

2017 -- S 0937 SUBSTITUTE A

LC002844/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO HEALTH AND SAFETY -- HOSPITAL CONVERSIONS

Introduced By: Senators Crowley, Nesselbush, and Conley

Date Introduced: June 06, 2017

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

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

3 ~~23-17.14-10. Review process of department of attorney general and department of~~  
4 ~~health and criteria by department of attorney general -- Conversions limited to not-for-~~  
5 ~~profit corporations.~~ **Criteria for the department of attorney general -- Conversions limited**  
6 **to not-for-profit corporations.**

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

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

15 (2) ~~The applicant will submit the additional information within thirty (30) working days.~~  
16 ~~If the additional information is submitted within the thirty (30) day period, the department of~~  
17 ~~attorney general and department of health will have ten (10) working days within which to~~  
18 ~~determine acceptability of the additional information. If the additional information is not~~  
19 ~~submitted by the applicant within the thirty (30) day period or if either agency determines the~~

1 ~~additional information submitted by the applicant is insufficient, the application will be rejected~~  
2 ~~without prejudice to the applicant's right to resubmit, the rejection to be accompanied by a~~  
3 ~~detailed written explanation of the reasons for rejection. If the department of attorney general and~~  
4 ~~department of health determine the additional information to be as requested, the applicant will be~~  
5 ~~notified, in writing, of the date of acceptance of the application;~~

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

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

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

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

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

17 (4) The department of attorney general and department of health shall each approve,  
18 approve with conditions directly related to the proposed conversion, or disapprove the application  
19 within ~~one hundred twenty (120)~~ ninety (90) days of the date of acceptance of the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (14) Whether the proposed conversion contemplates the appropriate and reasonable fair  
22 market value;

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

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

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

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

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

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

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

1            **23-17.14-12.1. Expedited review for unaffiliated community hospitals. Expedited**  
2 **review for conversions limited to nonprofit hospitals.**

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

14            (1) ~~The acquiree and acquiror are both nonprofit corporations that have directly or~~  
15 ~~indirectly continuously operated at least one licensed hospital for at least the preceding three (3)~~  
16 ~~years; and~~

17            (2) ~~The acquiree operates a distressed Rhode Island hospital facing significant financial~~  
18 ~~hardship that may impair its ability to continue to operate effectively without the proposed~~  
19 ~~conversion and has been determined to be distressed by the director of health based upon whether~~  
20 ~~the hospital meets one or more of the following criteria:~~

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

22            (ii) ~~Less than fifty (50) days cash on hand;~~

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

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

25            (v) ~~Inpatient occupancy rate of less than fifty percent (50%);~~

26            (vi) ~~Would be classified as below investment grade by a major rating agency.~~

27            If the acquiree and acquirer are both not-for-profit corporations that have operated a  
28 hospital either in Rhode Island or in another jurisdiction, either on their own or are part of a  
29 health care system, that has operated one or more hospitals for at least the preceding three (3)  
30 years then the conversion shall be reviewed pursuant to this section.

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

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

- 1 (2) Charter, articles of incorporation or certificate of incorporation for the transacting  
2 parties and their affiliated hospitals, including amendments thereto;
- 3 (3) Bylaws and organizational charts for the transacting parties and their affiliated  
4 hospitals;
- 5 (4) Organizational structure for the transacting parties and each partner, affiliate, parent,  
6 subsidiary or related legal entity in which either transacting party has a twenty percent (20%) or  
7 greater ownership interest or control;
- 8 (5) All documents, reports, meeting minutes and presentations relevant to the transacting  
9 parties' board of directors' decision to propose the conversion;
- 10 (6) Conflict of interest policies and procedures;
- 11 (7) Copies of audited income statements, balance sheets, and other financial statements  
12 for the past three (3) years for the transacting parties and their affiliated hospitals where  
13 appropriate and to the extent they have been made public, audited interim financial statements  
14 and income statements together with detailed descriptions of the financing structure of the  
15 proposed conversion including equity contribution, debt restructuring, stock issuance and  
16 partnership interests;
- 17 (8) Copies of reports analyzing the proposed conversion during the past three (3) years  
18 including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and  
19 other experts;
- 20 (9) Copies of current conflict of interest forms from all incumbent or recently incumbent  
21 officers, members of the board of directors or trustees and senior managers of the transacting  
22 parties; "incumbent or recently incumbent" means those individuals holding the position at the  
23 time the application is submitted and any individual who held a similar position within one year  
24 prior to the application's acceptance;
- 25 (10) Copies of all documents related to: (i) Identification of all current charitable assets;  
26 (ii) Accounting of all charitable assets for the past three (3) years; and (iii) Distribution of  
27 charitable assets for the past three (3) years including, but not limited to, endowments, restricted,  
28 unrestricted and specific purpose funds as each relates to the proposed conversion;
- 29 (11) A description of the plan as to how the affiliated hospitals will provide consolidated  
30 healthcare services during the first three (3) years following the conversion;
- 31 (12) Copies of plans for all hospital departments and services that will be eliminated or  
32 significantly reduced during the first three (3) years following the conversion; and
- 33 (13) Copies of plans relative to staffing levels for all categories of employees during the  
34 first three (3) years following the conversion.

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

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

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

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

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

16 (h) If an expedited review is performed by the department pursuant to this section, the  
17 department of attorney general shall perform a review of the proposed transaction pursuant to  
18 §23-17.14-10(b) and the criteria for conversions limited to nonprofits ~~as it deems necessary,~~  
19 ~~including, at a minimum, its impact upon the charitable assets of the transacting parties.~~ The  
20 attorney general's review shall be done concurrently with the department of health review and  
21 shall not extend the length of the review process. For this review, the department of attorney  
22 general shall be entitled to costs in accordance with § 23-17.14-13 and subsection 23-17.14-  
23 12.1(f).

24 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 -- HOSPITAL CONVERSIONS

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1           This act would streamline the procedure for the approval of mergers of nonprofit  
2 hospitals.

3           This act would take effect upon passage.

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