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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HEALTH AND SAFETY -- DETERMINATION OF NEED FOR NEW
HEALTHCARE EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES --
LICENSING OF HEALTHCARE FACILITIES -- THE HOSPITAL CONVERSIONS ACT

Introduced By: Senators Euer, Miller, Kallman, Murray, DiPalma, Lawson, DiMario,
Lauria, LaMountain, and McKenney

Date Introduced: February 01, 2023

Referred To: Senate Health & Human Services

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3 hereby repealed.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8 Laws in Chapter 23-17 entitled "Licensing of Healthcare Facilities" are hereby repealed.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**~~
34 ~~**not-for-profit corporations as acquirors or acquirees.**~~

1 (a) No person shall engage in a conversion with a for-profit corporation or a not-for-profit
2 corporation as the acquiror or acquiree involving the establishment, maintenance, or operation of a
3 hospital or a conversion subject to § 23-17.14-9 without prior approval of both the department of
4 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-year
23 (2) 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 plan descriptions and employee benefits, environmental reports, assessments, and
9 organizational goals;

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

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

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

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

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

25 (19) A list of pending or adjudicated citations, violations, [deficiencies](#) or charges against
26 the facilities listed in subdivision (a)(18) brought by any governmental agency or accrediting
27 agency, [including all documentation and communications to and from the joint commission on](#)
28 [accreditation of health care organizations relative thereto](#) within the past ~~three (3)~~ [ten \(10\)](#) years
29 and the status or disposition of each matter with regard to patient access and care and charitable
30 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
- 5 hospital(s) for the previous three-year (3) period to the present including a dollar amount and a
- 6 description of 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 that will be maintained at the new hospital, including staffing levels, and the estimated
- 23 length of time such services shall be maintained;
- 24 (30) A description of criteria established by the board of directors of the transacting parties
- 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 transacting parties 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 transacting parties 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 by transacting parties
16 at either the new hospital(s) or the existing hospital(s), [and a transition plan ensuring patients'](#)
17 [continued access to such services moving forward and continued employment for those who lose](#)
18 [their jobs](#);

19 (39) Description of staffing levels for five (5) years of all categories of employees,
20 including full-time, part-time, and contract employees currently working at or providing services
21 to the existing hospital and description of any anticipated or proposed changes in current staffing
22 levels, including any reduction in staffing, relocation of staffing, or additional staffing affecting the
23 new hospital and the existing hospital;

24 (40) Description of retirement plan(s) for all employees, full-time or part-time, including
25 any supplemental executive retirement plans;

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

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

29 (43) Copies of any impact analysis for the affected communities both before conversion
30 and after proposed conversion, including benefits to the community, economic impact, and staffing;

31 (44) Copies of current conflict of interest forms from all incumbent or recently incumbent
32 officers, directors, members of the boards of directors or trustees, and senior management and the
33 medical directors of the transacting parties on a form acceptable to the department of attorney
34 general;

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

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

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

13 (c) Except for information determined by the attorney general in accordance with § 23-
14 17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as
15 confidential, the initial application and supporting documentation shall be considered public
16 records and shall be available for inspection upon request.

17 **23-17.14-7. Review process of the department of attorney general and the department**
18 **of health and review criteria by department of attorney general.**

19 (a) The department of attorney general shall review all conversions involving a hospital in
20 which one or more of the transacting parties involves a for-profit corporation and/or a not-for-profit
21 corporation.

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

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

28 (2) The applicant will submit the additional information within thirty (30) working days.
29 If the additional information is submitted within the thirty-day (30) period, the department of
30 attorney general and department of health will have ten (10) working days within which to
31 determine acceptability of the additional information. If the additional information is not submitted
32 by the applicant within the thirty-day (30) period or if either agency determines the additional
33 information submitted by the applicant is insufficient, the application will be rejected without
34 prejudice to the applicant's right to resubmit, the rejection to be accompanied by a detailed written

1 explanation of the reasons for rejection. If the department of attorney general and department of
2 health determine the additional information to be as requested, the applicant will be notified, in
3 writing, of the date of acceptance of the application;

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

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

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

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

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

15 (4) The department of attorney general and department of health shall each approve,
16 approve with conditions directly related to the proposed conversion, or disapprove the application
17 within one hundred eighty (180) days of the date of acceptance of the application.

18 (c) In reviewing an application pursuant to subsection (a) of this section, the department of
19 the attorney general shall consider the following criteria:

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

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

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

28 (4) Whether the board formulated and issued appropriate requests for proposals in pursuing
29 a conversion;

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

32 (6) Whether any conflict of interest exists concerning the proposed conversion relative to
33 members of the board, officers, directors, senior management, experts, or consultants engaged in
34 connection with the proposed conversion including, but not limited to, attorneys, accountants,

1 investment bankers, actuaries, healthcare experts, or industry analysts;

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

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

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

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

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

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

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

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

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

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

25 (17) Whether the proposed conversion contemplates the appropriate and reasonable fair
26 market value;

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

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

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

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

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

34 (23) Whether officers, board members, directors, or senior management deliberately acted

1 or failed to act in a manner that impacted negatively on the value or purchase price [or employee](#)
2 [terms or conditions of employment](#);

3 (24) Whether the formula used in determining the value of the existing hospital was
4 appropriate and reasonable which may include, but not be limited to, factors such as: the multiple
5 factor applied to the “EBITDA” — earnings before interest, taxes, depreciation, and amortization;
6 the time period of the evaluation; price/earnings multiples; the projected efficiency differences
7 between the existing hospital and the new hospital; and the historic value of any tax exemptions
8 granted to the existing hospital;

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

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

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

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

16 (iv) Whether any conflicts of interest arise in the proposed handling of the conversion’s
17 proceeds;

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

19 (vi) Whether the board of any new or continuing entity will be independent from the new
20 hospital;

21 (vii) Whether the method for selecting board members, staff, and consultants is
22 appropriate;

23 (viii) Whether the board will comprise an appropriate number of individuals with
24 experience in pertinent areas such as foundations, health care, business, labor, community
25 programs, financial management, legal, accounting, grant making, and public members
26 representing diverse ethnic populations and the interests of the affected community; and

27 (ix) Whether the size of the board and proposed length of board terms are sufficient;

28 (26) Whether the transacting parties are in compliance with the Charitable Trust Act,
29 chapter 9 of title 18;

30 (27) Whether a right of first refusal to repurchase the assets has been retained;

31 (28) Whether the character, commitment, competence, and standing in the community, or
32 any other communities served by the transacting parties, are satisfactory; [Failure to fully disclose,](#)
33 [or intentional obfuscation, misrepresentation, omission or withholding of relevant information from](#)
34 [state regulators, or failure to otherwise cooperate with state regulators during the regulatory review](#)

1 process, shall disqualify the applicant(s) from consideration, resulting in the summary rejection of
2 the application under review. Such rejection shall act as a bar against the submission of future
3 applications for a period of five (5) years;

4 (29) Whether a control premium is an appropriate component of the proposed conversion;

5 (30) Whether the value of assets factored in the conversion is based on past performance
6 or future potential performance;

7 (31) Whether the proposed conversion is proper under chapter 36 of title 6 (“Rhode Island
8 Antitrust Act”);

9 (32) Whether the board established appropriate criteria for staffing levels post conversion,
10 including any reduction in staffing, relocation of staffing, or additional staffing affecting the new
11 hospital(s) and the existing hospital(s);

12 (33) Whether the board exercised due care concerning staffing levels post conversion to
13 comply with federal employment and labor laws, including the National Labor Relations Act
14 (NLRA), 29 U.S.C. §§ 151-169, Age Discrimination in Employment Act of 1967, Pub. L. No. 90-
15 202, 29 U.S.C. §§ 621-634, Civil Rights Act of 1964, Pub. L. No. 88-352 (78 Stat. 241), 42 U.S.C.
16 § 2000d et seq. (Title VI);

17 (34) Whether the board exercised due care concerning staffing levels post conversion to
18 comply with state employment and labor laws, including chapter 5 of title 28 (“fair employment
19 practices”);

20 (35) Whether the board exercised due care in funding employee and retirement plans and
21 pensions, including developing plans to fund unfunded liabilities for retirement plans and pensions
22 for all employees, full-time or part-time;

23 (36) Whether the retirement and pensions plans are in compliance with the Employee
24 Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq.; and

25 (37) Whether the board established appropriate criteria for any impact analysis for the
26 affected communities both before conversion and after proposed conversion, including benefits to
27 the community, economic impact, and staffing.

28 **23-17.14-8. Review process and review criteria by department of health for**
29 **conversions involving for-profit corporation as acquiror or acquiree.**

30 (a) The department of health shall review all proposed conversions involving a hospital in
31 which one or more of the transacting parties involves a for-profit corporation.

32 (b) In reviewing an application for a conversion involving hospitals in which one or more
33 of the transacting parties is a for-profit corporation, the department of health shall consider the
34 following criteria:

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

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

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

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

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

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

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

25 (8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and
26 conditions of approval for any previous conversion pursuant to an application submitted under §
27 23-17.14-6.

28 (c) In reviewing proposed conversions in accordance with this section, the department of
29 health shall adhere to the process in § 23-17.14-7(b).

30 **23-17.14-11. Criteria for the department of health — Conversions limited to not-for-**
31 **profit corporations.**

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

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

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

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

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

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

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

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

25 ~~**23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-**~~
26 ~~**profit hospitals. Expedited review for unaffiliated community hospitals.**~~

27 (a) Notwithstanding §§ 23-17.14-6(a) and 23-17.14-10, if a proposed conversion involves:

- 28 (1) Two (2) or more hospitals that are not in common control with another hospital; or (2) One
29 hospital not under common control with another hospital and a hospital system parent corporation;
30 or (3) Two (2) affiliated hospitals the conversion of which was previously approved in accordance
31 with this chapter and another hospital or hospital system parent corporation; ~~or (4) One or more~~
32 ~~hospital(s) that are determined to be distressed as under subsection (a)(3) of this section, including~~
33 ~~hospitals that are part of a not for profit hospital system parent corporation, as acquiree;~~ such
34 conversion will be reviewed under an expedited review process conducted solely by the department

1 of health (without derogation of the authority of the attorney general in accordance with § 23-17.14-
2 21), only if the acquiree and acquiror are both nonprofit corporations exempt from taxation under
3 section 501(a) of the United States Internal Revenue Code as organizations described in section
4 501(c)(3) of such code, or any successor provisions, and:

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) Bylaws and organizational charts for the transacting parties and their affiliated
29 hospitals;

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

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

1 (6) Conflict of interest policies and procedures;

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

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

10 (9) Copies of current conflict of interest forms from all incumbent or recently incumbent
11 officers, members of the board of directors or trustees and senior managers of the transacting
12 parties; “incumbent or recently incumbent” means those individuals holding the position at the time
13 the application is submitted and any individual who held a similar position within one year prior to
14 the application’s acceptance;

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

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

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

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

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

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

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

32 (f) Costs payable by the transacting parties under § 23-17.14-13 in connection with an
33 expedited review by the department under this section shall not exceed twenty-five thousand dollars
34 (\$25,000) per one hundred million dollars (\$100,000,000) of total net patient service revenue of

1 the acquiree and acquiror in the most recent fiscal year for which audited financial statements are
2 available.

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

6 (h) If an expedited review is performed by the department pursuant to this section, the
7 department of attorney general shall perform a review of the proposed transaction ~~pursuant to § 23-~~
8 ~~17.14-10(b) and the criteria for conversions limited to not-for-profits~~ as it deems necessary,
9 including, at a minimum, its impact upon the charitable assets of the transacting parties. The
10 attorney general's review shall be done concurrently with the department of health review and shall
11 not extend the length of the review process. For this review, the department of attorney general
12 shall be entitled to costs in accordance with § 23-17.14-13 and subsection (f) of this section.

13 **23-17.14-14. Investigations — Notice to attend — Court order to appear — Contempt.**

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

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

28 (c) If any person receiving notice pursuant to this provision neglects to attend or remain in
29 attendance so long as may be necessary for the purposes that the notice was issued, or refuses to
30 produce information requested, any justice of the superior court for the county within which the
31 inquiry is carried on or within which the person resides or transacts business, upon application by
32 the director, the attorney general, or any transacting party shall have jurisdiction to hear and
33 consider on an expedited basis the request, and if appropriate and relevant to the consideration of
34 proposed conversion, may issue to the person an order requiring the person to appear before the

1 director or the attorney general there to produce for the use of the director or the attorney general
2 evidence in accordance with the terms of the order of the court, and any failure to obey the order
3 of the superior court may be punished by the court as contempt of court.

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

7 **23-17.14-17. Perjury.**

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

13 **23-17.14-18. Prior approval — Closings or significant reduction of medical services.**

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

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

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

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

25 (3) Other licensed hospitals or healthcare providers in the affected community or in the
26 state.

27 (c) Notwithstanding any other provision in the general laws, the director and the
28 department of attorney general shall ~~have the sole authority to~~ review all plans submitted under this
29 section. ~~and the~~ The director and the department of attorney general shall each issue a decision
30 within ninety (90) days or the request shall be deemed approved; provided, however, that if the
31 director or attorney general determine that the request requires additional review, each is authorized
32 to extend their respective deadline by an additional thirty (30) days. The director and the department
33 of attorney general shall ~~may if deemed appropriate~~, issue public notice and allow a written
34 comment period within sixty (60) days of receipt of the proposal.

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

4 **23-17.14-28. Concurrent approval — License.**

5 (a) The director may consider the requirement of this chapter and the requirements of §§
6 23-17-1 — 23-17-45 together upon completion of the initial application. The director may approve,
7 approve with conditions, or disapprove one or both requests filed pursuant to this chapter, including
8 expedited review under § 23-17.14-12.1, and §§ 23-17-1 — 23-17-45. The approvals of the director
9 required by this chapter shall be subject to chapter 35 of title 42. For any conversion subject to this
10 chapter, the director may combine any hearings required by this chapter with any hearings on
11 similar or related matters required by §§ 23-17-1 — 23-17-45 and shall consider issues of market
12 share especially as they affect quality, access, and affordability of services.

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

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

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

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

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

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

28 (6) Not enter into any contract or other service or purchasing arrangements with an
29 affiliated legal entity except for contracts or arrangements to provide services or products that are
30 reasonably necessary to accomplish the healthcare purposes of the relevant hospital and for
31 compensation that is consistent with fair-market value for the services actually rendered, or the
32 products actually provided;

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

34 (8) Require that any corporate allocation, or equivalent charge, to any affiliated

1 organization(s) in any hospital fiscal year not exceed reasonable fair-market value for the services
2 rendered or the assets purchased or leased from the affiliate; and

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

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

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

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

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

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

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

34 **23-17.14-30. Failure to comply — Penalties.**

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

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

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

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

17 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 -- DETERMINATION OF NEED FOR NEW
HEALTHCARE EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES --
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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