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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO HEALTH AND SAFETY -- THE HOSPITAL CONVERSIONS ACT

Introduced By: Representatives Bennett, Solomon, Kazarian, Casimiro, and Mendez

Date Introduced: February 26, 2020

Referred To: House Finance

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.14-7 and 23-17.14-10 of the General Laws in Chapter 23-
2 17.14 entitled "The Hospital Conversions Act" are hereby amended to read as follows:

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

5 (a) The department of attorney general shall review all conversions involving a hospital in
6 which one or more of the transacting parties involves a for profit corporation as the acquiror and a
7 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 attorney
11 general and department of health shall jointly advise the applicant, in writing, whether the
12 application is complete, and, if not, shall specify all additional information the applicant is required
13 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 submitted
18 by the applicant within the thirty (30) day period or if either agency determines the additional
19 information submitted by the applicant is insufficient, the application will be rejected without

1 prejudice to the applicant's right to resubmit, the rejection to be accompanied by a detailed written
2 explanation of the reasons for rejection. If the department of attorney general and department of
3 health determine the additional information to be as requested, the applicant will be notified, in
4 writing, of the date of acceptance of the application;

5 (3) Within thirty (30) working days after acceptance of the initial application, the
6 department of attorney general shall render its determination on confidentiality pursuant to § 23-
7 17.14-32 and the department of attorney general and department of health shall publish notice of
8 the application in a newspaper of general circulation in the state and shall notify by United States
9 mail any person who has requested notice of the filing of the application. The notice shall:

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

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

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

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

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

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

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

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

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

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

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

33 (6) Whether any conflict of interest exists concerning the proposed conversion relative to
34 members of the board, officers, directors, senior management, experts or consultants engaged in

1 connection with the proposed conversion including, but not limited to, attorneys, accountants,
2 investment bankers, actuaries, health care experts, or industry analysts;

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

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

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

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

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

15 (12) Whether officers, directors, board members or senior management will receive future
16 contracts in existing, new, or affiliated hospital or foundations;

17 (13) Whether any members of the board will retain any authority in the new hospital;

18 (14) Whether the board accepted fair consideration and value for any management
19 contracts made part of the proposed conversion;

20 (15) Whether individual officers, directors, board members or senior management engaged
21 legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in
22 connection with the proposed conversion;

23 (16) Whether the proposed conversion results in an abandonment of the original purposes
24 of the existing hospital or whether a resulting entity will depart from the traditional purposes and
25 mission of the existing hospital such that a cy pres proceeding would be necessary;

26 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
27 market value;

28 (18) Whether the proposed conversion was based upon appropriate valuation methods
29 including, but not limited to, market approach, third party report or fairness opinion;

30 (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

31 (20) Whether the conversion is proper under applicable state tax code provisions;

32 (21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

33 (22) Whether the individuals who represented the existing hospital in negotiations avoided
34 conflicts of interest;

1 (23) Whether officers, board members, directors, or senior management deliberately acted
2 or failed to act in a manner that impacted negatively on the value or purchase price;

3 (24) Whether the formula used in determining the value of the existing hospital was
4 appropriate and reasonable which may include, but not be limited to factors such as: the multiple
5 factor applied to the "EBITDA" -- earnings before interest, taxes, depreciation, and amortization;
6 the time period of the evaluation; price/earnings multiples; the projected efficiency differences
7 between the existing hospital and the new hospital; and the historic value of any tax exemptions
8 granted to the existing hospital;

9 (25) Whether the proposed conversion appropriately provides for the disposition of
10 proceeds of the conversion that may include, but not be limited to:

11 (i) Whether an existing entity or a new entity will receive the proceeds;

12 (ii) Whether appropriate tax status implications of the entity receiving the proceeds have
13 been considered;

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

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

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

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

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

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

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

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

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

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

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

34 ~~and~~

1 (30) Whether the value of assets factored in the conversion is based on past performance
2 or future potential performance; [and](#)

3 [\(31\) Whether the proposed conversion is proper under chapter 36 of title 6 \(" Rhode Island](#)
4 [Antitrust Act"\)](#).

5 **23-17.14-10. Review process of department of attorney general and department of**
6 **health and criteria by department of attorney general -- Conversions limited to not-for-profit**
7 **corporations.**

8 (a) In reviewing an application of a conversion involving a hospital in which the transacting
9 parties are limited to not-for-profit corporations, except as provided in § 23-17.14-12.1, the
10 department of attorney general and department of health shall adhere to the following process:

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

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

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

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

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

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

34 (iv) Provide notice of the date, time and place of informational meeting open to the public

1 which shall be conducted within sixty (60) days of the date of the notice;

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

5 (b) In reviewing an application of a conversion involving a hospital in which the transacting
6 parties are limited to not-for-profit corporations, the department of attorney general may consider
7 the following criteria:

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

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

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

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

18 (5) 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 (6) Whether individuals described in subdivision (b)(5) 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 (7) Whether the board exercised due care in engaging consultants with the appropriate level
26 of independence, education, and experience in similar conversions;

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

29 (9) Whether officers, directors, board members or senior management will receive future
30 contracts;

31 (10) Whether any members of the board will retain any authority in the new hospital;

32 (11) Whether the board accepted fair consideration and value for any management
33 contracts made part of the proposed conversion;

34 (12) Whether individual officers, directors, board members or senior management engaged

1 legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in
2 connection with the proposed conversion;

3 (13) Whether the proposed conversion results in an abandonment of the original purposes
4 of the existing hospital or whether a resulting entity will depart from the traditional purposes and
5 mission of the existing hospital such that a cy pres proceeding would be necessary;

6 (14) Whether the proposed conversion contemplates the appropriate and reasonable fair
7 market value;

8 (15) Whether the proposed conversion was based upon appropriate valuation methods
9 including, but not limited to, market approach, third-party report or fairness opinion;

10 (16) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

11 (17) Whether the conversion is proper under applicable state tax code provisions;

12 (18) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

13 (19) Whether the individuals who represented the existing hospital in negotiations avoided
14 conflicts of interest;

15 (20) Whether officers, board members, directors, or senior management deliberately acted
16 or failed to act in a manner that impacted negatively on the value or purchase price;

17 (21) Whether the transacting parties are in compliance with the Charitable Trust Act,
18 chapter 9 of title 18; [and](#)

19 [\(22\) Whether the proposed conversion is proper under chapter 36 of title 6 \(" Rhode Island](#)
20 [Antitrust Act"\)](#).

21 SECTION 2. This act shall take effect upon passage.

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

1 This act would amend the Hospital Conversion Act to add a provision to the criteria for
2 review by the attorneys general which asks whether the proposed conversion is proper under the
3 Rhode Island Antitrust Act.

4 This act would take effect upon passage.

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