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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO HEALTH AND SAFETY - THE HOSPITAL CONVERSIONS ACT

Introduced By: Representatives Marshall, McKiernan, Johnston, O'Brien, and Edwards

Date Introduced: March 15, 2018

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.14-4, 23-17.14-8, 23-17.14-11 and 23-17.14-12.1 of the
2 General Laws in Chapter 23-17.14 entitled "The Hospital Conversions Act" are hereby amended
3 to read as follows:

4 **23-17.14-4. Definitions.**

5 For purposes of this chapter:

6 (1) "Acquiree" means the person or persons that lose(s) any ownership or control in the
7 new hospital as a result of a conversion, as the terms "conversion," "new hospital," and
8 "person(s)" are defined within this chapter;

9 (2) "Acquiror" means the person or persons which gain(s) an ownership or control in the
10 new hospital as a result of a conversion, as the terms "conversion," "new hospital," and
11 "person(s)" are defined within this chapter;

12 (3) "Affected community" means any city or town within the state wherein an existing
13 hospital is physically located and/or those cities and towns whose inhabitants are regularly served
14 by the existing hospital;

15 (4) "Affiliate" means, as to any hospital or health system, any other individual,
16 corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated
17 association, any governmental authority, and any fiduciary acting in such capacity on behalf of
18 any of the foregoing, that, directly or indirectly, is in control of, is controlled by or is under
19 common control with such hospital or health system or is a director, or officer of such hospital or

1 [health system or of an affiliate of such hospital or health system.](#)

2 ~~(4)~~(5) "Charity care" is defined as health care services provided by a hospital without
3 charge to a patient and for which the hospital does not and has not expected payment;

4 ~~(5)~~(6) "Community benefit" means the provision of hospital services that meet the
5 ongoing needs of the community for primary and emergency care in a manner that enables
6 families and members of the community to maintain relationships with person who are
7 hospitalized or are receiving hospital services, and shall also include, but not be limited to charity
8 care and uncompensated care;

9 ~~(6)~~(7) "Conversion" means any transfer by a person or persons of an ownership or
10 membership interest or authority in a hospital, or the assets of a hospital, whether by purchase,
11 merger, consolidation, lease, gift, joint venture, sale, or other disposition which results in a
12 change of ownership or control or possession of twenty percent (20%) or greater of the members
13 or voting rights or interests of the hospital or of the assets of the hospital or pursuant to which, by
14 virtue of the transfer, a person, together with all persons affiliated with the person, holds or owns,
15 in the aggregate, twenty percent (20%) or greater of the membership or voting rights or interests
16 of the hospital or of the assets of the hospital, or the removal, addition or substitution of a partner
17 which results in a new partner gaining or acquiring a controlling interest in the hospital, or any
18 change in membership which results in a new person gaining or acquiring a controlling vote in
19 the hospital;

20 ~~(7)~~(8) "Current conflict of interest forms" means conflict of interest forms signed within
21 one year prior to the date the application is submitted in the same form as submitted to auditors
22 for the transacting parties in connection with the preparation of financial statements, or in such
23 other form as is acceptable to the attorney general, together with a description of any conflicts of
24 interest that have been discovered by or disclosed to a transacting party since the date of such
25 conflict of interest forms;

26 ~~(8)~~(9) "Department" means the department of health. However "departments" shall mean
27 the department of health and the department of the attorney general;

28 ~~(9)~~(10) "Director" means the director of the department of health;

29 ~~(10)~~(11) "Existing hospital" means the acquiree hospital as it exists prior to the
30 acquisition;

31 ~~(11)~~(12) "For-profit corporation" means a legal entity formed for the purpose of
32 transacting business which has as any one of its purposes pecuniary profit;

33 ~~(12)~~(13) "Hospital" means a person or governmental entity licensed in accordance with
34 chapter 17 of this title to establish, maintain and operate a hospital;

1 ~~(13)~~(14) "New hospital" means the acquiree hospital as it exists after the completion of a
2 conversion;

3 ~~(14)~~(15) "Not-for-profit corporation means a legal entity formed for some charitable or
4 benevolent purpose and not-for-profit which has been exempted from taxation pursuant to
5 Internal Revenue Code § 501(c)(3), 26 U.S.C. § 501(c)(3);

6 ~~(15)~~(16) "Person" means any individual, trust or estate, partnership, corporation
7 (including associations, joint stock companies and insurance companies), state or political
8 subdivision or instrumentality of the state;

9 ~~(16)~~(17) "Senior managers" or "senior management" means executives and senior level
10 managers of a transacting party;

11 ~~(17)~~(18) "Transacting parties" means the acquiree and the acquiror;

12 ~~(18)~~(19) "Uncompensated care" means a combination of free care, which the hospital
13 provides at no cost to the patient, bad debt, which the hospital bills for but does not collect, and
14 less than full Medicaid reimbursement amounts.

15 **23-17.14-8. Review process and review criteria by department of health for**
16 **conversions involving for-profit corporation as acquiror.**

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

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

23 (1) Whether the character, commitment, competence, and standing in the community, or
24 any other communities served by the proposed transacting parties, are satisfactory;

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

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

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

32 (5) Whether the transacting parties have made a commitment to assure the continuation
33 of collective bargaining rights, if applicable, and retention of the workforce;

34 (6) Whether the transacting parties have appropriately accounted for employment needs

1 at the facility and addressed workforce retraining needed as a consequence of any proposed
2 restructuring;

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

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

9 (c) If the acquiror is a hospital or hospital system or is an affiliate of a hospital or hospital
10 system that is incorporated in, operates a hospital in, or is located within a state immediately
11 adjacent to the state which does not own or operate a licensed hospital within the state at the time
12 of the filing of the application, then the department shall also consider the following criteria:

13 (1) Whether the conversion will result in the increase or decrease of primary and
14 specialty services at the acquiree and the extent of such increase or decrease;

15 (2) Whether the conversion will result in the migration of patients from the acquiree to
16 out-of-state hospitals and the extent of such migration, if any;

17 (3) Whether the conversion will result in the increase or decrease of the number of jobs at
18 the acquiree and the extent of such increase or decrease;

19 (4) Whether the conversion will result in an increase in cost to the state's medicaid
20 program;

21 (5) Whether the conversion will result in an increase or decrease of local health insurance
22 premiums and the extent of such increase or decrease;

23 (6) Whether the conversion will result in an increase or decrease of funds available for
24 medical research, medical innovation, academic medical programs, and other research- and
25 academic-based activities identified by the department and the extent of such increase or
26 decrease; and

27 (7) Whether the conversion will affect any other aspect of patient care in the state as
28 identified by the department in its discretion.

29 (d) To effectuate the review of the criteria set forth in subsection (c) of this section, the
30 department shall duly engage an expert and/or consultant to prepare a report or reports analyzing
31 the criteria set forth in subsection (c) of this section for the department's review.

32 (e) The report or reports identified in subsection (d) of this section shall be made publicly
33 available within ninety (90) days of the department's retention of the expert and/or consultant.

34 (f) The department shall hold a public hearing on the report identified in subsection (d) of

1 this section within thirty (30) days of such report being publicly released and allow for public
2 comment on the report. Such public hearing shall be held upon notice of no less than forty-eight
3 (48) hours at a time and place determined in the discretion of the department.

4 (g) The transacting parties shall fully reimburse the department for any fees, costs, or
5 expenses incurred by the department in connection with subsection (d) of this section. No
6 application for a conversion made pursuant to the requirements of this chapter shall be complete
7 unless an agreement has been executed with the department for the payment of costs in
8 accordance with this subsection.

9 **23-17.14-11. Criteria for the department of health -- Conversions limited to not-for-**
10 **profit corporations.**

11 (a) In reviewing an application of a conversion involving a hospital in which the
12 transacting parties are limited to not-for-profit corporations, the department shall consider the
13 following criteria:

14 (1) Whether the character, commitment, competence, and standing in the community, or
15 any other communities served by the proposed transacting parties are satisfactory;

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

18 (3) Whether the transacting parties have provided satisfactory evidence that the new
19 hospital will provide health care and appropriate access with respect to traditionally underserved
20 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
24 of collective bargaining rights, if applicable, and retention of the workforce;

25 (6) Whether the transacting parties have appropriately accounted for employment needs
26 at 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
29 considering the essential medical services needed to provide safe and adequate treatment,
30 appropriate access and balanced health care delivery to the residents of the state.

31 (b) If the acquiror is a hospital or hospital system or is an affiliate of a hospital or hospital
32 system that is incorporated in, operates a hospital in, or located within a state immediately
33 adjacent to the state which does not own or operate a licensed hospital within the state at the time
34 of the filing of the application, then the department shall also consider the following criteria:

1 (1) Whether the conversion will result in the increase or decrease of primary and
2 specialty services at the acquiree and the extent of such increase or decrease;

3 (2) Whether the conversion will result in the migration of patients from the acquiree to
4 out-of-state hospitals and the extent of such migration, if any;

5 (3) Whether the conversion will result in the increase or decrease of the number of jobs at
6 the acquiree and the extent of such increase or decrease;

7 (4) Whether the conversion will result in an increase in cost to the state's medicaid
8 program;

9 (5) Whether the conversion will result in an increase or decrease of local health insurance
10 premiums and the extent of such increase or decrease;

11 (6) Whether the conversion will result in an increase or decrease of funds available for
12 medical research, medical innovation, academic medical programs, and other research- and
13 academic-based activities identified by the department and the extent of such increase or
14 decrease; and

15 (7) Whether the conversion will affect any other aspect of patient care in the state as
16 identified by the department in its discretion.

17 (c) To effectuate the review of the criteria set forth in subsection (b) of this section, the
18 department shall duly engage an expert and/or consultant to prepare a report or reports analyzing
19 the criteria set forth in subsection (b) of this section for the department's review.

20 (d) The report or reports identified in subsection (c) of this section shall be made publicly
21 available within ninety (90) days of the department's retention of the expert and/or consultant.

22 (e) The department shall hold a public hearing on the report identified in subsection (c) of
23 this section within thirty (30) days of such report being publicly released and allow for public
24 comment on the report. Such public hearing shall be held upon notice of no less than forty-eight
25 (48) hours at a time and place determined in the discretion of the department.

26 (f) The transacting parties shall fully reimburse the department for any fees, costs, or
27 expenses incurred by the department in connection with subsection (c) of this section. No
28 application for a conversion made pursuant to the requirements of this chapter shall be complete
29 unless an agreement has been executed with the department for the payment of costs in
30 accordance with this subsection.

31 **23-17.14-12.1. Expedited review for unaffiliated community hospitals or not-for-**
32 **profit 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
2 system parent corporation; or (3) Two (2) affiliated hospitals the conversion of which was
3 previously approved in accordance with chapter 17.14 of title 23 and another hospital or hospital
4 system parent corporation, or (4) One or more hospital(s) that are determined to be distressed as
5 under subsection (a)(2) of this section, including hospitals that are part of a not-for-profit hospital
6 system parent corporation, as acquiree, such conversion will be reviewed under an expedited
7 review process conducted solely by the department of health (without derogation of the authority
8 of the attorney general in accordance with § 23-17.14-21), only if the acquiree and acquiror are
9 both nonprofit corporations exempt from taxation under section 501(a) of the United States
10 Internal Revenue Service Code as organizations described in section 501(c)(3) of such code, or
11 any successor 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 health care system that has operated for at least the
15 preceding three (3) years; and

16 (2) The acquiree operates one or more distressed Rhode Island hospitals facing
17 significant financial hardship that may impair its or their ability to continue to operate effectively
18 without the proposed conversion and have been determined to be distressed by the director of
19 health based upon whether the hospital(s) 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
27 shall include the following information with respect to each transacting party and the proposed
28 conversion:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (i) Notwithstanding any provision of this chapter to the contrary, expedited review under
18 this chapter shall not be available for a proposed conversion involving a distressed hospital if the
19 acquiring hospital or hospital system or affiliate of a hospital or hospital system is incorporated
20 in, operates a hospital in, or is located within a state immediately adjacent to the state and does
21 not own or operate a licensed hospital within the state at the time of the filing of the application.

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

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

1 This act would revise the hospital conversions act and would set additional guidelines for
2 the department of health to consider when considering conversions of either for profit or
3 nonprofit hospitals or their affiliates which is defined within this act.

4 This act would take effect upon passage.

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