

2022 -- S 2349

=====
LC004342
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY -- THE HOSPITAL CONVERSIONS ACT

Introduced By: Senators McCaffrey, Goodwin, Coyne, Miller, DiPalma, and Euer

Date Introduced: February 15, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.14-4, 23-17.14-6, 23-17.14-7, 23-17.14-8, 23-17.14-10, 23-
2 17.14-12.1 and 23-17.14-31 of the General Laws in Chapter 23-17.14 entitled "The Hospital
3 Conversions Act" are hereby amended to read as follows:

4 **23-17.14-4. Definitions.**

5 For purposes of this chapter:

6 (1) "Acquiree" means the person or persons that lose(s) any ownership or control in the
7 new hospital as a result of a conversion, as the terms "conversion," "new hospital," and "person(s)"
8 are defined within this chapter;

9 (2) "Acquiror" means the person or persons which gain(s) an ownership or control in the
10 new hospital as a result of a conversion, as the terms "conversion," "new hospital," and "person(s)"
11 are defined within this chapter;

12 (3) "Affected community" means any city or town within the state wherein an existing
13 hospital is physically located and/or those cities and towns whose inhabitants are regularly served
14 by the existing hospital;

15 (4) "Charity care" is defined as healthcare services provided by a hospital without charge
16 to a patient and for which the hospital does not and has not expected payment;

17 (5) "Community benefit" means the provision of hospital services that meet the ongoing
18 needs of the community for primary and emergency care in a manner that enables families and
19 members of the community to maintain relationships with person who are hospitalized or are

1 receiving hospital services, and shall also include, but not be limited to charity care and
2 uncompensated care;

3 (6) "Conversion" means any transfer by a person or persons of an ownership or membership
4 interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger,
5 consolidation, lease, gift, joint venture, sale, or other disposition which results in a change of
6 ownership or control or possession of twenty percent (20%) or greater of the members or voting
7 rights or interests of the hospital or of the assets of the hospital or pursuant to which, by virtue of
8 the transfer, a person, together with all persons affiliated with the person, holds or owns, in the
9 aggregate, twenty percent (20%) or greater of the membership or voting rights or interests of the
10 hospital or of the assets of the hospital, or the removal, addition or substitution of a partner which
11 results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in
12 membership which results in a new person gaining or acquiring a controlling vote in the hospital;

13 (7) "Current conflict of interest forms" means conflict of interest forms signed within one
14 year prior to the date the application is submitted ~~in the same form as submitted to auditors for the~~
15 ~~transacting parties in connection with the preparation of financial statements, or in such other~~ on a
16 form ~~as is~~ acceptable to the department of the attorney general, ~~together with a description of any~~
17 ~~conflicts of interest that have been discovered by or disclosed to a transacting party since the date~~
18 ~~of such conflict of interest forms~~ setting forth any possible conflict of interest for all officers,
19 directors, members of the board, trustees, senior management, chairpersons or department
20 chairpersons and medical directors or the transacting parties and their families;

21 (8) "Department" means the department of health. ~~However "departments" shall mean the~~
22 ~~department of health~~ and the department of the attorney general;

23 (9) "Director" means the director of the department of health;

24 (10) "Existing hospital" means the acquiree hospital as it exists prior to the acquisition;

25 (11) "For-profit corporation" means a legal entity formed for the purpose of transacting
26 business which has as any one of its purposes pecuniary profit;

27 (12) "Hospital" means a person or governmental entity licensed in accordance with chapter
28 17 of this title to establish, maintain and operate a hospital;

29 (13) "Incumbent or recently incumbent" means those individuals holding the position at
30 the time the application was submitted and any individual who held a similar position within one
31 year prior to the application's acceptance;

32 ~~(13)~~(14) "New hospital" means the acquiree hospital as it exists after the completion of a
33 conversion;

34 ~~(14)~~(15) "Not-for-profit corporation" means a legal entity formed for some charitable or

1 benevolent purpose and not-for-profit which has been exempted from taxation pursuant to Internal
2 Revenue Code § 501(c)(3), 26 U.S.C. § 501(c)(3);

3 ~~(15)~~(16) "Person" means any individual, trust or estate, partnership, corporation (including
4 associations, joint stock companies and insurance companies), state or political subdivision or
5 instrumentality of the state;

6 ~~(16)~~(17) "Senior managers" or "senior management" means executives and senior level
7 managers of a transacting party;

8 ~~(17)~~(18) "Transacting parties" means the acquiree and the acquiror; and

9 ~~(18)~~(19) "Uncompensated care" means a combination of free care, which the hospital
10 provides at no cost to the patient, bad debt, which the hospital bills for but does not collect, and
11 less than full Medicaid reimbursement amounts.

12 ~~23-17.14-6. Initial application -- Conversions involving for-profit corporations or not-~~
13 ~~for-profit as acquirors. Initial application -- Conversions involving for-profit corporations or~~
14 ~~not-for-profit corporations as acquirors or acquirees.~~

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

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

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

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

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

34 (5) Agenda and minutes of all meetings of the board of directors or trustees and any of its

1 committees, subcommittees, task forces related to the conversion, or similar entities excluding
2 those focused on peer review and confidential medical matters, that occurred within the two (2)
3 year period prior to submission of the application, including, upon the request of the department or
4 attorney general, any meeting packages;

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

6 (7) Bylaws and organizational charts;

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

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

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

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

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

20 (13) A detailed description as each relates to the proposed transaction for equipment leases,
21 insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations,
22 pension plan descriptions and employee benefits, environmental reports, assessments and
23 organizational goals;

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

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

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

33 (17) Patient statistics for the past three (3) years and patient projections for the next one
34 year including patient visits, admissions, emergency room visits, clinical visits, and visits to each

1 department of the hospital, admissions to nursing care or visits by affiliated home healthcare
2 entities;

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

5 (19) A list of pending or adjudicated citations, violations or charges against the facilities
6 listed in subdivision (a)(18) brought by any governmental agency or accrediting agency within the
7 past three (3) years and the status or disposition of each matter with regard to patient [access and](#)
8 care and charitable asset matters;

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

11 (21) Copies of all documents related to:

12 (i) Identification of all charitable assets

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

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

16 (22) A description of charity care and uncompensated care provided by the existing ~~hospital~~
17 [hospital\(s\)](#) for the previous three (3) year period to the present including a dollar amount and a
18 description of services provided to patients;

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

21 (24) A description of the plan as to how the new hospital will provide community benefit
22 and charity care during the first three (3) years of operation;

23 (25) A description of how the new hospital will monitor and value charity care services
24 and community benefit;

25 (26) The names of persons currently holding a position as an officer, director, board
26 member, or senior manager who will or will not maintain any position with the new hospital and
27 whether any said person will receive any salary, severance stock offering or any financial gain,
28 current or deferred, as a result of or in relation to the proposed conversion;

29 (27) Copies of capital and operating budgets or other financial projections for the new
30 hospital during the first three (3) years of operation;

31 (28) Copies of plans relative to staffing during the first three (3) years at the new hospital;

32 (29) A list of all medical services, departments and clinical services, and administrative
33 services which will be maintained at the new hospital, [including staffing levels](#);

34 (30) A description of criteria established by the board of directors of the ~~existing hospital~~

1 [transacting parties](#) for pursuing a proposed conversion with one or more healthcare providers;

2 (31) Copies of reports of any due diligence review performed by each transacting party in
3 relation to the proposed conversion. These reports are to be held by the attorney general and
4 department of health as confidential and not released to the public regardless of any determination
5 made pursuant to § 23-17.14-32 and not withstanding any other provision of the general laws;

6 (32) A description of request for proposals issued by the ~~existing hospital~~ [transacting](#)
7 [parties](#) relating to pursuing a proposed conversion;

8 (33) Copies of reports analyzing affiliations, mergers, or other similar transactions
9 considered by any of the transacting parties during the past three (3) years, including, but not limited
10 to, reports by appraisers, accountants, investment bankers, actuaries and other experts;

11 (34) A copy of proposed contracts or description of proposed contracts or arrangements
12 with senior managers, board members, officers, or directors of the ~~existing hospital~~ [transacting](#)
13 [parties](#) for severance consulting services or covenants not to compete following completion of the
14 proposed conversion;

15 (35) A copy or description of all agreements or proposed agreements reflecting any current
16 and/or future employment or compensated relationship between the acquiror (or any related entity)
17 and any officer, director, board member, or senior manager of the acquiree (or any related entity);

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

20 (37) Copies of documents or description of any proposed plan for any entity to be created
21 for charitable assets, including but not limited to, endowments, restricted, unrestricted and specific
22 purpose funds, the proposed articles of incorporation, bylaws, mission statement, program agenda,
23 method of appointment of board members, qualifications of board members, duties of board
24 members, and conflict of interest policies;

25 (38) Description of all departments, clinical, social, or other services or medical services
26 that will be eliminated or significantly reduced ~~at the new hospital~~ [by transacting parties at either](#)
27 [the new hospital\(s\) or the existing hospital\(s\)](#);

28 (39) Description of staffing levels [for five \(5\) years](#) of all categories of employees,
29 including full-time, part-time, and contract employees currently working at or providing services
30 to the existing hospital and description of any anticipated or proposed changes in current staffing
31 levels, [including any reduction in staffing, relocation of staffing, or additional staffing affecting the](#)
32 [new hospital and the existing hospital](#);

33 [\(40\) Description of retirement plan\(s\) for all employees, full-time or part-time, including](#)
34 [any supplemental executive retirement plans](#);

1 [\(41\) Copies of retirement plans accounting; management letters, and reports, including](#)
2 [unfunded liabilities for retirement plans for the last five \(5\) years;](#)

3 [\(42\) Copies of plans to fund unfunded liabilities for pension and any retirement plans;](#)

4 [\(43\) Copies of any impact analysis for the affected communities both before conversion](#)
5 [and after proposed conversion, including benefits to the community, economic impact, and staffing;](#)

6 ~~(40)~~(44) Copies of current conflict of interest forms from all incumbent or recently
7 incumbent officers, [directors](#), members of the boards of directors or trustees, and senior ~~managers,~~
8 ~~including management and~~ the medical directors, of the transacting parties on a form acceptable to
9 the [department of](#) attorney general; ~~"incumbent or recently incumbent" means those individuals~~
10 ~~holding the position at the time the application is submitted and any individual who held a similar~~
11 ~~position within one year prior to the application's acceptance;~~

12 ~~(41)~~(45) If the acquiror is a for profit corporation that has acquired a not for profit hospital
13 under the provisions of this chapter, the application shall also include a complete statement of
14 performance during the preceding one year with regard to the terms and conditions of approval of
15 conversion and each projection, plan, or description submitted as part of the application for any
16 conversion completed under an application submitted pursuant to this section and made a part of
17 an approval for the conversion pursuant to § 23-17.14-7, 23-17.14-8 or ~~23-14.14-19~~ [23-17.14-19](#);
18 [and](#)

19 ~~(42)~~(46) Copies of IRS Form 990 for any transacting party required by federal law to file
20 such a form for each of the three (3) years prior to the submission of the application.

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

25 (c) Except for information determined by the attorney general in accordance with § 23-
26 17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as
27 confidential, the initial application and supporting documentation shall be considered public
28 records and shall be available for inspection upon request.

29 **23-17.14-7. Review process of the department of attorney general and the department**
30 **of health and review criteria by department of attorney general.**

31 (a) The department of attorney general shall review all conversions involving a hospital in
32 which one or more of the transacting parties involves a for-profit corporation ~~as the acquiror and~~
33 [and/or](#) a not-for-profit corporation ~~as the acquiree.~~

34 (b) In reviewing proposed conversions in accordance with this section and § 23-17.14-10,

1 the department of attorney general and department of health shall adhere to the following process:

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

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

16 (3) Within thirty (30) working days after acceptance of the initial application, the
17 department of attorney general shall render its determination on confidentiality pursuant to § 23-
18 17.14-32 and the department of attorney general and department of health shall publish notice of
19 the application in a newspaper of general circulation in the state and shall notify by United States
20 mail any person who has requested notice of the filing of the application. The notice shall:

- 21 (i) State that an initial application has been received and accepted for review;
- 22 (ii) State the names of the transacting parties;
- 23 (iii) State the date by which a person may submit written comments to the department of
24 attorney general or department of health; and
- 25 (iv) Provide notice of the date, time, and place of informational meeting open to the public
26 which shall be conducted within sixty (60) days of the date of the notice;

27 (4) The department of attorney general and department of health shall each approve,
28 approve with conditions directly related to the proposed conversion, or disapprove the application
29 within ~~one hundred twenty (120)~~ one hundred eighty (180) days of the date of acceptance of the
30 application.

31 (c) In reviewing an application pursuant to subsection (a) of this section, the department of
32 the attorney general shall consider the following criteria:

33 (1) Whether the proposed conversion will harm the public's interest in trust property given,
34 devised, or bequeathed to the existing hospital for charitable, educational, or religious purposes

1 located or administered in this state;

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

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

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

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

11 (6) Whether any conflict of interest exists concerning the proposed conversion relative to
12 members of the board, officers, directors, senior management, experts, or consultants engaged in
13 connection with the proposed conversion including, but not limited to, attorneys, accountants,
14 investment bankers, actuaries, healthcare experts, or industry analysts;

15 (7) Whether individuals described in subsection (c)(6) of this section were provided with
16 contracts or consulting agreements or arrangements that included pecuniary rewards based in
17 whole, or in part on the contingency of the completion of the conversion;

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

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

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

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

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

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

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

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

- 1 (16) Whether the proposed conversion results in an abandonment of the original purposes
2 of the existing hospital or whether a resulting entity will depart from the traditional purposes and
3 mission of the existing hospital such that a cy press proceeding would be necessary;
- 4 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
5 market value;
- 6 (18) Whether the proposed conversion was based upon appropriate valuation methods
7 including, but not limited to, market approach, third-party report, or fairness opinion;
- 8 (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;
- 9 (20) Whether the conversion is proper under applicable state tax code provisions;
- 10 (21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;
- 11 (22) Whether the individuals who represented the existing hospital in negotiations avoided
12 conflicts of interest;
- 13 (23) Whether officers, board members, directors, or senior management deliberately acted
14 or failed to act in a manner that impacted negatively on the value or purchase price;
- 15 (24) Whether the formula used in determining the value of the existing hospital was
16 appropriate and reasonable which may include, but not be limited to, factors such as: the multiple
17 factor applied to the "EBITDA" -- earnings before interest, taxes, depreciation, and amortization;
18 the time period of the evaluation; price/earnings multiples; the projected efficiency differences
19 between the existing hospital and the new hospital; and the historic value of any tax exemptions
20 granted to the existing hospital;
- 21 (25) Whether the proposed conversion appropriately provides for the disposition of
22 proceeds of the conversion that may include, but not be limited to:
- 23 (i) Whether an existing entity or a new entity will receive the proceeds;
- 24 (ii) Whether appropriate tax status implications of the entity receiving the proceeds have
25 been considered;
- 26 (iii) Whether the mission statement and program agenda will be or should be closely related
27 with the purposes of the mission of the existing hospital;
- 28 (iv) Whether any conflicts of interest arise in the proposed handling of the conversion's
29 proceeds;
- 30 (v) Whether the bylaws and articles of incorporation have been prepared for the new entity;
- 31 (vi) Whether the board of any new or continuing entity will be independent from the new
32 hospital;
- 33 (vii) Whether the method for selecting board members, staff, and consultants is
34 appropriate;

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

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

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

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

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

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

12 (30) Whether the value of assets factored in the conversion is based on past performance
13 or future potential performance; ~~and~~

14 (31) Whether the proposed conversion is proper under chapter 36 of title 6 ("Rhode Island
15 Antitrust Act");

16 (32) Whether the board established appropriate criteria for staffing levels post conversion,
17 including any reduction in staffing, relocation of staffing, or additional staffing affecting the new
18 hospital(s) and the existing hospital(s);

19 (33) Whether the board exercised due care concerning staffing levels post conversion to
20 comply with federal employment and labor laws, including the National Labor Relations Act
21 (NLRA) 29 U.S.C. §§ 151-169, Age Discrimination in Employment Act of 1967, Public Law 90-
22 202, 29 U.S.C. § 621-634, Civil Rights Act of 1964, Public Law 88-352 (78 Stat. 241), 42 U.S.C.
23 § 2000d et seq. (Title VI);

24 (34) Whether the board exercised due care concerning staffing levels post conversion to
25 comply with state employment and labor laws, including chapter 5 of title 28 ("fair employment
26 practices");

27 (35) Whether the board exercised due care in funding employee and retirement plans and
28 pensions, including developing plans to fund unfunded liabilities for retirement plans and pensions
29 for all employees, full-time or part-time;

30 (36) Whether the retirement and pensions plans are in compliance with the Employee
31 Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 et seq.; and

32 (37) Whether the board established appropriate criteria for any impact analysis for the
33 affected communities both before conversion and after proposed conversion, including benefits to
34 the community, economic impact, and staffing.

1 ~~23-17.14-8. Review process and review criteria by department of health for~~
2 ~~conversions involving for-profit corporation as acquiror.~~ **Review process and review criteria**
3 **by department of health for conversions involving for-profit corporation as acquiror and**
4 **acquiree.**

5 (a) The department [of health](#) shall review all proposed 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 an application for a conversion involving hospitals in which one or more
9 of the transacting parties is a for-profit corporation, ~~as the acquiror~~ the department [of health](#) shall
10 consider the following criteria:

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

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

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

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

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

22 (6) Whether the transacting parties have appropriately accounted for employment needs at
23 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 considering
26 the essential medical services needed to provide safe and adequate treatment, appropriate access
27 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 [\(c\) In reviewing proposed conversions in accordance with this section, the department of](#)
32 [health shall adhere to the process in § 23-17.14-7\(b\).](#)

33 **23-17.14-10. Review process of department of attorney general and department of**
34 **health and criteria by department of attorney general -- Conversions limited to not-for-profit**

1 **corporations.**

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

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

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

19 (3) Within thirty (30) working days after acceptance of the initial application, the
20 department of attorney general shall render its determination on confidentiality pursuant to § 23-
21 17.14-32 and the department of attorney general and department of health shall publish notice of
22 the application in a newspaper of general circulation in the state and shall notify by United States
23 mail any person who has requested notice of the filing of the application. The notice shall:

24 (i) State that an initial application has been received and accepted for review;

25 (ii) State the names of the transacting parties;

26 (iii) State the date by which a person may submit written comments to the department of
27 attorney general or department of health; and

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

30 (4) The department of attorney general and department of health shall each approve,
31 approve with conditions directly related to the proposed conversion, or disapprove the application
32 within ~~one hundred twenty (120)~~ one hundred eighty (180) days of the date of acceptance of the
33 application.

34 (b) In reviewing an application of a conversion involving a hospital in which the transacting

1 parties are limited to not-for-profit corporations, the department of attorney general may consider
2 the following criteria:

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

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

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

11 (4) Whether the board [formulated and issued appropriate requests for proposals in pursuing](#)
12 [a conversion, including](#) considered the proposed conversion as the only alternative or as the best
13 alternative in carrying out its mission and purposes;

14 (5) Whether any conflict of interest exists concerning the proposed conversion relative to
15 members of the board, officers, directors, senior management, experts, or consultants engaged in
16 connection with the proposed conversion including, but not limited to, attorneys, accountants,
17 investment bankers, actuaries, healthcare experts, or industry analysts;

18 (6) Whether individuals described in subsection (b)(5) of this section were provided with
19 contracts or consulting agreements or arrangements that included pecuniary rewards based in
20 whole, or in part on the contingency of the completion of the conversion;

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

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

25 (9) Whether officers, directors, board members, or senior management will receive future
26 contracts [in existing, new, or affiliated hospital or foundations](#);

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

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

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

33 (13) Whether the proposed conversion results in an abandonment of the original purposes
34 of the existing hospital or whether a resulting entity will depart from the traditional purposes and

- 1 mission of the existing hospital such that a cy pres proceeding would be necessary;
- 2 (14) Whether the proposed conversion contemplates the appropriate and reasonable fair
3 market value;
- 4 (15) Whether the proposed conversion was based upon appropriate valuation methods
5 including, but not limited to, market approach, third-party report, or fairness opinion;
- 6 (16) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;
- 7 (17) Whether the conversion is proper under applicable state tax code provisions;
- 8 (18) Whether the proposed conversion jeopardizes the tax status of the existing hospital;
- 9 (19) Whether the individuals who represented the existing hospital in negotiations avoided
10 conflicts of interest;
- 11 (20) Whether officers, board members, directors, or senior management deliberately acted
12 or failed to act in a manner that impacted negatively on the value or purchase price;
- 13 (21) Whether the transacting parties are in compliance with the Charitable Trust Act,
14 chapter 9 of title 18; ~~and~~
- 15 (22) Whether the proposed conversion is proper under chapter 36 of title 6 ("Rhode Island
16 Antitrust Act");
- 17 (23) Whether the board established appropriate criteria for staffing levels post conversion,
18 including any reduction in staffing, relocation of staffing, or additional staffing affecting the new
19 hospital(s) and the existing hospital(s);
- 20 (24) Whether the board exercised due care concerning staffing levels post conversion to
21 comply with federal employment and labor laws, including the National Labor Relations Act
22 (NLRA) 29 U.S.C. §§ 151-169, Age Discrimination in Employment Act of 1967, Public Law 90-
23 202, 29 U.S.C. § 621-634, and the Civil Rights Act of 1964, Public Law 88-352 (78 Stat. 241), 42
24 U.S.C. § 2000d et seq., (Title VI);
- 25 (25) Whether the board exercised due care concerning staffing levels post conversion to
26 comply with state employment and labor laws, including chapter 5 of title 28 ("fair employment
27 practices");
- 28 (26) Whether the board exercised due care in funding employee and retirement plans and
29 pensions, including developing plans to fund unfunded liabilities for retirement plans and pensions
30 for all employees, full-time or part-time;
- 31 (27) Whether the retirement and pensions plans are in compliance with the Employee
32 Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 et seq.; and
- 33 (28) Whether the board established appropriate criteria for any impact analysis for the
34 affected communities both before conversion and after proposed conversion, including benefits to

1 [the community, economic impact, and staffing.](#)

2 **23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-**
3 **profit hospitals.**

4 (a) Notwithstanding §§ 23-17.14-6(a) and 23-17.14-10 of this chapter, if a proposed
5 conversion involves: (1) Two (2) or more hospitals that are not in common control with another
6 hospital; or (2) One hospital not under common control with another hospital and a hospital system
7 parent corporation; or (3) Two (2) affiliated hospitals the conversion of which was previously
8 approved in accordance with this chapter and another hospital or hospital system parent
9 corporation, or (4) One or more hospital(s) that are determined to be distressed as under subsection
10 (a)(2) of this section, including hospitals that are part of a not-for-profit hospital system parent
11 corporation, as acquiree, such conversion will be reviewed under an expedited review process
12 conducted solely by the department of health (without derogation of the authority of the attorney
13 general in accordance with § 23-17.14-21), only if the acquiree and acquiror are both nonprofit
14 corporations exempt from taxation under section 501(a) of the United States Internal Revenue
15 Service Code as organizations described in section 501(c)(3) of such code, or any successor
16 provisions, and:

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

21 [\(2\) The combined hospitals of the acquiree and acquiror are licensed for not more than](#)
22 [twenty percent \(20%\) of licensed hospitals in Rhode Island according to the department of health;](#)

23 ~~(3)~~ (3) The acquiree operates one or more distressed Rhode Island hospitals facing
24 significant financial hardship that may impair its or their ability to continue to operate effectively
25 without the proposed conversion and have been determined to be distressed by the director of health
26 based upon whether the hospital(s) meets one or more of the following criteria:

- 27 (i) Operating loss for the two (2) most recently completed fiscal years;
- 28 (ii) Less than fifty (50) days cash-on-hand;
- 29 (iii) Current asset to liability ratio of less than one point five (1.5);
- 30 (iv) Long-term debt to capitalization greater than seventy-five percent (75%);
- 31 (v) Inpatient occupancy rate of less than fifty percent (50%);
- 32 (vi) Would be classified as below investment grade by a major rating agency.

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

1 conversion:

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

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

5 (3) Bylaws and organizational charts for the transacting parties and their affiliated
6 hospitals;

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

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

12 (6) Conflict of interest policies and procedures;

13 (7) Copies of audited income statements, balance sheets, and other financial statements for
14 the past three (3) years for the transacting parties and their affiliated hospitals where appropriate
15 and to the extent they have been made public, audited interim financial statements and income
16 statements together with detailed descriptions of the financing structure of the proposed conversion
17 including equity contribution, debt restructuring, stock issuance, and 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 time
24 the application is submitted and any individual who held a similar position within one year prior to
25 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 charitable
28 assets for the past three (3) years including, but not limited to, endowments, restricted, unrestricted,
29 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 § 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 public
6 an opportunity to comment on the application.

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

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

14 (g) Following a conversion, the new hospital shall provide on or before March 1 of each
15 calendar year a report in a form acceptable to the director [and attorney general](#) containing all
16 updated financial information required to be disclosed pursuant to subsection (b)(7) of this section.

17 (h) If an expedited review is performed by the department pursuant to this section, the
18 department of attorney general shall perform a review of the proposed transaction pursuant to § 23-
19 17.14-10(b) and the criteria for conversions limited to not-for-profits. The attorney general's review
20 shall be done concurrently with the department of health review and shall not extend the length of
21 the review process. For this review, the department of attorney general shall be entitled to costs in
22 accordance with § 23-17.14-13 and subsection (f) of this section.

23 **23-17.14-31. Powers of the department of health.**

24 The department may adopt rules, including measurable standards, as may be necessary to
25 accomplish the purpose of this chapter. In doing so, the department shall review other departmental
26 regulations that may have duplicative requirements, including change of effective control
27 regulations and processes, determination of need requirements and application requirements under
28 § 23-17.14-18, if applicable, and may streamline the process by eliminating duplicative
29 requirements and providing for concurrent regulatory review and combined hearings to the
30 maximum extent possible to promote efficiency and avoid duplication of effort and resources. [If
31 such duplicative requirements, including change of effective control regulations and processes,
32 determination of need requirements and application requirements under §23-17.14-18, and any
33 other are utilized to streamline the process, then the department of health shall include the findings
34 and decisions of those duplicative requirements within the written decision of this chapter.](#)

1 SECTION 2. Section 23-17.14-12 of the General Laws in Chapter 23-17.14 entitled "The
2 Hospital Conversions Act" is hereby repealed.

3 ~~23-17.14-12. Review process by department of health for conversions involving for-~~
4 ~~profit hospital as the acquiree.~~

5 ~~The department of health shall review all proposed conversions involving a for-profit~~
6 ~~hospital as the acquiree and either a for-profit corporation or a not-for-profit hospital or corporation~~
7 ~~as the acquiror in accordance with the provisions for change of effective control pursuant to §§ 23-~~
8 ~~17-14.3 and 23-17-14.4.~~

9 SECTION 3. This act shall take effect upon passage, and shall apply to all applications
10 pending on or after the effective date and to future applications.

=====
LC004342
=====

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

1 This act would require the transacting parties and the new hospital seeking conversion to
2 supply additional information in their application for review by the department of health and the
3 department of the attorney general relating to staffing levels, pension plans and impact for the
4 affected communities before and after the proposed conversion.

5 This act would take effect upon passage, and would apply to all applications pending on or
6 after the effective date and to future applications.

=====
LC004342
=====