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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY – LICENSING OF HEALTHCARE FACILITIES –
THE HOSPITAL CONVERSIONS ACT

Introduced By: Senators Euer, McCaffrey, Kallman, Miller, Murray, DiPalma,
Archambault, Lawson, Ruggerio, and DiMario

Date Introduced: January 25, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-15-7 of the General Laws in Chapter 23-15 entitled
2 "Determination of Need for New Healthcare Equipment and New Institutional Health Services" is
3 hereby repealed.

4 ~~**23-15-7. Health services council.**~~

5 ~~The health services council, established in accordance with chapter 17 of this title, shall~~
6 ~~function as the advisory body to the state agency in discharging the purpose of this chapter.~~

7 SECTION 2. Sections 23-17-13.1, 23-17-14, 23-17-14.1 and 23-17-14.2 of the General
8 Laws in Chapter 23-17 entitled "Licensing of Healthcare Facilities" are hereby repealed.

9 ~~**23-17-13.1. Health services council.**~~

10 ~~(a) There shall be established a health services council consisting of twelve (12) members,~~
11 ~~four (4) of whom shall be appointed by the speaker of the house, one who shall be an expert in~~
12 ~~healthcare economic and policy matters, and a second who shall represent the insurance business;~~
13 ~~four (4) of whom shall be appointed by the president of the senate, one who shall represent the~~
14 ~~business community, and a second who shall represent the general public; and four (4) of whom~~
15 ~~shall be appointed by the governor, one who shall represent the office of the health insurance~~
16 ~~commissioner, a second who shall represent the executive office of health and human services, a~~
17 ~~third who shall represent the health insurance business, and a fourth who shall represent the~~
18 ~~executive office of commerce. All members shall serve until the first day of July in the third year~~

1 after appointment or until their respective successors are appointed and qualified. Any vacancy of
2 a member appointed that may occur in the council shall be filled by appointment by the respective
3 appointing authority for the remainder of the unexpired term. The council may also serve as an
4 advisory council as authorized by § 23-16-3.

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

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

10 **23-17-14. Functions of health services council.**

11 The health services council shall have the following responsibilities and duties:

12 (1) To consult and advise with the licensing agency regarding licensing reviews conducted
13 under §§ 23-17-14.3 and 23-17-14.4 and in matters of policy affecting administration of this
14 chapter, and in the development of rules, regulations, and standards provided for under this chapter;

15 (2) To review and make recommendations with respect to rules, regulations, and standards
16 authorized under this chapter prior to their promulgation by the licensing agency as specified in
17 this section;

18 (3) To consult and advise with the licensing agency with respect to the administration of
19 chapter 15 of this title;

20 (4) When acting as an advisory council authorized by § 23-16-3, to consult with the director
21 of the state department of health in carrying out the purposes of chapter 16 of this title.

22 **23-17-14.1. Immunity for council members.**

23 No member of the health services council while acting in his or her capacity as a council
24 member shall be liable for any civil damages as a result of individual or collective actions or
25 recommendations as a member of the council.

26 **23-17-14.2. Compensation.**

27 The chairperson and vice chairperson of the health services council and no other member
28 of the council while serving on business of the council shall receive compensation for the discharge
29 of their official duties.

30 SECTION 3. Sections 23-17.14-6, 23-17.14-7, 23-17.14-8, 23-17.14-11, 23-17.14-12.1,
31 23-17.14-14, 23-17.14-17, 23-17.14-18, 23-17.14-28 and 23-17.14-30 of the General Laws in
32 Chapter 23-17.14 entitled "The Hospital Conversions Act" are hereby amended to read as follows:

33 **23-17.14-6. Initial application -- Conversions involving for-profit corporations or not-**
34 **for-profit as acquirors.**

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

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

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

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

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

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

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

26 (7) Bylaws and organizational charts;

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

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

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

33 (11) Copies of audited income statements, balance sheets, other financial statements, and
34 management letters for the past three (3) years and to the extent they have been made public, audited

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

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

6 (13) A detailed description as each relates to the proposed transaction for equipment leases,
7 insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations,
8 ~~pension~~ current retirement plan descriptions and other employee ~~benefits~~ benefit plan descriptions,
9 as well as any planned changes thereto, environmental reports, assessments and organizational
10 goals;

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

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

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

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

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

26 (19) A list of pending or adjudicated citations, violations, deficiencies or charges against
27 the facilities listed in subdivision (a)(18) brought by any governmental agency or accrediting
28 agency, including all documentation and communications to and from the joint commission on
29 accreditation of health care organizations relative thereto within the past ~~three (3)~~ ten (10) years
30 and the status or disposition of each matter with regard to patient care and charitable asset matters;

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

33 (21) Copies of all documents related to:

34 (i) Identification of all charitable assets

- 1 (ii) Accounting of all charitable assets for the past three (3) years; and
- 2 (iii) Distribution of the charitable assets including, but not limited to, endowments,
- 3 restricted, unrestricted and specific purpose funds as each relates to the proposed transaction;
- 4 (22) A description of charity care and uncompensated care provided by the existing hospital
- 5 for the previous three (3) year period to the present including a dollar amount and a description of
- 6 services provided to patients;
- 7 (23) A description of bad debt incurred by the existing hospital for the previous three (3)
- 8 years for which payment was anticipated but not received;
- 9 (24) A description of the plan as to how the new hospital will provide community benefit
- 10 and charity care during the first three (3) years of operation;
- 11 (25) A description of how the new hospital will monitor and value charity care services
- 12 and community benefit;
- 13 (26) The names of persons currently holding a position as an officer, director, board
- 14 member, or senior manager who will or will not maintain any position with the new hospital and
- 15 whether any said person will receive any salary, severance stock offering or any financial gain,
- 16 current or deferred, as a result of or in relation to the proposed conversion;
- 17 (27) Copies of capital and operating budgets or other financial projections for the new
- 18 hospital during the first three (3) years of operation;
- 19 (28) Copies of plans relative to staffing during the first ~~three (3)~~ ten (10) years at the new
- 20 hospital;
- 21 (29) A list of all medical services, departments and clinical services, and administrative
- 22 services which will be maintained at the new hospital and the estimated length of time such services
- 23 shall be maintained;
- 24 (30) A description of criteria established by the board of directors of the existing hospital
- 25 for pursuing a proposed conversion with one or more healthcare providers;
- 26 (31) Copies of reports of any due diligence review performed by each transacting party in
- 27 relation to the proposed conversion. These reports are to be held by the attorney general and
- 28 department of health as confidential and not released to the public regardless of any determination
- 29 made pursuant to § 23-17.14-32 and notwithstanding any other provision of the general laws;
- 30 (32) A description of request for proposals issued by the existing hospital relating to
- 31 pursuing a proposed conversion;
- 32 (33) Copies of reports analyzing affiliations, mergers, or other similar transactions
- 33 considered by any of the transacting parties during the past three (3) years, including, but not limited
- 34 to, reports by appraisers, accountants, investment bankers, actuaries and other experts;

1 (34) A copy of proposed contracts or description of proposed contracts or arrangements
2 with senior managers, board members, officers, or directors of the existing hospital for severance
3 consulting services or covenants not to compete following completion of the proposed conversion;

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

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

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

14 (38) Description [and detailed justification](#) of all departments, clinical, social, or other
15 services or medical services that will be eliminated or significantly reduced at the new hospital [and](#)
16 [a transition plan ensuring existing patients' continued access to such services moving forward and](#)
17 [continued employment for those who lose their jobs](#);

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

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

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

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

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

5 (c) Except for information determined by the attorney general in accordance with § 23-
6 17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as
7 confidential, the initial application and supporting documentation shall be considered public
8 records and shall be available for inspection upon request.

9 **23-17.14-7. Review process of the department of attorney general and the department**
10 **of health and review criteria by department of attorney general.**

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

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

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

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

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

- 1 (i) State that an initial application has been received and accepted for review;
- 2 (ii) State the names of the transacting parties;
- 3 (iii) State the date by which a person may submit written comments to the department of
4 attorney general or department of health; and
- 5 (iv) Provide notice of the date, time, and place of informational meeting open to the public
6 which shall be conducted within sixty (60) days of the date of the notice;
- 7 (4) The department of attorney general and department of health shall each approve,
8 approve with conditions directly related to the proposed conversion, or disapprove the application
9 within one hundred twenty (120) days of the date of acceptance of the application.
- 10 (c) In reviewing an application pursuant to subsection (a) of this section, the department of
11 the attorney general shall consider the following criteria:
- 12 (1) Whether the proposed conversion will harm the public's interest in trust property given,
13 devised, or bequeathed to the existing hospital for charitable, educational, or religious purposes
14 located or administered in this state;
- 15 (2) Whether a trustee or trustees of any charitable trust located or administered in this state
16 will be deemed to have exercised reasonable care, diligence, and prudence in performing as a
17 fiduciary in connection with the proposed conversion;
- 18 (3) Whether the board established appropriate criteria in deciding to pursue a conversion
19 in relation to carrying out its mission and purposes;
- 20 (4) Whether the board formulated and issued appropriate requests for proposals in pursuing
21 a conversion;
- 22 (5) Whether the board considered the proposed conversion as the only alternative or as the
23 best alternative in carrying out its mission and purposes;
- 24 (6) Whether any conflict of interest exists concerning the proposed conversion relative to
25 members of the board, officers, directors, senior management, experts, or consultants engaged in
26 connection with the proposed conversion including, but not limited to, attorneys, accountants,
27 investment bankers, actuaries, healthcare experts, or industry analysts;
- 28 (7) Whether individuals described in subsection (c)(6) of this section were provided with
29 contracts or consulting agreements or arrangements that included pecuniary rewards based in
30 whole, or in part on the contingency of the completion of the conversion;
- 31 (8) Whether the board exercised due care in engaging consultants with the appropriate level
32 of independence, education, and experience in similar conversions;
- 33 (9) Whether the board exercised due care in accepting assumptions and conclusions
34 provided by consultants engaged to assist in the proposed conversion;

- 1 (10) Whether the board exercised due care in assigning a value to the existing hospital and
2 its charitable assets in proceeding to negotiate the proposed conversion;
- 3 (11) Whether the board exposed an inappropriate amount of assets by accepting in
4 exchange for the proposed conversion future or contingent value based upon success of the new
5 hospital;
- 6 (12) Whether officers, directors, board members, or senior management will receive future
7 contracts in existing, new, or affiliated hospital or foundations;
- 8 (13) Whether any members of the board will retain any authority in the new hospital;
- 9 (14) Whether the board accepted fair consideration and value for any management
10 contracts made part of the proposed conversion;
- 11 (15) Whether individual officers, directors, board members, or senior management
12 engaged legal counsel to consider their individual rights or duties in acting in their capacity as a
13 fiduciary in connection with the proposed conversion;
- 14 (16) Whether the proposed conversion results in an abandonment of the original purposes
15 of the existing hospital or whether a resulting entity will depart from the traditional purposes and
16 mission of the existing hospital such that a cy pres proceeding would be necessary;
- 17 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
18 market value;
- 19 (18) Whether the proposed conversion was based upon appropriate valuation methods
20 including, but not limited to, market approach, third-party report, or fairness opinion;
- 21 (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;
- 22 (20) Whether the conversion is proper under applicable state tax code provisions;
- 23 (21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;
- 24 (22) Whether the individuals who represented the existing hospital in negotiations avoided
25 conflicts of interest;
- 26 (23) Whether officers, board members, directors, or senior management deliberately acted
27 or failed to act in a manner that impacted negatively on the value or purchase price [or employee](#)
28 [terms or conditions of employment](#);
- 29 (24) Whether the formula used in determining the value of the existing hospital was
30 appropriate and reasonable which may include, but not be limited to, factors such as: the multiple
31 factor applied to the "EBITDA" -- earnings before interest, taxes, depreciation, and amortization;
32 the time period of the evaluation; price/earnings multiples; the projected efficiency differences
33 between the existing hospital and the new hospital; and the historic value of any tax exemptions
34 granted to the existing hospital;

- 1 (25) Whether the proposed conversion appropriately provides for the disposition of
2 proceeds of the conversion that may include, but not be limited to:
- 3 (i) Whether an existing entity or a new entity will receive the proceeds;
- 4 (ii) Whether appropriate tax status implications of the entity receiving the proceeds have
5 been considered;
- 6 (iii) Whether the mission statement and program agenda will be or should be closely related
7 with the purposes of the mission of the existing hospital;
- 8 (iv) Whether any conflicts of interest arise in the proposed handling of the conversion's
9 proceeds;
- 10 (v) Whether the bylaws and articles of incorporation have been prepared for the new entity;
- 11 (vi) Whether the board of any new or continuing entity will be independent from the new
12 hospital;
- 13 (vii) Whether the method for selecting board members, staff, and consultants is
14 appropriate;
- 15 (viii) Whether the board will comprise an appropriate number of individuals with
16 experience in pertinent areas such as foundations, health care, business, labor, community
17 programs, financial management, legal, accounting, grant making, and public members
18 representing diverse ethnic populations and the interests of the affected community; and
- 19 (ix) Whether the size of the board and proposed length of board terms are sufficient;
- 20 (26) Whether the transacting parties are in compliance with the Charitable Trust Act,
21 chapter 9 of title 18;
- 22 (27) Whether a right of first refusal to repurchase the assets has been retained;
- 23 (28) Whether the character, commitment, competence, and standing in the community, or
24 any other communities served by the transacting parties, are satisfactory. [Failure to fully disclose,](#)
25 [or intentional obfuscation, misrepresentation, omission or withholding of relevant information from](#)
26 [state regulators, or failure to otherwise cooperate with state regulators during the regulatory review](#)
27 [process, shall disqualify the applicant\(s\) from consideration, resulting in the summary rejection of](#)
28 [the application under review. Such rejection shall act as a bar against the submission of future](#)
29 [applications for a period of five \(5\) years;](#)
- 30 (29) Whether a control premium is an appropriate component of the proposed conversion;
- 31 (30) Whether the value of assets factored in the conversion is based on past performance
32 or future potential performance; and
- 33 (31) Whether the proposed conversion is proper under chapter 36 of title 6 ("Rhode Island
34 Antitrust Act").

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

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

6 (b) In reviewing an application for a conversion involving hospitals in which one or more
7 of the transacting parties is a for-profit corporation as the acquiror the department shall consider
8 the following criteria:

9 (1) Whether the character, commitment, competence, and standing in the community, or
10 any other communities served by the proposed transacting parties, are satisfactory. Failure to fully
11 disclose, or intentional obfuscation, misrepresentation, omission or withholding of relevant
12 information from state regulators, or failure to otherwise cooperate with state regulators during the
13 regulatory review process, shall disqualify the applicant(s) from consideration, resulting in the
14 summary rejection of the application under review. Such rejection shall act as a bar against the
15 submission of future applications for a period of five (5) years;

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

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

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

23 (5) Whether the transacting parties have made a commitment to assure the continuation of
24 collective bargaining rights, if applicable, the continuation of current employee retirement,
25 medical, dental and paid time off benefits, the continuation of current employee wages and hours
26 of work, and retention of the workforce;

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

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

33 (8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and
34 conditions of approval for any previous conversion pursuant to an application submitted under §

1 23-17.14-6.

2 **23-17.14-11. Criteria for the department of health -- Conversions limited to not-for-**
3 **profit corporations.**

4 In reviewing an application of a conversion involving a hospital in which the transacting
5 parties are limited to not-for-profit corporations, the department shall consider the following
6 criteria:

7 (1) Whether the character, commitment, competence, and standing in the community, or
8 any other communities served by the proposed transacting parties are satisfactory. Failure to fully
9 disclose, or intentional obfuscation, misrepresentation, omission or withholding of relevant
10 information from state regulators, or failure to otherwise cooperate with state regulators during the
11 regulatory review process, shall disqualify the applicant(s) from consideration, resulting in the
12 summary rejection of the application under review. Such rejection shall act as a bar against the
13 submission of future applications for a period of five (5) years;

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

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

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

21 (5) Whether the transacting parties have made a commitment to assure the continuation of
22 collective bargaining rights, if applicable, the continuation of current employee retirement,
23 medical, dental and paid time off benefits, the continuation of current employee wages and hours
24 of work, and retention of the workforce;

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

28 (7) Whether the conversion demonstrates that the public interest will be served considering
29 the essential medical services needed to provide safe and adequate treatment, appropriate access
30 and balanced healthcare delivery to the residents of the state.

31 **~~23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-~~**
32 **profit hospitals. Expedited review for unaffiliated community hospitals.**

33 (a) Notwithstanding §§ 23-17.14-6(a) and 23-17.14-10 of this chapter, if a proposed
34 conversion involves: (1) Two (2) or more hospitals that are not in common control with another

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

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

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

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

26 (b) The transacting parties shall file an initial application pursuant to this section that shall
27 include ~~the following~~ the same information as required pursuant to § 23-17.14-6 with respect to
28 each transacting party and the proposed conversion and to include:

- 29 (1) A detailed summary of the proposed conversion;
30 (2) Charter, articles of incorporation, or certificate of incorporation for the transacting
31 parties and their affiliated hospitals, including amendments thereto;
32 (3) Bylaws and organizational charts for the transacting parties and their affiliated
33 hospitals;
34 (4) Organizational structure for the transacting parties and each partner, affiliate, parent,

1 subsidiary, or related legal entity in which either transacting party has a twenty percent (20%) or
2 greater ownership interest or control;

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

5 (6) Conflict of interest policies and procedures;

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

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

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

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

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

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

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

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

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

34 (e) The decision of the department shall be rendered within ninety (90) days of acceptance

1 of the application under this section.

2 (f) Costs payable by the transacting parties under § 23-17.14-13 in connection with an
3 expedited review by the department under this section shall not exceed twenty-five thousand dollars
4 (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service revenue of
5 the acquiree and acquiror in the most recent fiscal year for which audited financial statements are
6 available.

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

10 (h) If an expedited review is performed by the department pursuant to this section, the
11 department of attorney general shall perform a review of the proposed transaction ~~pursuant to § 23-~~
12 ~~17.14-10(b) and the criteria for conversions limited to not for profits~~ as it deems necessary,
13 including, at a minimum, its impact upon the charitable assets of the transacting parties. The
14 attorney general's review shall be done concurrently with the department of health review and shall
15 not extend the length of the review process. For this review, the department of attorney general
16 shall be entitled to costs in accordance with § 23-17.14-13 and subsection (f) of this section.

17 **23-17.14-14. Investigations -- Notice to attend -- Court order to appear -- Contempt.**

18 (a) The director or the attorney general shall conduct investigations in discharging the
19 duties required under this chapter. For purposes of this investigation, the director or the attorney
20 general may require any person, agent, trustee, fiduciary, consultant, institution, association, or
21 corporation directly related to the proposed conversion to appear at any time and place that the
22 director or the attorney general shall designate, then and there under oath and conducted with a
23 stenographic record to produce for the use of the director and/or the attorney general any and all
24 documents and any other information relating directly to the proposed conversion that the director
25 or the attorney general may require, including, but not limited to, interviews, testimony, or
26 statements.

27 (b) Whenever the director or the attorney general may require the attendance of any person
28 as provided in subsection (a), the director and/or the attorney general shall issue a notice setting the
29 time and place when the attendance is required and shall cause the notice to be delivered or sent by
30 registered or certified mail to the person at least fourteen (14) days before the date fixed in the
31 notice for the attendance.

32 (c) If any person receiving notice pursuant to this provision neglects to attend or remain in
33 attendance so long as may be necessary for the purposes that the notice was issued, or refuses to
34 produce information requested, any justice of the superior court for the county within which the

1 inquiry is carried on or within which the person resides or transacts business, upon application by
2 the director, the attorney general, or any transacting party shall have jurisdiction to hear and
3 consider on an expedited basis the request, and if appropriate and relevant to the consideration of
4 proposed conversion, may issue to the person an order requiring the person to appear before the
5 director or the attorney general there to produce for the use of the director or the attorney general
6 evidence in accordance with the terms of the order of the court, and any failure to obey the order
7 of the superior court may be punished by the court as contempt of court.

8 (d) In the event the applicant(s) fails to comply with any aspect of the review process, or
9 fails to comply with the conditions attached to a prior conversion, the application(s) shall be
10 summarily rejected.

11 **23-17.14-17. Perjury.**

12 Any person who is found to have testified falsely under oath before the legislature, the
13 department of health, or the attorney general pursuant to this chapter shall be subject to prosecution
14 for perjury and be subject to the penalties set forth in § 23-17.14-30, and the application shall be
15 summarily rejected with the applicant being barred from participating in a hospital conversion for
16 five (5) years.

17 **23-17.14-18. Prior approval -- Closings or significant reduction of medical services.**

18 (a) No hospital emergency department or primary care services which existed for at least
19 one year and which significantly serve uninsured or underinsured individuals shall be eliminated
20 or significantly reduced without the prior approval of the director and the prior approval of the
21 department of attorney general, in accordance with this section.

22 (b) Prior to the elimination or significant reduction of an emergency department or primary
23 care services which existed for at least one year and which significantly serve uninsured or
24 underinsured individuals, the hospital shall provide a written plan to the director ~~which~~ and to the
25 department of attorney general. The plan shall explain in full detail the rationale for the proposed
26 elimination or reduction, and further describe the impact of the proposal on:

27 (1) Access to healthcare services for traditionally underserved populations;

28 (2) The delivery of healthcare services on the affected community; and

29 (3) Other licensed hospitals or healthcare providers in the affected community or in the
30 state.

31 (c) Notwithstanding any other provision in the general laws, the director and the
32 department of attorney general shall ~~have the sole authority to~~ review all plans submitted under this
33 section. ~~and the~~ The director and the department of attorney general shall each issue a decision
34 within ninety (90) days or the request shall be deemed approved; provided, however, that if the

1 director or attorney general determine that the request requires additional review, each is authorize d
2 to extend their respective deadline by an additional thirty (30) days. The director and the department
3 of attorney general shall ~~may if deemed appropriate,~~ issue public notice and allow a written
4 comment period within sixty (60) days of receipt of the proposal.

5 (d) Any approval under this section shall be subject to any conditions as determined by the
6 director and the department of attorney general, provided those conditions relate to the purpose of
7 this chapter.

8 **23-17.14-28. Concurrent approval -- License.**

9 (a) The director may consider the requirement of this chapter and the requirements of §§
10 23-17-1 -- 23-17-45 together upon completion of the initial application. The director may approve,
11 approve with conditions, or disapprove one or both requests filed pursuant to this chapter, including
12 expedited review under § 23-17.14-12.1, and §§ 23-17-1 -- 23-17-45. The approvals of the director
13 required by this chapter shall be subject to chapter 35 of title 42. For any conversion subject to this
14 chapter, the director may combine any hearings required by this chapter with any hearings on
15 similar or related matters required by §§ 23-17-1 -- 23-17-45 and shall consider issues of market
16 share especially as they affect quality, access, and affordability of services.

17 (b) Any approval of a conversion involving a for-profit corporation as an acquiror shall be
18 subject to any conditions as determined by the director of health, provided those conditions relate
19 to the purpose of this chapter. The conditions may include, but not be limited to, the conditions
20 contained in this subsection. In the event the director determines that one or more of the conditions
21 contained in this subsection are not appropriate or desirable in a particular conversion, the director
22 shall include the rationale for not including the condition(s) in any approval.

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

25 (2) Make a financially reasonable contribution to support the state's coordinated health
26 planning process;

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

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

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

32 (6) Not enter into any contract or other service or purchasing arrangements with an
33 affiliated legal entity except for contracts or arrangements to provide services or products that are
34 reasonably necessary to accomplish the healthcare purposes of the relevant hospital and for

1 compensation that is consistent with fair-market value for the services actually rendered, or the
2 products actually provided;

3 (7) Report to the director on annual distributions of profit to owners; ~~and~~

4 (8) Require that any corporate allocation, or equivalent charge, to any affiliated
5 organization(s) in any hospital fiscal year not exceed reasonable fair-market value for the services
6 rendered or the assets purchased or leased from the affiliate; ~~and~~

7 (9) Make a reasonable minimum investment to maintain current employment levels,
8 current employee retirement, medical, dental and paid time-off benefits, current employee rates of
9 pay and hours of work.

10 (c) Any approval of a conversion involving a for-profit corporation as an acquiror shall be
11 subject to any conditions as determined by the attorney general, provided those conditions relate to
12 the purpose of this chapter. The conditions may include, but not be limited to, the acquiror's
13 adherence to a minimum investment to protect the assets, financial health, and well-being of the
14 new hospital and for community benefit. In the event the attorney general determines that the
15 conditions contained in this subsection are not appropriate or desirable in a particular conversion,
16 the attorney general shall include the rationale for not including the condition(s) in any approval.

17 (d) For a period of five (5) years following the effective date of the conversion, when
18 approval of a conversion involves either a not-for-profit or a for-profit corporation as an acquiror:

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

24 (2) The department of health and the department of attorney general shall monitor, assess,
25 and evaluate the acquiror's compliance with all of the conditions of approval, as well as annually
26 review the impact of the conversion on healthcare costs and services within the communities
27 served;

28 (3) The acquiror shall pay for the costs of the department of health and the department of
29 attorney general in performing the monitoring, evaluation, and assessment in an amount to be
30 determined by the attorney general or the director as they deem appropriate, which should be placed
31 in escrow during the term of the monitoring period. No application for a conversion made pursuant
32 to the requirements of this chapter shall be approved unless an agreement has been executed with
33 the attorney general and the director for the payment of reasonable costs in accordance with this
34 section; and

1 (4) The department and/or the attorney general may seek immediate relief in the superior
2 court to enforce any conditions of approval of a conversion, and may impose penalties for
3 noncompliance pursuant to § 23-17.14-30.

4 **23-17.14-30. Failure to comply -- Penalties.**

5 If any person knowingly violates or fails to comply with any provision of this chapter or
6 willingly or knowingly gives false or incorrect information:

7 (1) The director or attorney general may, after notice and opportunity for a prompt and fair
8 hearing to one or more transacting parties, deny, suspend, or revoke a license, or in lieu of
9 suspension or revocation of the license, may order the licensee to admit no additional persons to
10 the facility, to provide health services to no additional persons through the facility, or to take any
11 corrective action necessary to secure compliance under this chapter, and impose a fine of not more
12 than two million dollars (\$2,000,000); ~~and~~

13 (2) The attorney general may, after notice and opportunity for a prompt and fair hearing to
14 one or more transacting parties, take any corrective action necessary to secure compliance under
15 this chapter, and impose a fine of not more than two million dollars (\$2,000,000); ~~and~~

16 (3) Failure to fully disclose, or intentional obfuscation, misrepresentation, omission or
17 withholding of relevant information from state regulators, or failure to otherwise cooperate with
18 state regulators during the regulatory review process, shall disqualify the applicant(s) from
19 consideration, resulting in the summary rejection of the application under review. Such rejection
20 shall act as a bar against the submission of future applications for a period of five (5) years.

21 SECTION 4. 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 – LICENSING OF HEALTHCARE FACILITIES –
THE HOSPITAL CONVERSIONS ACT

- 1 This act would repeal those sections of the general laws that establish the health services
- 2 council and would also amend several provisions relative to the review process of the hospital
- 3 conversion act pertaining to maintenance of services and required disclosures.
- 4 This act would take effect upon passage.

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