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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

A N A C T

RELATING TO HEALTH AND SAFETY - HOSPITAL CONVERSIONS ACT

Introduced By: Senators Picard, Ruggerio, and Cote

Date Introduced: January 24, 2012

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.14-2, 23-17.14-3, 23-17.14-4, 23-17.14-5, 23-17.14-6, 23-
2 17.14-7, 23-17.14-9, 23-17.14-10, 23-17.14-11, 23-17.14-13, 23-17.14-19, 23-17.14-28 and 23-
3 17.14-31 of the General Laws in Chapter 23-17.14 entitled "The Hospital Conversions Act" are
4 hereby amended to read as follows:

5 **23-17.14-2. Findings.** -- The general assembly finds and declares that:

- 6 (1) Rhode Island has a proud history of non-profit hospitals and philanthropic support of
7 medical services, education and research;
- 8 (2) Hospitals in Rhode Island provide overall high quality care at a reasonable cost;
- 9 (3) Hospitals in Rhode Island have experienced ~~during the 1990's~~ substantial declines in
10 occupancy as the healthcare system has changed.
- 11 (4) Hospitals ~~required~~ require capital to maintain operations and to modernize facilities
12 and services;
- 13 (5) Nationally and regionally private investment is being made that results in the
14 conversion of not-for-profit and public hospitals into for-profit hospitals;
- 15 (6) There are hospitals in Rhode Island that have provided and continue to provide
16 important services to communities that submit that their survival may depend on the ability to
17 enter into agreements that result in the investment of private capital and their conversion to for-
18 profit status;
- 19 (7) Hospitals both not-for-profit and for-profit are merging and forming networks to

1 achieve integration, stability and efficiency and the presence of these networks affects
2 competition;

3 (8) There are concerns that hospital networks may engage in practices that affect the
4 quality medical services in the community as a whole and for more vulnerable members of
5 society in particular;

6 (9) In order to protect public health and welfare and public and charitable assets, it is
7 necessary to establish standards and procedures for hospital conversions.

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

9 (1) Assure the viability of a safe, accessible and affordable healthcare system that is
10 available to all of the citizens of the state;

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

15 (3) To establish a review process and criteria for review of hospital conversions ~~that~~
16 ~~involve for-profit corporations;~~

17 ~~(4) To establish a review process and criteria for review of hospital conversions that~~
18 ~~involve only not-for-profit corporations;~~

19 ~~(5)~~(4) To clarify the jurisdiction and the authority of the department of health to protect
20 public health and welfare and the department of attorney general to preserve and protect public
21 and charitable assets in reviewing both hospital conversions which involve for-profit corporations
22 and hospital conversions which include only not-for-profit corporations; and

23 ~~(6)~~(5) To provide for independent foundations to hold and distribute proceeds of hospital
24 conversions consistent with the acquiree's original purpose or for the support and promotion of
25 health care and social needs in the affected community.

26 **23-17.14-4. Definitions.** -- For purposes of this chapter:

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

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

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

1 by the existing hospital;

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

4 (5) "Community benefit" means the provision of hospital services that meet the ongoing
5 needs of the community for primary and emergency care in a manner that enables families and
6 members of the community to maintain relationships with person who are hospitalized or are
7 receiving hospital services, and shall also include, but not be limited to charity care and
8 uncompensated care;

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

20 (7) "Current conflict of interest forms" means conflict of interest forms signed within one
21 year prior to the date the application is submitted in the same form as submitted to auditors for the
22 transacting parties in connection with the preparation of financial statements, or in such other
23 form as is acceptable to the attorney general, together with a description of any conflicts of
24 interest that have been discovered by or disclosed to a transacting party since the date of such
25 conflict of interest forms;

26 ~~(7)~~(8) "Department" means the department of health. However "departments" shall mean
27 the department of health and the department of the attorney general;

28 ~~(8)~~(9) "Director" means the director of the department of health;

29 ~~(9)~~(10) "Existing hospital" means the acquiree hospital as it exists prior to the
30 acquisition;

31 ~~(10)~~(11) "For-profit corporation" means a legal entity formed for the purpose of
32 transacting business which has as any one of its purposes pecuniary profit;

33 ~~(11)~~(12) "Hospital" means a person or governmental entity licensed in accordance with
34 chapter 17 of this title to establish, maintain and operate a hospital;

1 ~~(12)~~(13) "New hospital" means the acquiree hospital as it exists after the completion of a
2 conversion;

3 ~~(13)~~(14) "Not-for-profit corporation means a legal entity formed for some charitable or
4 benevolent purpose and not-for-profit which has been exempted from taxation pursuant to
5 Internal Revenue Code section 501(c)(3), 26 U.S.C. section 501(c)(3);

6 ~~(14)~~(15) "Person" means any individual, trust or estate, partnership, corporation
7 (including associations, joint stock companies and insurance companies), state or political
8 subdivision or instrumentality of the state;

9 (16) "Senior managers" or "senior management" means executives and senior level
10 managers of a transacting party;

11 ~~(15)~~(17) "Transacting parties" means the acquiree and the acquiror ~~any person or persons~~
12 ~~who seeks either to transfer or acquire ownership or a controlling interest or controlling authority~~
13 ~~in a hospital which would result in a change of ownership, control or authority of twenty percent~~
14 ~~(20%) or greater;~~

15 ~~(16)~~(18) "Uncompensated care" means a combination of free care, which the hospital
16 provides at no cost to the patient, bad debt, which the hospital bills for but does not collect, and
17 less than full Medicaid reimbursement amounts.

18 **23-17.14-5. Prior approval required -- Department of attorney general and**
19 **department of health.** -- (a) A conversion shall require review and approval from the department
20 of attorney general and from the department of health in accordance with the provisions of this
21 chapter; except as provided for under section 23-17.14-12.1 hereof, but shall remain subject to the
22 authority of the attorney general pursuant to section 23-17.14-21 hereof.

23 (b) The review by the departments shall occur concurrently, and neither department shall
24 delay its review or determination because the other department has not completed its review or
25 issued its determination. The applicant may request that the review by the department occur
26 concurrently with the review of any relevant federal regulatory authority.

27 **23-17.14-6. Initial application -- Conversions involving for-profit corporations or**
28 **not-for-profit as acquirors.** -- (a) No person shall engage in a conversion with a for profit
29 corporation as the acquiror and a not-for-profit corporation as the acquiree involving the
30 establishment, maintenance, or operation of a hospital or a conversion subject to section 23-
31 17.14-9 without prior approval of both the department of attorney general and the department of
32 health. The transacting parties shall file an initial application in accordance with subsection (b) of
33 this section that shall, at minimum, include the following information with respect to each
34 transacting party and to the proposed new hospital:

- 1 (1) A detailed summary of the proposed conversion;
- 2 (2) Names, addresses and phone numbers of the transacting parties;
- 3 (3) Name, address, phone number, occupation, and tenure of all officers, members of the
4 board of directors, trustees, executives, and senior ~~level~~ managers, including for each position,
5 current persons and persons holding such position during the past ~~three (3)~~ two (2) years;
- 6 (4) A list of all committees, subcommittees, task forces, or similar entities of the board
7 of directors or trustees, including a short description of the purpose of each committee,
8 subcommittee, task force, or similar entity and the name, address, phone number, occupation, and
9 tenure of each member;
- 10 (5) Agenda, ~~meeting packages~~, and minutes of all meetings of the board of directors or
11 trustees and any of its committees, subcommittees, task forces related to the conversion, or
12 similar entities excluding those focused on peer review and confidential medical matters, that
13 occurred within the two (2) year period prior to submission of the application, including, upon the
14 request of the department or attorney general, any meeting packages;
- 15 (6) Articles of incorporation and certificate of incorporation;
- 16 (7) Bylaws and organizational charts;
- 17 (8) Organizational structure for existing transacting parties and each partner, affiliate,
18 parent, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or
19 greater ownership interest;
- 20 (9) Conflict of interest statements, policies and procedures;
- 21 (10) Names, addresses and phone numbers of professional consultants engaged in
22 connection with the proposed conversion;
- 23 (11) Copies of audited income statements, balance sheets, other financial statements, and
24 management letters for the past three (3) years and to the extent they have been made public,
25 audited interim financial statements and income statements together with detailed description of
26 the financing structure of the proposed conversion including equity contribution, debt
27 restructuring, stock issuance, partnership interests, stock offerings and the like;
- 28 (12) A detailed description of real estate issues including title reports for land owned and
29 lease agreements concerning the proposed conversion;
- 30 (13) A detailed description as each relates to the proposed transaction for equipment
31 leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory
32 citations, pension plan descriptions and employee benefits, environmental reports, assessments
33 and organizational goals;
- 34 (14) Copies of reports analyzing the proposed conversion during the past three (3) years

1 including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and
2 other experts;

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

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

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

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

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

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

21 (21) Copies of all documents related to:

22 (i) Identification of all charitable assets

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

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

26 (22) A description of charity care and uncompensated care provided by the existing
27 hospital for the previous ~~five (5)~~ three (3) year period to the present including a dollar amount
28 and a description of services provided to patients;

29 (23) A description of bad debt incurred by the existing hospital for the previous ~~five (5)~~
30 three (3) for which payment was anticipated but not received;

31 (24) A description of the plan as to how the new hospital will provide community benefit
32 and charity care during the first ~~five (5)~~ three (3) years of operation;

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

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

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

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

9 (29) A list of all medical services, departments and clinical services, and administrative
10 services which will be maintained at the new hospital;

11 (30) A description of criteria established by the board of directors of the existing hospital
12 for pursuing a proposed conversion with one or more health care providers;

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

18 (32) A description of request for proposals issued by the existing hospital relating to
19 pursuing a proposed conversion;

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

23 (34) A copy of proposed contracts or description of proposed contracts or arrangements
24 with ~~management~~ senior managers, board members, officers, or directors of the existing hospital
25 for severance consulting services or covenants not to compete following completion of the
26 proposed conversion;

27 (35) A copy or description of all agreements or proposed agreements reflecting any
28 current and/or future employment or compensated relationship between the acquiror (or any
29 related entity) and any officer, director, board member, or senior ~~level~~ manager of the acquiree
30 (or any related entity);

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

33 (37) Copies of documents or description of any proposed plan for any entity to be
34 created for charitable assets, including but not limited to, endowments, restricted, unrestricted and

1 specific purpose funds, the proposed articles of incorporation, by-laws, mission statement,
2 program agenda, method of appointment of board members, qualifications of board members,
3 duties of board members, and conflict of interest policies;

4 (38) Description of all departments, clinical, social, or other services or medical services
5 that will be eliminated or significantly reduced at the new hospital;

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

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

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

22 (42) Copies of IRS Form 990 for any transacting party required by federal law to file
23 such a form for each of the ~~five (5)~~ three (3) years prior to the submission of the application.

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

28 (c) Except for information determined by the attorney general in accordance with section
29 23-17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained
30 as confidential, the initial application and supporting documentation shall be considered public
31 records and shall be available for inspection upon request.

32 **23-17.14-7. Review process of the department of attorney general and the**
33 **department of health and review criteria by department of attorney general. --** (a) The
34 department of attorney general shall review all conversions involving a hospital in which one or

1 more of the transacting parties involves a for profit corporation as the acquiror and a not for profit
2 corporation as the acquiree.

3 (b) In reviewing proposed conversions in accordance with this section and section 23-
4 17.14-10, the department of attorney general and department of health shall adhere to the
5 following process:

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

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

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

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

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

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

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

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

1 the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
10 market value;

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

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

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

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

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

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

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

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

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

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

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

34 (iv) Whether any conflicts of interest arise in the proposed handling of the conversion's

1 proceeds;

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

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

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

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

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

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

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

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

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

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

22 **23-17.14-9. Initial application -- Conversions limited to not-for-profit corporations. -**

23 **;** All conversions which are limited to not-for-profit corporations which involve the
24 establishment, maintenance, or operation of a hospital require prior approval of both the
25 department of attorney general and the department of health [or, if eligible for expedited review](#)
26 [under section 23-17.14-12.1, prior approval of the department of health and subject to the](#)
27 [authority of the attorney general pursuant to section 23-17.14-21 hereof.](#) The review by the two
28 (2) departments shall occur concurrently and neither department shall delay its review or
29 determination because the other department has not completed its review or issued its
30 determination. [The applicant may request that the review by the department occur concurrently](#)
31 [with the review of any relevant federal regulatory authority.](#) The transacting parties shall file an
32 initial application pursuant to the provisions set forth in section 23-17.14-6 [or section 23-17.14-](#)
33 [12.1.](#)

34 **23-17.14-10. Review process of department of attorney general and department of**

1 **health and criteria by department of attorney general -- Conversions limited to not-for-**
2 **profit corporations.** -- (a) In reviewing an application of a conversion involving a hospital in

3 which the transacting parties are limited to not-for-profit corporations, [except as provided in](#)
4 [section 23-17.14-12.1](#), the department of attorney general and department of health shall adhere
5 to the following process:

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

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

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

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

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

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

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

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

1 the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (13) Whether the proposed conversion results in an abandonment of the original

1 purposes of the existing hospital or whether a resulting entity will depart from the traditional
2 purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

3 (14) Whether the proposed conversion contemplates the appropriate and reasonable fair
4 market value;

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

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

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

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

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

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

15 (21) Whether the transacting parties are in compliance with the Charitable Trust Act,
16 chapter 9 of title 18.

17 **23-17.14-11. Criteria for the department of health -- Conversions limited to not-for-**
18 **profit corporations. --** In reviewing an application of a conversion involving a hospital in which
19 the transacting parties are limited to not-for-profit corporations, the department shall consider the
20 following criteria:

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

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

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

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

30 (5) Whether the transacting parties have made a commitment to assure the continuation
31 of collective bargaining rights, if applicable, and retention of the ~~workplace~~ [workforce](#);

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

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

4 **23-17.14-13. Reports, use of experts, costs. --** The department of health or the
5 department of attorney general may in effectuating the purposes of this chapter engage experts or
6 consultants including, but not limited to, actuaries, investment bankers, accountants, attorneys, or
7 industry analysts. All copies of reports prepared by experts and consultants, and costs associated
8 with the reports, shall be made available to the transacting parties and to the public. All costs
9 incurred under this provision shall be the responsibility of one or more transacting parties in an
10 amount to be determined by the attorney general or the director as they deem appropriate and
11 consistent with 23-17.14-12.1, if applicable. No application for a conversion made pursuant to the
12 requirements of this chapter shall be considered complete unless an agreement has been executed
13 with the attorney general or the director for the payment of costs in accordance with this section.

14 **23-17.14-19. Limits to acquisitions -- Community benefits requirements -- Filings**
15 **prohibited. --** (a) ~~In effectuating the purposes of this chapter to evaluate, review and monitor the~~
16 ~~new phenomenon of for-profit corporations gaining an interest in hospitals and the resulting~~
17 ~~impact on the delivery of healthcare in the state, limitations on for-profit corporations involved in~~
18 ~~hospital conversions are necessary~~ Notwithstanding any other provisions in this chapter, nothing
19 herein shall be construed to prohibit a for-profit hospital, its subsidiaries or affiliates, from
20 applying for and receiving approval of a conversion of more than one hospital in the same year,
21 or any subsequent year, and each such application shall require review and approval from the
22 attorney general and the department of health in accordance with the provisions of this chapter.

23 ~~(b) No for-profit corporation, or its subsidiaries or affiliates, which applies for and~~
24 ~~receives approval of a conversion of a hospital in accordance with the provisions of this chapter~~
25 ~~shall be permitted to apply for approval of a conversion of a second hospital in this state for a~~
26 ~~period of at least three (3) years after the initial conversion is finalized and implemented. This~~
27 ~~subsection shall not be deemed to prohibit a for-profit corporation, together with its subsidiaries~~
28 ~~and affiliates, from applying for or receiving approval of a conversion of two (2) affiliated~~
29 ~~hospitals in this state provided that: (1) one of the two (2) hospital licenses involved in the~~
30 ~~conversion was issued prior to July 22, 1997; and (2) this license involves a specialty~~
31 ~~rehabilitation hospital that has a maximum of ninety (90) beds. A conversion undertaken pursuant~~
32 ~~to this provision shall be considered one conversion and a for-profit corporation which receives~~
33 ~~approval for the conversion shall be subject to the three (3) year period between the finalization~~
34 ~~and implementation of a first conversion and the application for a second conversion as set forth~~

1 ~~in this subsection.~~

2 ~~(e)(b)~~ In the event that a for-profit corporation applies ~~to hold, own, or acquire an~~
3 ~~ownership or controlling interest greater than twenty percent (20%) in more than one~~ for
4 conversion of an additional hospital ~~one year subsequent to the finalization and implementation~~
5 ~~of a prior license~~, all provisions of this chapter must be met. ~~and, in~~ In addition to the review
6 process and criteria set forth in this chapter, the department shall have the sole authority and
7 discretion to determine:

8 (1) Whether the for-profit corporation provided community benefits as required or
9 promised in connection with obtaining and holding a license or interest therein during the
10 previous license period;

11 (2) Whether all terms and conditions of the prior license have been met, including but
12 not limited to, the conditions in sections 23-17.14-19(b) and section 23-17.14-15;

13 (3) Whether all federal, state and local laws, ordinances and regulations have been
14 complied with relative to any prior license;

15 (4) Whether the for-profit corporation planned, implemented, monitored and reviewed a
16 community benefit program during the prior license period;

17 (5) Whether the for-profit corporation maintained, enhanced or disrupted the essential
18 medical services in the affected community or the state;

19 (6) Whether the for-profit corporation provided an appropriate amount of charity care
20 necessary to maintain or enhance a safe and accessible healthcare delivery system in the affected
21 community and the state; and

22 (7) Whether the for-profit corporation demonstrated a substantial linkage between the
23 hospital and the affected community by providing one or more of the following benefits;
24 uncompensated care, charity care, cash or in kind donations to community programs, education
25 and training of professionals in community health issues, relevant research initiatives or essential
26 but unprofitable medical services if needed in the affected community.

27 ~~(d)(c)~~ The director may hold a public hearing to solicit input to assess the performance of
28 a for-profit corporation or its affiliates or subsidiaries in providing community benefits in the
29 affected community or the state.

30 ~~(e) The director shall have the sole authority to deny a for-profit corporation, its affiliates~~
31 ~~or subsidiaries, or successors, permission for one or more than one license and, for good cause,~~
32 ~~may prohibit a for-profit corporation or its affiliates or subsidiaries from filing an application~~
33 ~~pursuant to this chapter for a period not to exceed ten (10) years.~~

34 **23-17.14-28. Concurrent approval -- License.** – (a) The director may consider the

1 requirement of this chapter and the requirements of sections 23-17-1 -- 23-17-45 together upon
2 completion of the initial application. The director may approve, approve with conditions, or
3 disapprove one or both requests filed pursuant to this chapter, including expedited review under
4 section 12.1, and sections 23-17-1 -- 23-17-45. The approvals of the director required by this
5 chapter shall be subject to chapter 35 of title 42. For any conversion subject to this chapter, the
6 director may combine any hearings required by this chapter with any hearings on similar or
7 related matters required by sections 23-17-1 -- 23-17-45 and shall consider issues of market share
8 especially as they affect quality, access, and affordability of services.

9 (b) Any approval of a conversion involving a for-profit corporation as an acquiror may
10 include, but not be limited to, the acquiror's acceptance of the following conditions as determined
11 by the director of health:

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

14 (2) Make a financial contribution to support the state's coordinated health planning
15 process;

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

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

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

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

26 (7) Adhere to a maximum amount of annual net revenue accruing to owners in any
27 hospital fiscal year; and

28 (8) Adhere to an annual maximum corporate allocation, or equivalent charge, to any
29 affiliated organization(s) in any hospital fiscal year.

30 (c) Any approval of a conversion involving a for-profit corporation as an acquiror may
31 include, but not be limited to, the acquiror's acceptance of conditions, as determined by the
32 attorney general. These conditions may include, but not be limited to, the acquiror's adherence to
33 a minimum investment to protect the assets, financial health, and well-being of the new hospital
34 and for community benefit.

1 (d) For a period of five (5) years following the effective date of the conversion, when
2 approval of a conversion involves a for-profit corporation as an acquiror:

3 (1) The acquiror shall file reports with the department and the attorney general on or
4 before March 1st of each calendar year detailing compliance with the conditions in subsection (b)
5 and any other conditions on the conversion approval or license of the new hospital. Failure to
6 comply with any of such conditions or the charity care requirements contained in section 23-
7 17.14-15 shall be cause for penalties to be applied in accordance with section 23-17.14-30;

8 (2) The department of health and the department of attorney general shall monitor, assess
9 and evaluate the acquiror's compliance with all of the foregoing conditions, as well as annually
10 review whether conditions should be revised due to a change in circumstances, and the impact of
11 the conversion on health care costs and services within the communities served; and

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

19 **23-17.14-31. Powers of the department of health. --** The department may adopt rules,
20 including measurable standards, as may be necessary to accomplish the purpose of this chapter. In
21 doing so, the department shall review other departmental regulations that may have duplicative
22 requirements, including change of effective control regulations and processes, determination of
23 need requirements and application requirements under section 23-17.14-18, if applicable, and
24 may streamline the process by eliminating duplicative requirements and providing for concurrent
25 regulatory review and combined hearings to the maximum extent possible to promote efficiency
26 and avoid duplication of effort and resources.

27 SECTION 2. Chapter 23-17.14 of the General Laws entitled "The Hospital Conversions
28 Act" is hereby amended by adding thereto the following section:

29 **23-17.14-12.1. Expedited review for unaffiliated community hospitals. --**
30 Notwithstanding subsection 23-17.14-6(a) and section 23-17.14-10 of this chapter if a proposed
31 conversion involves: Two (2) or more hospitals that are not in common control with another
32 hospital; or one hospital not under common control with another hospital and a hospital system
33 parent corporation; or two (2) affiliated hospitals the conversion of which was previously
34 approved in accordance with chapter 23-17.14, such conversion will be reviewed under an

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

6 (1) The acquiree and acquiror are both Rhode Island nonprofit corporations that have
7 directly or indirectly continuously operated at least one Rhode Island licensed hospital for at least
8 the preceding three (3) years; and

9 (2) The acquiree operates a distressed Rhode Island hospital facing significant financial
10 hardship that may impair its ability to continue to operate without the proposed conversion and
11 has been designated to be distressed by the director of health after consideration of whether the
12 hospital meets some or all of the following criteria:

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

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

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

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

17 (v) Inpatient occupancy rate of less than fifty percent (50%).

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

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

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

24 (3) Bylaws and organizational charts for the transacting parties and their affiliated
25 hospitals;

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

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

31 (6) Conflict of interest policies and procedures;

32 (7) Copies of audited income statements, balance sheets, and other financial statements
33 for the past three (3) years for the transacting parties and their affiliated hospitals where
34 appropriate and to the extent they have been made public, audited interim financial statements

1 and income statements together with detailed descriptions of the financing structure of the
2 proposed conversion including equity contribution, debt restructuring, stock issuance and
3 partnership interests;

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

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

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

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

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

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

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

25 (f) Costs payable by the transacting parties under section 23-17.14-13 in connection with
26 an expedited review by the department under this section shall not exceed twenty-five thousand
27 dollars (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service
28 revenue of the acquiree in the most recent fiscal year for which audited financial statements are
29 available. This limit shall not apply to the department of attorney general's review pursuant to
30 subsection 23-17.14-12.1(h).

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

34 (h) If an expedited review is performed by the department pursuant to this section, the

1 [department of attorney general shall perform a review of the proposed transaction as it deems](#)
2 [necessary, including, at a minimum, its impact upon the charitable assets of the transacting](#)
3 [parties. For this review, the department of attorney general shall be entitled to costs in accordance](#)
4 [with section 23-17.14-13.](#)

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

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LC00664/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - HOSPITAL CONVERSIONS ACT

- 1 This act would comprehensively revise the Hospital Conversions Act.
- 2 This act would take effect upon passage.

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LC00664/SUB A/2
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