

## **2014 -- H 7368 SUBSTITUTE A**

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LC003167/SUB A/3

# STATE OF RHODE ISLAND

## **IN GENERAL ASSEMBLY**

## **JANUARY SESSION, A.D. 2014**

A N A C T

# RELATING TO HEALTH AND SAFETY

Introduced By: Representatives McNamara, Bennett, Ackerman, Amore, and Abney

Date Introduced: February 06, 2014

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1           Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby amended by  
2       adding thereto the following chapter:

CHAPTER 23-93

## RHODE ISLAND ACCESS TO

# MEDICAL TECHNOLOGY INNOVATION ACT

**23-93-1. Domestic medical tourism.** -- (a) For purposes of this chapter, "Domestic Medical Tourism" means the practice of patients of traveling to states other than his or her residence for the provision of healthcare services.

23-93-2. Exemption for domestic medical tourism. -- (a) Any healthcare facility located in the state of Rhode Island specializing in domestic medical tourism, and having more than fifty percent (50%) of its patients residing outside of the state, shall be exempt from the provisions of chapter 23-15; provided, however, that such healthcare facility must comply with all other applicable laws and regulations governing healthcare facilities. Any applicant not compliant shall have thirty (30) days to comply with this section and any applicable regulations governing this section.

16           (b) Any healthcare facility described in subsection (a) shall, on a biennial basis, certify to  
17           the department that more than fifty percent (50%) of its patients reside outside of the state.

(c) Any healthcare facility exempt under subsection (a) that fails to certify under subsection (b), or is otherwise found by the department to have not established that more than

1       fifty percent (50%) of its patients currently reside outside of the state, shall be required to apply  
2       for a certificate of need during the next review cycle established by the health services council.

3           **23-93-3. Exemption for multi-practice facilities.** -- Notwithstanding the requirements  
4       of any other provisions of any general or public laws, the following circumstances shall not  
5       require a certificate of need review and approval by the state agency:

6              (1) The merger of an existing, currently licensed multi-practice physician ambulatory  
7       surgery center, or multi-practice podiatry ambulatory surgery center, (as such terms are defined in  
8       § 23-17-2) with another such center; or

9              (2) An existing, currently licensed multi-practice physician ambulatory surgery center, or  
10       multi-practice podiatry ambulatory surgery center, (as such terms are defined in § 23-17-2)  
11       expanding its operation to add an additional operating room in excess of two (2) operating rooms.

12           **23-93-4. Penalties for noncompliance.** -- (a) The department, after notice and  
13       opportunity for hearing to the applicant, is authorized to take corrective action in any case in  
14       which it finds that there has been failure by an applicant to comply with the requirements  
15       established under any approval granted pursuant to this chapter, including, without limitation, the  
16       imposition of monetary fines that may be statutorily permitted by virtue of individual healthcare  
17       facility licensing statutes.

18              (b) The notice shall be effected by registered or certified mail or by personal service,  
19       setting forth the particular reasons for the proposed action and fixing a date not less than thirty  
20       (30) days from the date of the mailing or service, at which the applicant shall be given an  
21       opportunity for a prompt and fair hearing. On the basis of the hearing, or upon default of the  
22       applicant, the department shall make a determination specifying its findings of fact and  
23       conclusions. A copy of the determination shall be sent by registered or certified mail or served  
24       personally upon the applicant. The decision shall become final thirty (30) days after it is so  
25       mailed or served, unless the applicant, within such thirty (30) day period, appeals the decision  
26       pursuant to § 42-35-15. The procedure governing hearings authorized by this section shall be in  
27       accordance with §§ 42-35-9 through 42-35-13 as stipulated in § 42-35-14(a). A full and complete  
28       record shall be kept of all proceedings, and all testimony shall be reported but need not be  
29       transcribed unless the decision is appealed pursuant to § 42-35-15. A copy or copies of the  
30       transcript may be obtained by any interested party on payment of the cost of preparing the copy  
31       or copies.

32              (c) Nothing in this section shall limit the director's general or emergency powers under §§  
33       23-1-1, 23-17-8 or any other authority granted to the department under the general laws.

34           **23-93-5. Moratorium; State-wide health plan; Inventory of healthcare facilities,**

1       **equipment and services.** -- (a) The health services council shall not review, and applicable state  
2       licensing agencies shall not issue any approvals for new healthcare equipment or new institutional  
3       health services prior to July 1, 2015; provided, however, that any review by the health services  
4       council and approval by state agencies may be conducted during the moratorium period in the  
5       case of an emergency circumstance, a certificate of need not previously approved, a certificate of  
6       need request made pursuant to the nursing home culture change beds as defined in § 23-17-44(e),  
7       a certificate of need request made by a hospital or by a health care facility under common  
8       ownership with a hospital, a change in ownership with respect to an institutional health service, a  
9       change in the effective control of a hospital or other licensed facility, upgrades or improvements  
10      of services related to prior changes in effective control, or a compelling circumstance affecting  
11      the quality of life with respect to a certain geographic area or subpopulation such as, but not  
12      limited to, pain management delivered to the home. Notwithstanding the foregoing, any  
13      certificate of need application pending at the time of passage of this chapter shall continue to be  
14      reviewed pursuant to the provisions of chapter 23-15, and shall not be subject to the moratorium  
15      provisions of this chapter.

16                 (b) During the moratorium period provided in subsection (a) above, the department of  
17        health (for purposes of this section referred to as the "department") shall conduct, and shall  
18        conduct on a biennial basis thereafter, a state-wide healthcare utilization and capacity study. Such  
19        study may include, but not be limited to, an assessment of:

20                         (1) The current availability and utilization of acute hospital care, hospital emergency  
21        care, specialty hospital care, outpatient surgical care, home care and hospice agencies, assisted  
22        daily living and nursing homes, long-term care facilities, primary care and specialty and clinic  
23        care, behavioral and mental healthcare and substance abuse care and services;

24                         (2) The geographic areas and subpopulations that may be underserved or have reduced  
25        access to specific types of healthcare services; and

26                         (3) Other factors that the department deems pertinent to healthcare utilization including,  
27        but not limited to, the number of magnetic resonance imaging facilities and physician ambulatory  
28        surgi-centers. Not later than November 1 of the year in which the study is conducted, the  
29        department shall report to the governor, the general assembly and the healthcare planning and  
30        accountability advisory council ("council") on the findings of the study. Such report may also  
31        include the department's recommendations for addressing identified gaps in the provision of  
32        health services and institutional health services, and recommendations concerning a lack of  
33        access to health services and institutional health services, and duplicative and/or redundant  
34        services.

1           (c)(1) The department, in consultation with the council and such other state agencies as it  
2        deems appropriate, shall establish and maintain a state-wide health plan. Such plan may include,  
3        but not be limited to:

4           (i) An assessment of the availability of acute hospital care, hospital emergency care,  
5        specialty hospital care, outpatient surgical care, home care and hospice agencies, primary care  
6        and clinic care, behavioral and mental healthcare and substance abuse care and services;

7           (ii) An evaluation of the unmet needs of persons at risk and vulnerable populations as  
8        determined by the department and the council;

9           (iii) A projection of future demand for health services and institutional health services,  
10      and the impact that technology may have on the demand, capacity or need for such services; and

11          (iv) Recommendations for the expansion, reduction or modification of healthcare  
12        facilities, health services or institutional health services. The department, in consultation with  
13        healthcare providers, healthcare facilities and the council, shall develop a process that requires as  
14        a condition of licensure that healthcare providers and healthcare facilities incorporate the state-  
15        wide health plan into their long-range planning and shall facilitate communication between  
16        appropriate state agencies concerning innovations or changes that may affect future health  
17        planning. Information needed for the development of the state health plan shall be gathered  
18        through systematic methods designed to include local, regional, and statewide perspectives. The  
19        department, in conjunction with the council, shall update the state-wide health plan not less than  
20        once every two (2) years.

21           (2) The state health plan shall identify:

22           (i) Major statewide health concerns;

23           (ii) The availability and use of current health resources of the state, including resources  
24        associated with information technology, capacity provided by existing healthcare physicians and  
25        providers of service and institutions of higher education; and

26           (iii) Future health service, information technology, and facility needs of the state.

27           (3) The state health plan shall:

28           (i) Propose strategies for the correction of any deficiencies in the state health delivery  
29        system;

30           (ii) Propose strategies for incorporating information technology in the health service and  
31        institutional health service delivery system;

32           (iii) Propose strategies for involving state-supported institutions of higher education in  
33        providing health services and for coordinating those efforts with health and human services  
34        agencies; and

1           (iv) Provide proposals for the state's legislative and executive decision-making processes  
2       to consider implementing the strategies proposed by the plan.

3           (d)(1) For purposes of conducting the state-wide healthcare utilization and capacity study  
4       and preparing the state-wide health plan, and in order to identify the location, distribution and  
5       nature of all healthcare resources in the state the department shall establish and maintain an  
6       inventory of all healthcare facilities, health services and institutional health services in the state,  
7       and the equipment located in such healthcare facilities. The state-wide inventory of all healthcare  
8       services and equipment shall also include without limitation current stock, anticipated need and  
9       geographical distribution of health services and institutional health services throughout the state.  
10      The department and the council shall develop an inventory questionnaire to obtain, at a minimum,  
11      the following information:

12           (i) The name and location of the healthcare provider and healthcare facility;  
13           (ii) The type of facility;  
14           (iii) The hours of operation;  
15           (iv) The type of services provided at that location including, but not limited to, translation  
16       and transportation services;

17           (v) The total number of clients, the race, ethnicity and primary language spoken in the  
18       home of the clients, treatments, patient visits, procedures performed or scans performed in a  
19       calendar year;

20           (vi) The total number of the uninsured population in the state; and  
21           (vii) Such other information as the department deems appropriate. The inventory shall be  
22       completed biennially by healthcare facilities and healthcare providers, and such healthcare  
23       facilities and healthcare providers shall not provide patient specific data.

24           (2) The inventory and all related information shall be maintained in a form usable by the  
25       general public in a designated office of the department, shall constitute a public record, and shall  
26       be coordinated with information collected by the department and the council under other  
27       provisions of law; provided, however, that any item of information which is confidential or  
28       privileged in nature shall not be regarded as a public record under this section or the general laws.

29           (e) The department and the council shall publish analyses, reports and interpretations of  
30       information collected under this section in order to further public knowledge concerning the  
31       distribution and nature of health services and institutional health services in the state. The  
32       department may require healthcare providers and healthcare facilities to provide information for  
33       the purposes of this section and may prescribe by regulation uniform reporting requirements. In  
34       prescribing such regulations the department shall strive to make any reports required under this

1     section of mutual benefit to those providing as well as those using such information, and shall  
2     avoid placing any burdens on such providers which are not reasonably necessary to accomplish  
3     the purposes of this section.

4                 (f) Agencies of the state which collect cost or other data concerning health services and  
5     institutional health services shall cooperate with the department in coordinating such data with  
6     information collected under this section.

7                 (g) In the performance of its duties under this section, the department, subject to  
8     appropriation, may enter into such contracts with agencies of the federal government, the state or  
9     its political subdivisions, and public or private bodies, as it deems necessary.

10                 (h) The department shall provide a progress report on health care inventory and statewide  
11     health plan no later than February 2015.

12                 SECTION 2. Section 23-15-5 of the General Laws in Chapter 23-15 entitled  
13     "Determination of Need for New HealthCare Equipment and New Institutional Health Services"  
14     is hereby amended to read as follows:

15                 **23-15-5. Expeditious review.** – (a) Any person who proposes to offer or develop new  
16     institutional health services or new health care equipment for documented emergency needs, or  
17     for the purpose of eliminating or preventing documented fire or safety hazards affecting the lives  
18     and health of patients or staff, or for compliance with accreditation standards required for receipt  
19     of federal or state reimbursement, or for any other purpose that the state agency may specify in  
20     rules and regulations, may apply for an expeditious review. The state agency may exercise its  
21     discretion in recommending approvals through an expeditious review except that no new  
22     institutional health service or new health care equipment may be approved through the  
23     expeditious review if provision of the new institutional health service or new health care  
24     equipment is contra-indicated by the state health plan as may be formulated by the state agency.  
25     Specific procedures for the conduct of expeditious reviews shall be promulgated in rules and  
26     regulations adopted by the state agency with the advice of the health services council.

27                 (b) The decision of the state agency not to conduct an expeditious review shall be  
28     reconsidered upon a written petition to the state agency, and the state agency shall be required to  
29     respond to the written petition within ten (10) days stating whether expeditious review is granted.  
30     If the request for reconsideration is denied, the state agency shall state the reasons in writing why  
31     the expeditious request had been denied.

32                 (c) The decision of the state agency in connection with an expeditious review shall be  
33     rendered within thirty (30) days after the commencement of said review.

34                 (d) Any healthcare facility which provides a service performed in another state and which

1       is not performed in the state of Rhode Island, or such service is performed in the state on a very  
2       limited basis, shall be granted expeditious review upon request under this section, provided that  
3       such service, among other things, has a clear effect on the timeliness, access or quality of care and  
4       is able to meet licensing standards.

5           SECTION 3. Section 23-17-13 of the General Laws in Chapter 23-17 entitled "Licensing  
6       of HealthCare Facilities" is hereby repealed.

7           **23-17-13. Health services council.** -- There shall be established a health services council  
8       consisting of twenty four (24) members, eight (8) of whom shall be appointed by the speaker of  
9       the house, one of whose appointments shall represent hospital service corporations, six (6) of  
10      whom shall be appointed by the president of the senate, one of whose appointments shall  
11      represent hospitals and a second of whose appointments shall represent the business community,  
12      and ten (10) of whom shall be appointed by the governor, one of whose appoints shall represent  
13      the state budget office, a second of whose appointment shall represent the department of human  
14      services and two (2) of whom shall be members of the general public that maintain his or her  
15      principal residence within fifteen hundred feet (1500 ft.) of a licensed hospital. The governor  
16      shall appoint members of the council in staggered appointments, three (3) members one year, two  
17      (2) members the next year, and two (2) members the year after that. All members shall serve until  
18      their successors are appointed and qualified. In the month of February in each year, the governor  
19      shall appoint successors to the members of the council whose terms shall expire in that year, to  
20      hold office commencing on the first day of March in the year of appointment until the first day of  
21      March in the third (3rd) year after appointment or until their respective successors are appointed  
22      and qualified. Legislative members shall serve until the end of their legislative term. Any vacancy  
23      of a member appointed which may occur in the commission shall be filled by appointment by the  
24      respective appointing authority for the remainder of the unexpired term. The council may also  
25      serve as an advisory council as authorized by section 23-16-3.

26           SECTION 4. Chapter 23-17 of the General Laws entitled "Licensing of HealthCare  
27       Facilities" is hereby amended by adding thereto the following section:

28           **23-17-13.1. Health services council.** -- (a) There shall be established a health services  
29       council consisting of twelve (12) members, four (4) of whom shall be appointed by the speaker of  
30       the house, one of whose appointment shall be an expert in healthcare economic and policy  
31       matters, and a second of whose appointment shall represent the insurance business; four (4) of  
32       whom shall be appointed by the president of the senate, one of whose appointment shall represent  
33       the business community, and a second of whose appointment shall represent the general public;  
34       and four (4) of whom shall be appointed by the governor, one of whose appointment shall

1   represent the office of the health insurance commissioner, a second of whose appointment shall  
2   represent the executive office of health and human services, a third of whose appointment shall  
3   represent the health insurance business and a fourth of whose appointment shall represent the  
4   executive office of commerce. All members shall serve until the first day of July in the third year  
5   after appointment or until their respective successors are appointed and qualified. Any vacancy of  
6   a member appointed which may occur in the council shall be filled by appointment by the  
7   respective appointing authority for the remainder of the unexpired term. The council may also  
8   serve as an advisory council as authorized by § 23-16-3.

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

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

14                 SECTION 5. Sections 3 and 4 of this act shall take effect nine (9) months after passage.  
15                 The remainder of this act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY

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1        This act would establish the "Rhode Island Access to Medical Technology Innovation  
2        Act", which would, among other things, establish a moratorium on all new healthcare services  
3        and equipment until July 1, 2015, during which time the department of health in conjunction with  
4        the healthcare planning and accountability advisory council, shall conduct a state-wide healthcare  
5        utilization and capacity study, and prepare a state-wide health plan and inventory of healthcare  
6        facilities, equipment and health services. The act would also, under certain circumstances,  
7        provide an exemption from the certificate of need requirements to the domestic medical tourism  
8        industry and multi-practice health facilities.

9        This act would also reduce the composition of the health services council from twenty-  
10      four (24) members to twelve (12) members.

11        This act would also provide a process for reconsideration of an expeditious review  
12      request and require that a decision in connection with an expeditious review be rendered within  
13      thirty (30) days.

14        Sections 3 and 4 of this act would take effect nine (9) months after passage. The  
15      remainder of this act would take effect upon passage.[\\_](#)

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