

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO HEALTH AND SAFETY -- THE HOSPITAL CONVERSIONS ACT

Introduced By: Senators McCaffrey, Ruggerio, Goodwin, Miller, Coyne, Bell, Gallo,
Lombardo, Cano, and Archambault

Date Introduced: February 25, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

4 **23-17.14-6. Initial application -- Conversions involving for-profit corporations or not-**
5 **for-profit as acquirors.**

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

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

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

18 (3) Name, address, phone number, occupation, and tenure of all officers, members of the
19 board of directors, trustees, executives, and senior managers, including for each position, current

1 persons and persons holding such position during the past two (2) years;

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

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

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

12 (7) Bylaws and organizational charts;

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

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

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

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

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

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

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

33 (15) Copies of any opinions or memoranda addressing the state and federal tax
34 consequences of the proposed conversion prepared for a transacting party by an attorney,

1 accountant, or other expert;

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

5 (17) Patient statistics for the past three (3) years and patient projections for the next one
6 year including patient visits, admissions, emergency room visits, clinical visits, and visits to each
7 department of the hospital, admissions to nursing care or visits by affiliated home healthcare
8 entities;

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

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

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

17 (21) Copies of all documents related to:

18 (i) Identification of all charitable assets

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

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

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

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

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

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

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

- 1 (27) Copies of capital and operating budgets or other financial projections for the new
2 hospital during the first three (3) years of operation;
- 3 (28) Copies of plans relative to staffing during the first three (3) years at the new hospital;
- 4 (29) A list of all medical services, departments and clinical services, and administrative
5 services which will be maintained at the new hospital, including staffing levels;
- 6 (30) A description of criteria established by the board of directors of the ~~existing hospital~~
7 transacting parties for pursuing a proposed conversion with one or more healthcare providers;
- 8 (31) Copies of reports of any due diligence review performed by each transacting party in
9 relation to the proposed conversion. These reports are to be held by the attorney general and
10 department of health as confidential and not released to the public regardless of any determination
11 made pursuant to § 23-17.14-32 and notwithstanding any other provision of the general laws;
- 12 (32) A description of request for proposals issued by the ~~existing hospital~~ transacting
13 parties relating to pursuing a proposed conversion;
- 14 (33) Copies of reports analyzing affiliations, mergers, or other similar transactions
15 considered by any of the transacting parties during the past three (3) years, including, but not limited
16 to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
- 17 (34) A copy of proposed contracts or description of proposed contracts or arrangements
18 with senior managers, board members, officers, or directors of the ~~existing hospital~~ transacting
19 parties for severance consulting services or covenants not to compete following completion of the
20 proposed conversion;
- 21 (35) A copy or description of all agreements or proposed agreements reflecting any current
22 and/or future employment or compensated relationship between the acquiror (or any related entity)
23 and any officer, director, board member, or senior manager of the acquiree (or any related entity);
- 24 (36) A copy or description of all agreements executed or anticipated to be executed by any
25 of the transacting parties in connection with the proposed conversion;
- 26 (37) Copies of documents or description of any proposed plan for any entity to be created
27 for charitable assets, including but not limited to, endowments, restricted, unrestricted and specific
28 purpose funds, the proposed articles of incorporation, bylaws, mission statement, program agenda,
29 method of appointment of board members, qualifications of board members, duties of board
30 members, and conflict of interest policies;
- 31 (38) Description of all departments, clinical, social, or other services or medical services
32 that will be eliminated or significantly reduced ~~at the new hospital~~ by transacting parties at either
33 the new hospital(s) or the existing hospital(s);
- 34 (39) Description of staffing levels for five (5) years of all categories of employees,

1 including full-time, part-time, and contract employees currently working at or providing services
2 to the existing hospital and description of any anticipated or proposed changes in current staffing
3 levels, including any reduction in staffing, relocation of staffing, or additional staffing affecting the
4 new hospital and the exiting hospital;

5 (40) Describe retirement plan(s) for all employees, full-time or part-time, including any
6 supplemental executive retirement plans;

7 (41) Copies of retirement plans accounting; management letters, and reports, including
8 unfunded liabilities for retirement plans for the last five (5) years;

9 (42) Copies of plans to fund unfunded liabilities for pension and any retirement plans;

10 (43) Copies of any impact analysis for the affected communities both before conversion
11 and after proposed conversion, including community benefits, economic impact, and staffing.

12 ~~(40)~~(44) Copies of current conflict of interest forms from all incumbent or recently
13 incumbent officers, members of the boards of directors or trustees and senior managers, including
14 the medical directors, of the transacting parties on a form acceptable to the attorney general;
15 "incumbent or recently incumbent" means those individuals holding the position at the time the
16 application is submitted and any individual who held a similar position within one year prior to the
17 application's acceptance;

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

24 ~~(42)~~(46) Copies of IRS Form 990 for any transacting party required by federal law to file
25 such a form for each of the three (3) years prior to the submission of the application.

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

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

34 **23-17.14-7. Review process of the department of attorney general and the department**

1 **of health and review criteria by department of attorney general.**

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

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

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

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

21 (3) Within thirty (30) working days after acceptance of the initial application, the
22 department of attorney general shall render its determination on confidentiality pursuant to § 23-
23 17.14-32 and the department of attorney general and department of health shall publish notice of
24 the application in a newspaper of general circulation in the state and shall notify by United States
25 mail any person who has requested notice of the filing of the application. The 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 public
31 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 twenty (120) days of the date of acceptance of the application.

1 (c) In reviewing an application pursuant to subsection (a) of this section, the department of
2 the attorney general shall consider 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;

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

15 (6) 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, healthcare experts, or industry analysts;

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

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

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

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

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

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

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

34 (14) Whether the board accepted fair consideration and value for any management

1 contracts made part of the proposed conversion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (vi) Whether the board of any new or continuing entity will be independent from the new
2 hospital;
- 3 (vii) Whether the method for selecting board members, staff, and consultants is
4 appropriate;
- 5 (viii) Whether the board will comprise an appropriate number of individuals with
6 experience in pertinent areas such as foundations, health care, business, labor, community
7 programs, financial management, legal, accounting, grant making, and public members
8 representing diverse ethnic populations and the interests of the affected community; and
- 9 (ix) Whether the size of the board and proposed length of board terms are sufficient;
- 10 (26) Whether the transacting parties are in compliance with the Charitable Trust Act,
11 chapter 9 of title 18;
- 12 (27) Whether a right of first refusal to repurchase the assets has been retained;
- 13 (28) Whether the character, commitment, competence, and standing in the community, or
14 any other communities served by the transacting parties, are satisfactory;
- 15 (29) Whether a control premium is an appropriate component of the proposed conversion;
- 16 (30) Whether the value of assets factored in the conversion is based on past performance
17 or future potential performance; ~~and~~
- 18 (31) Whether the proposed conversion is proper under chapter 36 of title 6 ("Rhode Island
19 Antitrust Act");
- 20 (32) Whether the board established appropriate criteria for staffing levels post conversion,
21 including any reduction in staffing, relocation of staffing, or additional staffing affecting the new
22 hospital(s) and the exiting hospital(s);
- 23 (33) Whether the board exercised due care concerning staffing levels post conversion to
24 comply with federal employment and labor laws, including the National Labor Relations Act
25 (NLRA) 29 U.S.C. §§ 151-169, Age Discrimination in Employment Act of 1967, Public Law 90-
26 202 29 U.S.C. § 621 et seq., Civil Rights Act of 1964, Public Law 88-352 (78 Stat. 241) Title VI,
27 42 U.S.C. § 2000d et seq.;
- 28 (34) Whether the board exercised due care concerning staffing levels post conversion to
29 comply with state employment and labor laws, including chapter 5 of title 28 (the "fair employment
30 practices act");
- 31 (35) Whether the board exercised due care in funding employee and retirement plans and
32 pensions, including developing plans to fund unfunded liabilities for retirement plans and pensions
33 for all employees, full-time or part-time;
- 34 (36) Whether the retirement and pensions plans are in compliance with the Employee

1 [Retirement Income Security Act \(ERISA\) 29 U.S.C. §§ 1001 et seq.; and](#)

2 [\(37\) Whether the board established appropriate criteria for any impact analysis for the](#)
3 [affected communities both before conversion and after proposed conversion, including community](#)
4 [benefits, economic impact, and staffing.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (21) Whether the transacting parties are in compliance with the Charitable Trust Act,
19 chapter 9 of title 18; **and**

20 (22) Whether the proposed conversion is proper under chapter 36 of title 6 ("Rhode Island
21 Antitrust Act");

22 (23) Whether the board established appropriate criteria for staffing levels post conversion,
23 including any reduction in staffing, relocation of staffing, or additional staffing affecting the new
24 hospital(s) and the exiting hospital(s);

25 (24) Whether the board exercised due care concerning staffing levels post conversion to
26 comply with federal employment and labor laws, including the National Labor Relations Act
27 (NLRA) 29 U.S.C. §§ 151-169, Age Discrimination in Employment Act of 1967, Public Law 90-
28 202 29 U.S.C. § 621 et seq., and the Civil Rights Act of 1964, Public Law 88-352 (78 Stat. 241)
29 Title VI, 42 U.S.C. § 2000d et seq.;

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

33 (26) Whether the board exercised due care in funding employee and retirement plans and
34 pensions, including developing plans to fund unfunded liabilities for retirement plans and pensions

1 for all employees, full-time or part-time;

2 (27) Whether the retirement and pensions plans are in compliance with the Employee
3 Retirement Income Security Act (ERISA) 29 U.S.C. §§ 1001 et seq.; and

4 (28) Whether the board established appropriate criteria for any impact analysis for the
5 affected communities both before conversion and after proposed conversion, including community
6 benefits, economic impact, and staffing.

7 **23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-**
8 **profit hospitals.**

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

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

26 (2) The combined hospitals of the acquiree and acquiror are licensed for not more than
27 twenty percent (20%) of licensed hospitals in Rhode Island according to the department of health;

28 ~~(2)~~(3) The acquiree operates one or more distressed Rhode Island hospitals facing
29 significant financial hardship that may impair its or their ability to continue to operate effectively
30 without the proposed conversion and have been determined to be distressed by the director of health
31 based upon whether the hospital(s) meets one or more of the following criteria:

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

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

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

- 1 (iv) Long-term debt to capitalization greater than seventy-five percent (75%);
- 2 (v) Inpatient occupancy rate of less than fifty percent (50%);
- 3 (vi) Would be classified as below investment grade by a major rating agency.

4 (b) The transacting parties shall file an initial application pursuant to this section that shall
5 include the following information with respect to each transacting party and the proposed
6 conversion:

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

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

10 (3) Bylaws and organizational charts for the transacting parties and their affiliated
11 hospitals;

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

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

17 (6) Conflict of interest policies and procedures;

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

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

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

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

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

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

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

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

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

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

14 (f) Costs payable by the transacting parties under § 23-17.14-13 in connection with an
15 expedited review by the department under this section shall not exceed twenty-five thousand dollars
16 (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service revenue of
17 the acquiree and acquiror in the most recent fiscal year for which audited financial statements are
18 available.

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

22 (h) If an expedited review is performed by the department pursuant to this section, the
23 department of attorney general shall perform a review of the proposed transaction pursuant to § 23-
24 17.14-10(b) and the criteria for conversions limited to not-for-profits. The attorney general's review
25 shall be done concurrently with the department of health review and shall not extend the length of
26 the review process. For this review, the department of attorney general shall be entitled to costs in
27 accordance with § 23-17.14-13 and subsection (f) of this section.

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

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

1 This act would 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.

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LC001350
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