

2014 -- H 7368 SUBSTITUTE B AS AMENDED

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LC003167/SUB B
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO HEALTH AND SAFETY

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

Date Introduced: February 06, 2014

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

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

3 CHAPTER 23-93

4 RHODE ISLAND ACCESS TO

5 MEDICAL TECHNOLOGY INNOVATION ACT

6 **23-93-1. Domestic medical tourism.** -- (a) For purposes of this chapter, "Domestic
7 Medical Tourism" means the practice of patients of traveling to states other than his or her
8 residence for the provision of healthcare services.

9 **23-93-2. Exemption for domestic medical tourism.** -- (a) Any healthcare facility
10 located in the state of Rhode Island specializing in domestic medical tourism, and having more
11 than fifty percent (50%) of its patients residing outside of the state provided, however, that such
12 healthcare facility must comply with all other applicable laws and regulations governing
13 healthcare facilities. Any applicant not compliant shall have thirty (30) days to comply with this
14 section and any applicable regulations governing this section.

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

17 (c) Any healthcare facility exempt under subsection (a) that fails to certify under
18 subsection (b), or is otherwise found by the department to have not established that more than
19 fifty percent (50%) of its patients currently reside outside of the state, shall be required to apply

1 for a certificate of need during the next review cycle established by the health services council.

2 **23-93-3. Exemption for multi-practice facilities.** -- Notwithstanding the requirements
3 of any other provisions of any general or public laws, the following circumstances shall not
4 require a certificate of need review and approval by the state agency:

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

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

11 **23-93-4. Penalties for noncompliance.** -- (a) The department, after notice and
12 opportunity for hearing to the applicant, is authorized to take corrective action in any case in
13 which it finds that there has been failure by an applicant to comply with the requirements
14 established under any approval granted pursuant to this chapter, including, without limitation, the
15 imposition of monetary fines that may be statutorily permitted by virtue of individual healthcare
16 facility licensing statutes.

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

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

33 **23-93-5. Moratorium; State-wide health plan; Inventory of healthcare facilities,**
34 **equipment and services.** -- (a) The health services council shall not review, and applicable state

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

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

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

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

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

34 (c)(1) The department, in consultation with the council and such other state agencies as it

1 deems appropriate, shall establish and maintain a state-wide health plan. Such plan may include,
2 but not be limited to:

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

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

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

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

20 (2) The state health plan shall identify:

21 (i) Major statewide health concerns;

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

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

26 (3) The state health plan shall:

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

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

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

34 (iv) Provide proposals for the state's legislative and executive decision-making processes

1 to consider implementing the strategies proposed by the plan.

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

11 (i) The name and location of the healthcare provider and healthcare facility;
12 (ii) The type of facility;
13 (iii) The hours of operation;
14 (iv) The type of services provided at that location including, but not limited to, translation
15 and transportation services;
16 (v) The total number of clients, the race, ethnicity and primary language spoken in the
17 home of the clients, treatments, patient visits, procedures performed or scans performed in a
18 calendar year;
19 (vi) The total number of the uninsured population in the state; and
20 (vii) Such other information as the department deems appropriate. The inventory shall be
21 completed biennially by healthcare facilities and healthcare providers, and such healthcare
22 facilities and healthcare providers shall not provide patient specific data.

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

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

1 avoid placing any burdens on such providers which are not reasonably necessary to accomplish
2 the purposes of this section.

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

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

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

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

14 **23-15-5. Expeditious review.** – (a) Any person who proposes to offer or develop new
15 institutional health services or new health care equipment for documented emergency needs, or
16 for the purpose of eliminating or preventing documented fire or safety hazards affecting the lives
17 and health of patients or staff, or for compliance with accreditation standards required for receipt
18 of federal or state reimbursement, or for any other purpose that the state agency may specify in
19 rules and regulations, may apply for an expeditious review. The state agency may exercise its
20 discretion in recommending approvals through an expeditious review except that no new
21 institutional health service or new health care equipment may be approved through the
22 expeditious review if provision of the new institutional health service or new health care
23 equipment is contra-indicated by the state health plan as may be formulated by the state agency.
24 Specific procedures for the conduct of expeditious reviews shall be promulgated in rules and
25 regulations adopted by the state agency with the advice of the health services council.

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

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

33 (d) Any healthcare facility which provides a service performed in another state and which
34 is not performed in the state of Rhode Island, or such service is performed in the state on a very

1 limited basis, shall be granted expeditious review upon request under this section, provided that
2 such service, among other things, has a clear effect on the timeliness, access or quality of care and
3 is able to meet licensing standards.

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

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

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

27 **23-17-13.1. Health services council.** -- (a) There shall be established a health services
28 council consisting of twelve (12) members, four (4) of whom shall be appointed by the speaker of
29 the house, one of whose appointment shall be an expert in healthcare economic and policy
30 matters, and a second of whose appointment shall represent the insurance business; four (4) of
31 whom shall be appointed by the president of the senate, one of whose appointment shall represent
32 the business community, and a second of whose appointment shall represent the general public;
33 and four (4) of whom shall be appointed by the governor, one of whose appointment shall
34 represent the office of the health insurance commissioner, a second of whose appointment shall

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

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

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

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

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

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

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

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

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

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