of directors or trustees and senior managers, including the
17 medical directors, of the transacting parties on a form acceptable to the attorney general;
18 "incumbent or recently incumbent" means those individuals holding the position at the time the
19 application is submitted and any individual who held a similar position within one year prior to
20 the application's acceptance;

21 (41) If the acquiror is a for profit corporation that has acquired a not for profit hospital
22 under the provisions of this chapter, the application shall also include a complete statement of
23 performance during the preceding one year with regard to the terms and conditions of approval of
24 conversion and each projection, plan, or description submitted as part of the application for any
25 conversion completed under an application submitted pursuant to this section and made a part of
26 an approval for the conversion pursuant to § 23-17.14-7, 23-17.14-8 or 23-14.14-19;

27 (42) Copies of IRS Form 990 for any transacting party required by federal law to file
28 such a form for each of the three (3) years prior to the submission of the application.

29 (b) Two (2) copies of the initial application shall be provided to each of the department of
30 health and department of the attorney general simultaneously by United States mail, certified,
31 return receipt requested. Filings may be submitted electronically if acceptable to the department
32 of health and/or attorney general.

33 (c) Except for information determined by the attorney general in accordance with § 23-
34 17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as

1 confidential, the initial application and supporting documentation shall be considered public
2 records and shall be available for inspection upon request.

3 **23-17.14-7. Review process of the department of attorney general and the**
4 **department of health and review criteria by department of attorney general.**

5 (a) The department of attorney general shall review all conversions involving a hospital
6 in which one or more of the transacting parties involves a for profit corporation as the acquiror
7 and a not for profit corporation as the acquiree.

8 (b) In reviewing proposed conversions in accordance with this section and § 23-17.14-10,
9 the department of attorney general and department of health shall adhere to the following process:

10 (1) Within thirty (30) days after receipt of an initial application, the department of
11 attorney general and department of health shall jointly advise the applicant, in writing, whether
12 the application is complete, and, if not, shall specify all additional information the applicant is
13 required to provide;

14 (2) The applicant will submit the additional information within thirty (30) working days.
15 If the additional information is submitted within the thirty (30) day period, the department of
16 attorney general and department of health will have ten (10) working days within which to
17 determine acceptability of the additional information. If the additional information is not
18 submitted by the applicant within the thirty (30) day period or if either agency determines the
19 additional information submitted by the applicant is insufficient, the application will be rejected
20 without prejudice to the applicant's right to resubmit, the rejection to be accompanied by a
21 detailed written explanation of the reasons for rejection. If the department of attorney general and
22 department of health determine the additional information to be as requested, the applicant will be
23 notified, in writing, of the date of acceptance of the application;

24 (3) Within thirty (30) working days after acceptance of the initial application, the
25 department of attorney general shall render its determination on confidentiality pursuant to § 23-
26 17.14-32 and the department of attorney general and department of health shall publish notice of
27 the application in a newspaper of general circulation in the state and shall notify by United States
28 mail any person who has requested notice of the filing of the application. The notice shall:

29 (i) State that an initial application has been received and accepted for review,

30 (ii) State the names of the transacting parties,

31 (iii) State the date by which a person may submit written comments to the department of
32 attorney general or department of health, and

33 (iv) Provide notice of the date, time and place of informational meeting open to the public
34 which shall be conducted within sixty (60) days of the date of the notice;

1 (4) The department of attorney general and department of health shall each approve,
2 approve with conditions directly related to the proposed conversion, or disapprove the application
3 within one hundred twenty (120) days of the date of acceptance of the application.

4 (c) In reviewing an application pursuant to subsection (a) the department of the attorney
5 general shall consider the following criteria:

6 (1) Whether the proposed conversion will harm the public's interest in trust property
7 given, devised, or bequeathed to the existing hospital for charitable, educational or religious
8 purposes located or administered in this state;

9 (2) Whether a trustee or trustees of any charitable trust located or administered in this
10 state will be deemed to have exercised reasonable care, diligence, and prudence in performing as
11 a fiduciary in connection with the proposed conversion;

12 (3) Whether the board established appropriate criteria in deciding to pursue a conversion
13 in relation to carrying out its mission and purposes;

14 (4) Whether the board formulated and issued appropriate requests for proposals in
15 pursuing a conversion;

16 (5) Whether the board considered the proposed conversion as the only alternative or as
17 the best alternative in carrying out its mission and purposes;

18 (6) Whether any conflict of interest exists concerning the proposed conversion relative to
19 members of the board, officers, directors, senior management, experts or consultants engaged in
20 connection with the proposed conversion including, but not limited to, attorneys, accountants,
21 investment bankers, actuaries, health care experts, or industry analysts;

22 (7) Whether individuals described in subdivision (c)(6) were provided with contracts or
23 consulting agreements or arrangements which included pecuniary rewards based in whole, or in
24 part on the contingency of the completion of the conversion;

25 (8) Whether the board exercised due care in engaging consultants with the appropriate
26 level of independence, education, and experience in similar conversions;

27 (9) Whether the board exercised due care in accepting assumptions and conclusions
28 provided by consultants engaged to assist in the proposed conversion;

29 (10) Whether the board exercised due care in assigning a value to the existing hospital
30 and its charitable assets in proceeding to negotiate the proposed conversion;

31 (11) Whether the board exposed an inappropriate amount of assets by accepting in
32 exchange for the proposed conversion future or contingent value based upon success of the new
33 hospital;

34 (12) Whether officers, directors, board members or senior management will receive

- 1 future contracts in existing, new, or affiliated hospital or foundations;
- 2 (13) Whether any members of the board will retain any authority in the new hospital;
- 3 (14) Whether the board accepted fair consideration and value for any management
4 contracts made part of the proposed conversion;
- 5 (15) Whether individual officers, directors, board members or senior management
6 engaged legal counsel to consider their individual rights or duties in acting in their capacity as a
7 fiduciary in connection with the proposed conversion;
- 8 (16) Whether the proposed conversion results in an abandonment of the original purposes
9 of the existing hospital or whether a resulting entity will depart from the traditional purposes and
10 mission of the existing hospital such that a cy pres proceeding would be necessary;
- 11 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
12 market value;
- 13 (18) Whether the proposed conversion was based upon appropriate valuation methods
14 including, but not limited to, market approach, third party report or fairness opinion;
- 15 (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation
16 Act;
- 17 (20) Whether the conversion is proper under applicable state tax code provisions;
- 18 (21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;
- 19 (22) Whether the individuals who represented the existing hospital in negotiations
20 avoided conflicts of interest;
- 21 (23) Whether officers, board members, directors, or senior management deliberately
22 acted or failed to act in a manner that impacted negatively on the value or purchase price, or
23 employee terms or conditions of employment;
- 24 (24) Whether the formula used in determining the value of the existing hospital was
25 appropriate and reasonable which may include, but not be limited to factors such as: the multiple
26 factor applied to the "EBITDA" -- earnings before interest, taxes, depreciation, and amortization;
27 the time period of the evaluation; price/earnings multiples; the projected efficiency differences
28 between the existing hospital and the new hospital; and the historic value of any tax exemptions
29 granted to the existing hospital;
- 30 (25) Whether the proposed conversion appropriately provides for the disposition of
31 proceeds of the conversion that may include, but not be limited to:
- 32 (i) Whether an existing entity or a new entity will receive the proceeds;
- 33 (ii) Whether appropriate tax status implications of the entity receiving the proceeds have
34 been considered;

1 (iii) Whether the mission statement and program agenda will be or should be closely
2 related with the purposes of the mission of the existing hospital;

3 (iv) Whether any conflicts of interest arise in the proposed handling of the conversion's
4 proceeds;

5 (v) Whether the bylaws and articles of incorporation have been prepared for the new
6 entity;

7 (vi) Whether the board of any new or continuing entity will be independent from the new
8 hospital;

9 (vii) Whether the method for selecting board members, staff, and consultants is
10 appropriate;

11 (viii) Whether the board will comprise an appropriate number of individuals with
12 experience in pertinent areas such as foundations, health care, business, labor, community
13 programs, financial management, legal, accounting, grant making and public members
14 representing diverse ethnic populations and the interests of the affected community;

15 (ix) Whether the size of the board and proposed length of board terms are sufficient;

16 (26) Whether the transacting parties are in compliance with the Charitable Trust Act,
17 chapter 9 of title 18; and

18 (27) Whether a right of first refusal to repurchase the assets has been retained.

19 (28) Whether the character, commitment, competence and standing in the community, or
20 any other communities served by the transacting parties are satisfactory failure to fully disclose,
21 or intentional obfuscation, misrepresentation, omission or withholding of relevant information
22 from state regulators, or failure to otherwise cooperate with state regulators during the regulatory
23 review process, shall disqualify the applicant(s) from consideration, resulting in the summary
24 rejection of the application under review. Such rejection shall act as a bar against the submission
25 of future applications for a period of five (5) years;

26 (29) Whether a control premium is an appropriate component of the proposed conversion;
27 and

28 (30) Whether the value of assets factored in the conversion is based on past performance
29 or future potential performance.

30 **23-17.14-8. Review process and review criteria by department of health for**
31 **conversions involving for-profit corporation as acquiror.**

32 (a) The department shall review all proposed conversions involving a hospital in which
33 one or more of the transacting parties involves a for-profit corporation as the acquiror and a not-
34 for-profit corporation as the acquiree.

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

4 (1) Whether the character, commitment, competence, and standing in the community, or
5 any other communities served by the proposed transacting parties, are satisfactory failure to fully
6 disclose, or intentional obfuscation, misrepresentation, omission or withholding of relevant
7 information from state regulators, or failure to otherwise cooperate with state regulators during
8 the regulatory review process, shall disqualify the applicant(s) from consideration, resulting in the
9 summary rejection of the application under review. Such rejection shall act as a bar against the
10 submission of future applications for a period of five (5) years;

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

13 (3) Whether the transacting parties have provided clear and convincing evidence that the
14 new hospital will provide health care and appropriate access with respect to traditionally
15 underserved populations in the affected community;

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

18 (5) Whether the transacting parties have made a commitment to assure the continuation
19 of collective bargaining rights, if applicable, the continuation of current employee retirement,
20 medical, dental and paid time off benefits, the continuation of current employee wages and hours
21 of work, and retention of the workforce;

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

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

28 (8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and
29 conditions of approval for any previous conversion pursuant to an application submitted under §
30 23-17.14-6.

31 **23-17.14-11. Criteria for the department of health -- Conversions limited to not-for-**
32 **profit corporations.**

33 In reviewing an application of a conversion involving a hospital in which the transacting
34 parties are limited to not-for-profit corporations, the department shall consider the following

1 criteria:

2 (1) Whether the character, commitment, competence, and standing in the community, or
3 any other communities served by the proposed transacting parties are satisfactory failure to fully
4 disclose, or intentional obfuscation, misrepresentation, omission or withholding of relevant
5 information from state regulators, or failure to otherwise cooperate with state regulators during
6 the regulatory review process, shall disqualify the applicant(s) from consideration, resulting in the
7 summary rejection of the application under review. Such rejection shall act as a bar against the
8 submission of future applications for a period of five (5) years;

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

11 (3) Whether the transacting parties have provided ~~satisfactory~~ clear and convincing
12 evidence that the new hospital will provide health care and appropriate access with respect to
13 traditionally underserved populations in the affected community;

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

16 (5) Whether the transacting parties have made a commitment to assure the continuation
17 of collective bargaining rights, if applicable, the continuation of current employee retirement,
18 medical, dental and paid time off benefits, the continuation of current employee wages and hours
19 of work, and retention of the workforce;

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

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

26 **23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-**
27 **profit hospitals. Expedited review for unaffiliated community hospitals.**

28 (a) Notwithstanding §§ 23-17.14-6(a) and 23-17.14-10 of this chapter, if a proposed
29 conversion involves: (1) Two (2) or more hospitals that are not in common control with another
30 hospital; or (2) One hospital not under common control with another hospital and a hospital
31 system parent corporation; or (3) Two (2) affiliated hospitals the conversion of which was
32 previously approved in accordance with chapter 17.14 of title 23 and another hospital or hospital
33 system parent corporation, ~~or (4) One or more hospital(s) that are determined to be distressed as~~
34 ~~under subsection (a)(2) of this section, including hospitals that are part of a not for profit hospital~~

1 ~~system parent corporation, as acquiree,~~ such conversion will be reviewed under an expedited
2 review process conducted solely by the department of health (without derogation of the authority
3 of the attorney general in accordance with § 23-17.14-21), only if the acquiree and acquiror are
4 both nonprofit corporations exempt from taxation under section 501(a) of the United States
5 Internal Revenue Service Code as organizations described in section 501(c)(3) of such code, or
6 any successor provisions, and:

7 (1) The acquiree and acquiror are both nonprofit corporations that have directly or
8 indirectly continuously operated at least one licensed hospital ~~either in Rhode Island or in another~~
9 ~~jurisdiction either on its own or it is part of a health care system that has operated for at least the~~
10 ~~preceding three (3) years~~ for at least the preceding three (3) years; and

11 (2) The acquiree operates ~~one or more~~ a distressed Rhode Island ~~hospitals~~ hospital facing
12 significant financial hardship that may impair its ~~or their~~ ability to continue to operate effectively
13 without the proposed conversion and ~~have~~ has been determined to be distressed by the director of
14 health based upon whether the ~~hospital(s)~~ hospital meets one or more of the following criteria:

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

16 (ii) Less than fifty (50) days cash-on-hand;

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

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

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

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

21 (b) The transacting parties shall file an initial application pursuant to this section that
22 shall include ~~the following~~ the same information as required pursuant to § 23-17.14-6 with
23 respect to each transacting party and the proposed conversion:

24 (1) A detailed summary of the proposed conversion;

25 (2) Charter, articles of incorporation, or certificate of incorporation for the transacting
26 parties and their affiliated hospitals, including amendments thereto;

27 (3) Bylaws and organizational charts for the transacting parties and their affiliated
28 hospitals;

29 (4) Organizational structure for the transacting parties and each partner, affiliate, parent,
30 subsidiary, or related legal entity in which either transacting party has a twenty percent (20%) or
31 greater ownership interest or control;

32 (5) All documents, reports, meeting minutes, and presentations relevant to the transacting
33 parties' board of directors' decision to propose the conversion;

34 (6) Conflict of interest policies and procedures;

1 (7) Copies of audited income statements, balance sheets, and other financial statements
2 for the past three (3) years for the transacting parties and their affiliated hospitals where
3 appropriate and to the extent they have been made public, audited interim financial statements
4 and income statements together with detailed descriptions of the financing structure of the
5 proposed conversion including equity contribution, debt restructuring, stock issuance, and
6 partnership interests;

7 (8) Copies of reports analyzing the proposed conversion during the past three (3) years
8 including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and
9 other experts;

10 (9) Copies of current conflict of interest forms from all incumbent or recently incumbent
11 officers, members of the board of directors or trustees and senior managers of the transacting
12 parties; "incumbent or recently incumbent" means those individuals holding the position at the
13 time the application is submitted and any individual who held a similar position within one year
14 prior to the application's acceptance;

15 (10) Copies of all documents related to: (i) Identification of all current charitable assets;
16 (ii) Accounting of all charitable assets for the past three (3) years; and (iii) Distribution of
17 charitable assets for the past three (3) years including, but not limited to, endowments, restricted,
18 unrestricted, and specific purpose funds as each relates to the proposed conversion;

19 (11) A description of the plan as to how the affiliated hospitals will provide consolidated
20 healthcare services during the first three (3) years following the conversion;

21 (12) Copies of plans for all hospital departments and services that will be eliminated or
22 significantly reduced during the first three (3) years following the conversion; and

23 (13) Copies of plans relative to staffing levels for all categories of employees during the
24 first three (3) years following the conversion.

25 (c) In reviewing an application under an expedited review process, the department shall
26 consider the criteria in § 23-17.14-11.

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

30 (e) The decision of the department shall be rendered within ninety (90) days of
31 acceptance of the application under this section.

32 (f) Costs payable by the transacting parties under § 23-17.14-13 in connection with an
33 expedited review by the department under this section shall not exceed twenty-five thousand
34 dollars (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service

1 revenue of the acquiree and acquiror in the most recent fiscal year for which audited financial
2 statements are available.

3 (g) Following a conversion, the new hospital shall provide on or before March 1 of each
4 calendar year a report in a form acceptable to the director containing all updated financial
5 information required to be disclosed pursuant to subsection (b)(7) of this section.

6 (h) If an expedited review is performed by the department pursuant to this section, the
7 department of attorney general shall perform a review of the proposed transaction ~~pursuant to §~~
8 ~~23-17.14-10(b) and the criteria for conversions limited to not for profits~~ as it deems necessary,
9 including, at a minimum, its impact upon the charitable assets of the transacting parties. The
10 attorney general's review shall be done concurrently with the department of health review and
11 shall not extend the length of the review process. For this review, the department of attorney
12 general shall be entitled to costs in accordance with § 23-17.14-13 and subsection (f) of this
13 section.

14 **23-17.14-14. Investigations -- Notice to attend -- Court order to appear -- Contempt.**

15 (a) The director or the attorney general may conduct investigations in discharging the
16 duties required under this chapter. For purposes of this investigation the director or the attorney
17 general may require any person, agent, trustee, fiduciary, consultant, institution, association, or
18 corporation directly related to the proposed conversion to appear at any time and place that the
19 director or the attorney general may designate, then and there under oath to produce for the use of
20 the director and/or the attorney general any and all documents and any other information relating
21 directly to the proposed conversion that the director or the attorney general may require.

22 (b) Whenever the director or the attorney general may require the attendance of any
23 person as provided in subsection (a), the director and/or the attorney general shall issue a notice
24 setting the time and place when the attendance is required and shall cause the notice to be
25 delivered or sent by registered or certified mail to the person at least fourteen (14) days before the
26 date fixed in the notice for the attendance.

27 (c) If any person receiving notice pursuant to this provision neglects to attend or remain
28 in attendance so long as may be necessary for the purposes which the notice was issued, or
29 refuses to produce information requested, any justice of the superior court for the county within
30 which the inquiry is carried on or within which the person resides or transacts business, upon
31 application by the director, the attorney general, or any transacting party shall have jurisdiction to
32 hear and consider on an expedited basis the request, and if appropriate and relevant to the
33 consideration of proposed conversion, may issue to the person an order requiring the person to
34 appear before the director or the attorney general there to produce for the use of the director or the

1 attorney general evidence in accordance with the terms of the order of the court, and any failure
2 to obey the order of the superior court may be punished by the court as contempt of court.

3 (d) In the event the applicant(s) fails to comply with any aspect of the review process, or
4 fails to comply with the conditions attached to a prior conversion, the application(s) shall be
5 summarily rejected.

6 **23-17.14-17. Perjury.**

7 Any person who is found to have testified falsely under oath before the legislature, the
8 department of health, or the attorney general pursuant to this chapter shall be subject to
9 prosecution for perjury and be subject to the penalties set forth in § 23-17.14-30, and the
10 application shall be summarily rejected with the applicant being barred from participating in a
11 hospital conversion for five (5) years.

12 **23-17.14-28. Concurrent approval -- License.**

13 (a) The director may consider the requirement of this chapter and the requirements of §§
14 23-17-1 -- 23-17-45 together upon completion of the initial application. The director may
15 approve, approve with conditions, or disapprove one or both requests filed pursuant to this
16 chapter, including expedited review under section 12.1, and §§ 23-17-1 -- 23-17-45. The
17 approvals of the director required by this chapter shall be subject to chapter 35 of title 42. For any
18 conversion subject to this chapter, the director may combine any hearings required by this chapter
19 with any hearings on similar or related matters required by §§ 23-17-1 -- 23-17-45 and shall
20 consider issues of market share especially as they affect quality, access, and affordability of
21 services.

22 (b) Any approval of a conversion involving a for-profit corporation as an acquiror shall
23 be subject to any conditions as determined by the director of health, provided those conditions
24 relate to the purpose of this chapter. Said conditions may include, but not be limited to, the
25 conditions contained in this subsection. In the event the director determines that one or more of
26 the conditions contained in this subsection are not appropriate or desirable in a particular
27 conversion, the director shall include the rationale for not including such condition(s) in any
28 approval.

29 (1) Maintain a governing body for each converted hospital whose membership shall
30 include uncompensated, independent individuals who reside in Rhode Island;

31 (2) Make a financially reasonable contribution to support the state's coordinated health
32 planning process;

33 (3) Adhere to reasonable restrictions on financial incentives to patient or health plan
34 enrollees to receive hospital services outside of the state of Rhode Island;

1 (4) Keep the new hospital open and operational for a reasonable minimum period of time;

2 (5) Make a reasonable minimum investment to support primary care in the Rhode Island
3 communities served by the new hospital;

4 (6) Not enter into any contract or other service or purchasing arrangements with an
5 affiliated legal entity except for contracts or arrangements to provide services or products that are
6 reasonably necessary to accomplish the health care purposes of the relevant hospital and for
7 compensation that is consistent with fair market value for the services actually rendered, or the
8 products actually provided;

9 (7) Report to the director on annual distributions of profit to owners; and

10 (8) Require that any corporate allocation, or equivalent charge, to any affiliated
11 organization(s) in any hospital fiscal year not exceed reasonable fair market value for the services
12 rendered or the assets purchased or leased from such affiliate.

13 (9) Make a reasonable minimum investment to maintain current employment levels,
14 current employee retirement, medical, dental and paid time-off benefits, current employee rates of
15 pay and hours of work;

16 (c) Any approval of a conversion involving a for-profit corporation as an acquiror shall
17 be subject to any conditions as determined by the attorney general, provided those conditions
18 relate to the purpose of this chapter. Said conditions may include, but not be limited to, the
19 acquiror's adherence to a minimum investment to protect the assets, financial health, and well-
20 being of the new hospital and for community benefit. In the event the attorney general determines
21 that the conditions contained in this subsection are not appropriate or desirable in a particular
22 conversion, the attorney general shall include the rationale for not including such condition(s) in
23 any approval.

24 (d) For a period of three (3) years following the effective date of the conversion, when
25 approval of a conversion involves a for-profit corporation as an acquiror:

26 (1) The acquiror shall file reports with the department and the attorney general on or
27 before March 1st of each calendar year detailing compliance with the conditions in subsection (b)
28 and any other conditions on the conversion approval or license of the new hospital. Failure to
29 comply with any of such conditions or the charity care requirements contained in § 23-17.14-15
30 shall be cause for penalties to be applied in accordance with § 23-17.14-30;

31 (2) The department of health and the department of attorney general shall monitor, assess
32 and evaluate the acquiror's compliance with all of the conditions of approval, as well as annually
33 review the impact of the conversion on health care costs and services within the communities
34 served; and

1 (3) The acquiror shall pay for the costs of the department of health and the department of
2 attorney general in performing such monitoring, evaluation and assessment in an amount to be
3 determined by the attorney general or the director as they deem appropriate, which should be
4 placed in escrow during the term of the monitoring period. No application for a conversion made
5 pursuant to the requirements of this chapter shall be approved unless an agreement has been
6 executed with the attorney general and the director for the payment of reasonable costs in
7 accordance with this section.

8 **23-17.14-30. Failure to comply -- Penalties.**

9 If any person knowingly violates or fails to comply with any provision of this chapter or
10 willingly or knowingly gives false or incorrect information:

11 (1) The director or attorney general may, after notice and opportunity for a prompt and
12 fair hearing to the applicant or licensee, deny, suspend, or revoke a license, or in lieu of
13 suspension or revocation of the license, may order the licensee to admit no additional persons to
14 the facility, to provide health services to no additional persons through the facility, or to take
15 corrective action necessary to secure compliance under this chapter; or

16 (2) The superior court may, after notice and opportunity for a prompt and fair hearing,
17 may impose a fine of not more than one million dollars (\$1,000,000) or impose a prison term of
18 not more than five (5) years.

19 (3) Failure to fully disclose, or intentional obfuscation, misrepresentation, omission or
20 withholding of relevant information from state regulators, or failure to otherwise cooperate with
21 state regulators during the regulatory review process, shall disqualify the applicant(s) from
22 consideration, resulting in the summary rejection of the application under review. Such rejection
23 shall act as a bar against the submission of future applications for a period of five (5) years.

24 SECTION 3. This act shall take effect upon passage.

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LC004903
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY - THE HOSPITAL CONVERSION ACT

1 This act would expand the health services council within the licensing of health care
2 facility licensing act from twelve (12) to twenty-four (24) members, and would also amend
3 several provisions relative to the review process of the hospital conversion act pertaining to
4 maintenance of services and required disclosures.

5 This act would take effect upon passage.

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LC004903
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