

RULES AND REGULATIONS
PERTAINING TO
HOSPITAL CONVERSIONS

(R23-17.14-HCA)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

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As amended:

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with the provisions of section 42-35-
4.1 of the Rhode Island General Laws,
as amended)**

INTRODUCTION

These *Rules and Regulations Pertaining to Hospital Conversions (R23-17.14-HCA)* are promulgated pursuant to the authority conferred under section 23-17.14-31 of the Rhode Island General Laws, as amended, and are established pursuant to the findings listed in section 23-17.14-2 of the Rhode Island General Laws, as amended, for the purpose of establishing minimal standards for the review of hospital conversions in this state, and to fulfil those purposes set forth in section 23-17.14-3 of the Rhode Island General Laws, as amended.

The purpose of Chapter 23-17.14 is to: (1) assure the viability of a safe, accessible and affordable healthcare system that is available to all of the citizens of the state; (2) to establish a process to evaluate, monitor and review whether the new phenomenon of for-profit corporations gaining an interest in hospitals will maintain, enhance, or disrupt the delivery of healthcare in the state and to monitor hospital performance to assure that standards for community benefits continue to be met; (3) to establish a review process and criteria for review of hospital conversions which involve for-profit corporations; (4) to establish a review process and criteria for review of hospital conversions which involve only not-for-profit corporations; (5) to clarify the jurisdiction and the authority of the Department of Health to protect public health and welfare; and (6) to provide for independent foundations to hold and distribute proceeds of hospital conversions consistent with the acquiree's original purpose or for the support and promotion of health care and social needs in the affected community.

In effectuating the purposes of the Act, these regulations to evaluate, review and monitor the new phenomenon of for-profit corporations gaining an interest in hospitals and the resulting impact

on the delivery of healthcare in the state, limitations on for-profit corporations involved in hospital conversions are necessary. In accordance with the provisions of section 42-35-3 (c) of the General Laws of Rhode Island, as amended, in the development of the regulations, consideration was given to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) any significant economic impact on small business as defined in Chapter 42-35 of the General Laws. Based on the available information, no known alternative approach, duplication or overlap was identified. The health, safety, and welfare of the public overrides any economic impact which may be incurred from these regulations.

Those entities engaged in a hospital conversion are also advised to reference the *Rules and Regulations for Licensing of Hospitals (R23-17-HOSP)* promulgated by the Rhode Island Department of Health. Nothing in the attached regulations should be construed to be inconsistent with the *Rules and Regulations for Licensing of Hospitals (R23-17-HOSP)*.

These rules and regulations appertain only to the Department of Health.

These regulations shall supersede all previous rules and regulations related to hospital conversions promulgated by the Department of Health and filed with the Secretary of State.

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PART I DEFINITIONS

Section 1.0 *Definitions*

Wherever used in these rules and regulations, the terms listed below shall be construed as follows:

- 1.1 **"Acquiree"** means the person or persons which lose(s) any ownership or control in the new hospital, as the terms "new hospital" and "person(s)" are defined within the Hospital Conversions Act.
- 1.2 **"Acquiror"** means the person or persons which gain(s) an ownership or control in the new hospital, as the terms "new hospital" and "person(s)" are defined within the Hospital Conversions Act.
- 1.3 **"Act"** means Chapter 23-17.14 of the Rhode Island General Laws, as amended, entitled "The Hospital Conversions Act."
- 1.4 **"Affected community"** means any city or town within the state of Rhode Island wherein an existing hospital is physically located and/or those cities and towns whose inhabitants are regularly served by the existing hospital.
- 1.5 **"Bad debt"** means services provided and billed, but reported to be uncollectible, and demonstrated as such in the audited financial statements.
- 1.6 **"Charity care"** means health care services provided by a hospital without charge to a patient and for which the hospital does not and has not expected payment. Said health care services shall be rendered to patients determined to be uninsured, underinsured or otherwise deemed to be eligible at the time of delivery of services. Charity care services are those health care services that are not recognized as either a receivable or as revenue in the hospital's financial statements. Charity care shall not include health care services provided to individuals for the purpose of professional courtesy without charge or for reduced charge. Under no circumstances shall bad debt be deemed to be charity care. Charity care shall be cost-adjusted by applying a ratio of cost to charges from the hospital's Medicare Cost Reports to charity care charges-foregone.
- 1.7 **"Community benefit"** means the provision of hospital services that meet the ongoing needs of the community for primary and emergency care in a manner that enables families and members of the community to maintain relationships with persons who are hospitalized or are receiving hospital services, and shall also include, but not be limited to, charity care and uncompensated care.

Community benefit activities may also include the following:

- a) programs, procedures, and protocols that meet the needs of the medically indigent;

- b) linkages with community partners that focus on improving the health and well-being of community residents;
 - c) contribution of non-revenue producing services made available to the community, such as fitness programs, health screenings, or transportation services;
 - d) public advocacy on behalf of community health needs;
 - e) scientific, medical research, or educational activities.
- 1.8 **"Conversion"** means any transfer by a person or persons of an ownership or membership interest or authority in a hospital, or the assets thereof, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition which results in a change of ownership or control or possession of twenty percent (20%) or greater of the members or voting rights or interests of the hospital or of the assets of the hospital or pursuant to which, by virtue of such transfer, a person, together with all persons affiliated with such person, holds or owns, in the aggregate, twenty percent (20%) or greater of the membership or voting rights or interests of the hospital or of the assets of the hospital, or the removal, addition or substitution of a partner which results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in membership which results in a new person gaining or acquiring a controlling vote in the hospital.
- 1.9 **"Department"** means the Department of Health.
- 1.10 **"Director"** means the Director of the Rhode Island Department of Health.
- 1.11 **"Emergency care"** means care provided in situations or circumstances involving the sudden onset of a medical, dental, mental or substance abuse condition manifesting itself by acute symptoms of sufficient severity (e.g., severe pain) where the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily or mental functions, or serious dysfunction of any body organ or part.
- 1.12 **"Equity"** means non-debt funds contributed towards the capital costs related to a change in owner or change in operator of a hospital which funds are free and clear of any repayment obligation or liens against the assets of the proposed owner and/or licensee and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged.
- 1.13 **"Existing hospital"** means the hospital as it exists prior to the acquisition.
- 1.14 **"For-profit corporation"** means a legal entity formed for the purpose of transacting business which has as any one of its purposes pecuniary profit.

- 1.15 ***“Free care”*** means charity care.
- 1.16 ***“Hospital”*** means a person or governmental entity licensed in accordance with Chapter 23-17 to establish, maintain and operate a hospital, including a rehabilitation hospital and persons for-profit and not-for-profit.
- 1.17 ***“Incumbent”*** or ***“recently incumbent”*** means those individuals holding the position at the time the application is submitted and any individual who held a similar position within one (1) year prior to the application's acceptance.
- 1.18 ***“New hospital”*** means the hospital as it exists after the completion of a conversion.
- 1.19 ***“Not-for-profit corporation”*** means a legal entity formed for some charitable or benevolent purpose and not-for-profit which has been exempted from taxation pursuant to Internal Revenue Code Section 501(C)(3) [26 U.S.C. § 501(c)(3)].
- 1.20 ***“Person”*** means any individual, trust or estate, partnership, corporation (including associations, joint stock companies, and insurance companies), state or political subdivision or instrumentality of the state.
- 1.21 ***“Primary care services”*** means the provision of integrated, accessible health care services by clinicians who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community. In most instances, primary care is focused on the point at which a patient first seeks assistance from the health care system for non-emergency services. Primary care services include, but are not limited to, such services as family practice, pediatrics, internal medicine, obstetrics/gynecology, and mental health services.
- 1.22 ***“State agency”*** means the Rhode Island Department of Health.
- 1.23 ***“Transacting parties”*** means any person or persons who seeks either to transfer or acquire ownership or a controlling interest or controlling authority in a hospital which would result in a change of ownership, control or authority of twenty percent (20%) or greater.
- 1.24 ***“Uncompensated care”*** means a combination of free care, which the hospital provides at no cost to the patient, bad debt, which the hospital bills for but does not collect, and less than full Medicaid reimbursement amounts.
- 1.25 ***“Uninsured”*** means those individuals who do not have coverage under private or employer-sponsored health insurance or another government health plan, and who continue to lack such coverage.

PART II REQUIREMENTS FOR CONVERSIONS OF HOSPITALS

Section 2.0 *General Requirements and Procedures*

- 2.1 Any hospital conversion, as defined in section 1.8 herein, shall require review and approval from the Department of Health in accordance with the provisions of Chapter 23-17.14 of the Rhode Island General Laws, as amended, and these regulations herein. The review shall proceed in accordance with the provisions of section 23-17.14-5 of the Rhode Island General Laws, as amended.
- 2.2 All hospitals, including all new hospitals as defined in section 1.18 herein, shall be subject to the provisions of the **RULES AND REGULATIONS FOR LICENSING OF HOSPITALS (R23-17-HOSP)**, promulgated by the Rhode Island Department of Health.
- 2.3 Nothing contained herein shall be deemed to affect the licensing fees set forth in the **RULES AND REGULATIONS FOR LICENSING OF HOSPITALS (R23-17-HOSP)**.
- 2.4 When review of a proposed conversion and review of a proposed change in owner, operator or lessee of a hospital are both required pursuant to the provisions of Chapter 23-17.14 and Chapter 23-17 of the Rhode Island General Laws, as amended, respectively, a conversion application shall be filed with the Department of Health which contains all information required pursuant to Chapter 23-17.14 as may be determined by the state agency and cited in section 3.0 herein; and a separate application for a change in effective control shall be filed containing all information required under the provisions of Chapter 23-17 and section 4.0 of the **RULES AND REGULATIONS FOR LICENSING OF HOSPITALS (R23-17-HOSP)**.
 - 2.4.1 Reviews of applications for changes in the owner, operator, or lessee of licensed hospitals shall be conducted in accordance with the requirements set forth in section 4.0 of the **RULES AND REGULATIONS FOR LICENSING OF HOSPITALS (R23-17-HOSP)**.

Section 3.0 *Conversion Application*

- 3.1 No person shall engage in a conversion with a for- profit corporation as the acquiror and a not- for- profit corporation as the acquiree involving the establishment, maintenance, or operation of a hospital or a conversion subject to section 23-17.14-9 of the Rhode Island General Laws, as amended, without prior approval of the Department of Health in accordance with section 23-17.14-6 of the Rhode Island General Laws, as amended. The transacting parties shall file an initial application which shall, at minimum, include the following information with respect to each transacting party and to the proposed new hospital:
 - a) A detailed summary of the proposed conversion;
 - b) Names, addresses and phone numbers of the transacting parties;

- c) Name, address, phone number, occupation, and tenure of all officers, members of the board of directors, trustees, executives, and senior level managers including for each position, current persons and persons holding position during the past three (3) years;
- d) A list of all committees, subcommittees, task forces, or similar entities of the board of directors or trustees, including a short description of the purpose of each committee, subcommittee, task force, or similar entity and the name, address, phone number, occupation, and tenure of each member;
- e) Agenda, meeting packages, and minutes of all meetings of the board of directors or trustees and any of its committees, subcommittees, task forces, or similar entities that occurred within the two (2) year period prior to submission of the application;
- f) Articles of incorporation and certificate of incorporation;
- g) Bylaws and organizational charts;
- h) Organizational structure for existing transacting parties and each partner, affiliate, parent, subsidiary or related corporate entity in which the acquiror has a twenty percent (20%) or greater ownership interest;
- i) Conflict of interest statements, policies and procedures;
- j) Names, addresses and phone numbers of professional consultants engaged in connection with the proposed conversion;
- k) Copies of audited income statements, balance sheets, other financial statements, and management letters for the past three (3) years and to the extent they have been made public, audited interim financial statements and income statements together with detailed description of the financing structure of the proposed conversion including equity contribution, debt restructuring, stock issuance, partnership interests, stock offerings and the like;
- l) A detailed description of real estate issues including title reports for land owned and lease agreements concerning the proposed conversion;
- m) A detailed description as each relates to the proposed transaction for equipment leases, insurance, regulatory compliance, tax status, pending litigation or pending regulatory citations, pension plan descriptions and employee benefits, environmental reports, assessments and organizational goals;
- n) Copies of reports analyzing the proposed conversion during the past three (3) years including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;

- o) Copies of any opinions or memoranda addressing the state and federal tax consequences of the proposed conversion prepared for a transacting party by an attorney, accountant, or other expert;
- p) A description of the manner in which the price was determined including which methods of valuation and what data were used, and the names and addresses of persons preparing said documents, and this information is deemed to be proprietary;
- q) Patient statistics for the past three (3) years and patient projections for the next one (1) year including patient visits, admissions, emergency room visits, clinical visits, and visits to each department of the hospital, admissions to nursing care or visits by affiliated home health care entities;
- r) The name and mailing address of all licensed facilities in which the for-profit corporation maintains an ownership interest or controlling interest or operating authority;
- s) A list of pending or adjudicated citations, violations or charges against the facilities listed in subsection (r) (above) brought by any governmental agency or accrediting agency within the past three (3) years and the status or disposition of each matter with regard to patient care and charitable asset matters;
- t) A list of uncompensated care provided over the past three (3) years by each facility listed in subsection (r) (above) and detail as to how that amount was calculated;
- u) Copies of all documents related to (a) identification of all charitable assets (b) accounting of all charitable assets for the past three (3) years; and (c) distribution of the charitable assets including, but not limited to, endowments, restricted, unrestricted and specific purpose funds as each relates to the proposed transaction;
- v) A description of charity care and uncompensated care provided by the existing hospital for the previous five (5) year period to the present including a dollar amount and a description of services provided to patients;
- w) A description of bad debt incurred by the existing hospital for the previous five (5) years for which payment was anticipated but not received;
- x) A description of the plan as to how the new hospital will provide community benefit and charity care during the first five (5) years of operation;
- y) A description of how the new hospital will monitor and value charity care services and community benefit;

- z) The names of persons currently holding a position as an officer, director, board member, or senior level management who will or will not maintain any position with the new hospital and whether any said person will receive any salary, severance stock offering or any financial gain, current or deferred, as a result of or in relation to the proposed conversion;
- aa) Copies of capital and operating budgets, business plans, or other financial projections for the new hospital during the first three (3) years of operation;
- bb) Copies of plans relative to staffing during the first three (3) years at the new hospital;
- cc) A list of all medical services, departments and clinical services, and administrative services which will be maintained at the new hospital;
- dd) A description of criteria established by the board of directors of the existing hospital for pursuing a proposed conversion with one (1) or more health care providers;
- ee) Copies of reports of any due diligence review performed by each transacting party in relation to the proposed conversion. Such reports are to be held by the Department of Health as confidential and not released to the public regardless of any determination made pursuant to section 23-17.14-32 of the Rhode Island General Laws, as amended, and not withstanding any other provision of the General Laws;
- ff) A description of request for proposals issued by the existing hospital relating to pursuing a proposed conversion;
- gg) Copies of reports analyzing affiliations, mergers, or other similar transactions considered by any of the transacting parties during the past three (3) years, including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
- hh) A copy of proposed contracts or description of proposed contracts or arrangements with management, board members, officers, or directors of the existing hospital for severance consulting services or covenants not to compete following completion of the proposed conversion;
- ii) A copy or description of all agreements or proposed agreements reflecting any current and/or future employment or compensated relationship between the acquirer (or any related entity) and any officer, director, board members, or senior level manager of the acquiree (or any related entity);
- jj) A copy or description of all agreements executed or anticipated to be executed by any of the transacting parties in connection with the proposed conversion;

- kk) Copies of documents or description of any proposed plan for any entity to be created for charitable assets, including but not limited to, endowments, restricted, unrestricted and specific purpose funds, the proposed articles of incorporation, by-laws, mission statement, program agenda, method of appointment of board members, qualifications of board members, duties of board members, and conflict of interest policies;
- ll) Description of all departments, clinical, social, or other services or medical services which will be eliminated or significantly reduced at the new hospital;
- mm) Description of staffing levels of all categories of employees, including full-time, part-time, and contract employees currently working at or providing services to the existing hospital and description of any anticipated or proposed changes in current staffing levels;
- nn) Current, signed original conflict of interest forms from all incumbent or recently incumbent officers, directors, members of the board, trustees, senior management, chairpersons or department chairpersons and medical directors on a form as provided in section 23-17.14-6(b)(32) of the Rhode Island General Laws, as amended;
- oo) If the acquiror is a for-profit corporation that has acquired a not-for-profit hospital under the provisions of the Act, the application shall also include a complete statement of performance during the preceding one (1) year with regard to the terms and conditions of approval of conversion and each projection, plan, or description submitted as part of the application for any conversion completed under an application submitted pursuant to this section and made a part of an approval for such conversion pursuant to sections 23-17.14-7 or 23-17.14-8 of the Act.
- pp) All information relevant to the criteria that the Department is required to consider pursuant to sections 4.0 and 5.0 herein.
- qq) Copies of IRS Form 990 for any transacting party required by federal law to file such a form for each of the five (5) years prior to the submission of the application.
- rr) Any additional information pertaining to the conversion that the state agency may deem necessary for analysis of the applicable considerations outlined in sections 4.0 and 5.0 herein.
- ss) With respect to all information required pursuant to section 3.1 and all of its subparts, the transacting parties shall upgrade and update said information through to the time of the Director's decision and the transacting parties shall have a continuing duty to supplement previously submitted information with supplemental, updated, and upgraded information.

- 3.2 Two (2) copies of the initial application shall be provided to the Department of Health by United States mail, certified, return receipt requested, pursuant to section 23-17.14-6(b)(33.1)(b) of the Rhode Island General Laws, as amended;
- 3.3 Decisions with respect to whether any information required by Chapter 23-17.14 of the Rhode Island General Laws, as amended, is confidential and/or proprietary shall be made pursuant to section 23-17.14-32 of the Rhode Island General Laws, as amended.
- 3.4 Except for information determined in accordance with section 23-17.14-32 to be confidential and/or proprietary, or otherwise required by law to be maintained as confidential, the initial application and supporting documentation shall be considered a public record and shall be available for inspection upon request.

Section 4.0 *Review of For-profit Conversions*

- 4.1 The Department shall review all proposed conversions involving a hospital in which one (1) or more of the transacting parties involves a for-profit corporation as the acquiror and a not-for-profit corporation as the acquiree. In reviewing proposed conversions, the Department shall adhere to the following process:
 - a) within thirty (30) days after receipt of an initial application, the Department pursuant to the provisions of section 23-17.14-7(b)(1) of the Rhode Island General Laws, as amended, shall advise the applicant in writing whether the application is complete, and, if not, shall specify all additional information the applicant is required to provide;
 - b) pursuant to section 23-17.14-7(b)(2) of the Rhode Island General Laws, as amended, the applicant will submit the additional information within thirty (30) working days. If the additional information is submitted within such thirty (30) day period, the Department will have ten (10) working days within which to determine acceptability of the additional information. If the additional information is not submitted by the applicant within such thirty (30) day period or if the Department determines the additional information submitted by the applicant is insufficient, the application will be rejected without prejudice to the applicant's right to resubmit, such rejection to be accompanied by a detailed written explanation of the reasons for rejection. If the Department determines the additional information to be as requested, the applicant will be notified in writing of the date of acceptance of the application;
 - c) In accordance with section 23-17.14-7(b)(3) of the Rhode Island General Laws, as amended, and after the determination on confidentiality pursuant to section 23-17.14-32 of the Rhode Island General Laws, as amended, the Department shall publish notice of the application in a newspaper of general circulation in the state and shall notify by United States mail any person who has requested notice of the filing of such application. The notice shall state (a) that an initial application has been received and accepted for review, (b) the names of the transacting parties, (c) the date by which a person may submit written comments to the Department and

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

- d) the Department shall approve, approve with conditions directly related to the proposed conversion, or disapprove the application within one hundred and eighty (180) days of the date of acceptance of the application.

4.2 In reviewing an application for a conversion involving hospitals in which one (1) or more of the transacting parties is a for-profit corporation as the acquiror, the Department shall consider the following criteria:

- a) Whether the character, commitment, competence, and standing in the community, or any other communities served by the proposed transacting parties, are satisfactory;
- b) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;
- c) Whether the transacting parties have provided clear and convincing evidence that the new hospital will provide health care and appropriate access with respect to traditionally underserved populations, including racial and ethnic minority populations, in the affected community;
- d) Whether procedures or safeguards are assured to insure that ownership interests will not be used as incentives for hospital employees or physicians to refer patients to the hospital;
- e) Whether the transacting parties have made a commitment to assure the continuation of collective bargaining rights, if applicable, and retention of the workforce;
- f) Whether the transacting parties have appropriately accounted for employment needs at the facility and addressed workforce retraining needed as a consequence of any proposed restructuring;
- g) Whether the conversion demonstrates that the public interest will be served considering the essential medical services needed to provide safe and adequate treatment, appropriate access, and balanced health care delivery to the residents of the state;
- h) Whether the acquiror has demonstrated that it has satisfactorily met the terms and conditions of approval for any previous conversion pursuant to an application submitted under section 23-17.14-6 of the Act; and
- i) Issues of market share especially as they affect quality, access, and affordability of services.

Section 5.0 *Review of Not-for-Profit Conversions*

- 5.1 All conversions which are limited to not-for-profit corporations which involve the establishment, maintenance, or operation of a hospital shall require prior approval of the Department. The review shall proceed pursuant to section 23-17.14-9 of the Rhode Island General Laws, as amended. The transacting parties shall file an initial application pursuant to the provisions set forth in section 23-17.14-6 of the Act and section 3.0 herein.
- 5.2 In reviewing an application of a conversion involving a hospital in which the transacting parties are limited to not-for-profit corporations, the Department shall adhere to the process set forth in section 23-17.14-10 of the Act and as set forth below:
- a) within thirty (30) days after receipt of an initial application, the Department pursuant to the provisions of section 23-17.14-10(a)(1) shall advise the applicant in writing whether the application is complete, and, if not, shall specify all additional information the applicant is required to provide;
 - b) pursuant to section 23-17.14-10(a)(2) of the Rhode Island General Laws, as amended, the applicant will submit the additional information within thirty (30) working days. If the additional information is submitted within such thirty (30) day period, the Department will have ten (10) working days within which to determine acceptability of the additional information. If the additional information is not submitted by the applicant within such thirty (30) day period or if the Department determines the additional information submitted by the applicant is insufficient, the application will be rejected without prejudice to the applicant's right to resubmit, such rejection to be accompanied by a detailed written explanation of the reasons for rejection. If the Department determines the additional information to be as requested, the applicant will be notified in writing of the date of acceptance of the application;
 - c) in accordance with section 23-17.14-10(a)(3) of the Rhode Island General Laws, as amended, and after the determination on confidentiality pursuant to section 23-17.14-32, the Department shall publish notice of the application in a newspaper of general circulation in the state and shall notify by United States mail any person who has requested notice of the filing of such application. The notice shall state (a) that an initial application has been received and accepted for review, (b) the names of the transacting parties, (c) the date by which a person may submit written comments to the Department, and shall provide notice of the date, time and place of an informational meeting open to the public which shall be conducted within sixty (60) days of the date of such notice;
 - d) the Department shall approve, approve with conditions directly related to the proposed conversion, or disapprove the application within one hundred and eighty (180) days of the date of acceptance of the application.
- 5.3 In reviewing an application of a conversion involving a hospital in which the transacting parties are limited to not-for-profit corporations, the Department shall consider the following criteria:

- a) Whether the character, commitment, competence, and standing in the community, or any other communities served by the proposed transacting parties are satisfactory;
- b) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;
- c) Whether the transacting parties have provided satisfactory evidence that the new hospital will provide health care and appropriate access with respect to traditionally underserved populations, including racial and ethnic minority populations, in the affected community;
- d) Whether procedures or safeguards ensure that ownership interests will not be used as incentives for hospital employees or physicians to refer patients to the hospital;
- e) Whether the transacting parties have made a commitment to ensure the continuation of collective bargaining rights, if applicable, and retention of the workplace;
- f) Whether the transacting parties have appropriately accounted for employment needs at the facility and addressed workforce retraining needed as a consequence of any proposed restructuring;
- g) Whether the conversion demonstrates that the public interest will be served considering the essential medical services needed to provide safe and adequate treatment, appropriate access and balanced health care delivery to the residents of the state;
- h) Issues of market share especially as they affect quality, access, and affordability of services.

Section 6.0 *Review of Other Conversions*

- 6.1 The Department of Health shall review all proposed conversions involving a for-profit hospital as the acquiree and either a for-profit corporation or a not-for-profit hospital or corporation as the acquiror in accordance with the provisions for change of effective control pursuant to sections 23-17-14.3 and 23-17-14.4 of the Rhode Island General Laws, as amended.

Section 7.0 *Reports, Use of Experts, Costs, and Investigations*

- 7.1 The Department of Health may in effectuating the purposes of the Act engage experts or consultants including, but not limited to, actuaries, investment bankers, accountants, attorneys, or industry analysts. All copies of reports prepared by experts and consultants, and

costs associated therewith, shall be made available to the transacting parties and to the public. All costs incurred under this provision shall be the responsibility of one (1) or more transacting parties in an amount to be determined by the Director as he/she deems appropriate. No application for a conversion made pursuant to the requirements of the Act shall be considered complete unless an agreement has been executed with the Director for the payment of costs in accordance with this section.

7.2 The Director may conduct investigations in discharging the duties required under the Act. For purposes of this investigation, the Director may require any person, agent, trustee, fiduciary, consultant, institution, association, or corporation directly related to the proposed conversion to appear at such time and place as the Director may designate, then and there under oath to produce for the use of the Director any and all documents and other such information relating directly to the proposed conversion as the Director may require.

7.2.1 Whenever the Director may require the attendance of any person, the Director shall issue a notice setting the time and place when the attendance is required and shall cause the notice to be delivered or sent by registered or certified mail to the person at least fourteen (14) days before the date fixed in the notice for the attendance.

7.2.2 If any person receiving notice pursuant to this provision neglects to attend or remain in attendance so long as may be necessary for the purposes which the notice was issued, or refuses to produce information requested, any justice of the Superior Court for the county within which the inquiry is carried on or within which the person resides or transacts business, upon application by the Director, or any transacting party shall have jurisdiction to hear and consider on an expedited basis the request, and if appropriate and relevant to the consideration of proposed conversion, may issue to the person an order requiring the person to appear before the Director there to produce for the use of the Director evidence in accordance with the terms of the order of the court. Any failure to obey the order of the Superior Court may be punished by the Court as contempt thereof.

Section 8.0 *Limits to Subsequent Acquisitions*

8.1 No for-profit corporation, or its subsidiaries or affiliates, which applies for and receives approval of a conversion of a hospital in accordance with the provisions of the Act and these regulations shall be permitted to apply for approval of a conversion of a second hospital in this state for a period of at least three (3) years after the initial conversion is finalized and implemented.

Provided, however, that this subsection shall not be deemed to prohibit a for-profit corporation, together with its subsidiaries and affiliates, from applying for or receiving approval of a conversion of two affiliated hospitals in this state provided that:

- a) one (1) of the two (2) hospital licenses involved in the conversion was issued prior to the effective date of the Act, and
 - b) the said license involves a specialty rehabilitation hospital that has a maximum of ninety (90) beds and a conversion undertaken pursuant to this provision shall be considered one conversion and a for-profit corporation which receives approval for such conversion shall be subject to the three (3) year period between the finalization and implementation of a first conversion and the application for a second conversion as set forth above.
- 8.2 In the event that a for-profit corporation applies to hold, own, or acquire an ownership or controlling interest greater than twenty percent (20%) in more than one (1) hospital one (1) year subsequent to the finalization and implementation of a prior license, all provisions of the Act must be met and, in addition to the review process and criteria set forth herein, the Department shall have the sole authority and discretion to determine:
- a) Whether the for-profit corporation provided community benefits as required or promised in connection with obtaining and holding a license or interest therein during the previous license period;
 - b) Whether all terms and conditions of the prior license have been met;
 - c) Whether all federal, state and local laws, ordinances and regulations have been complied with relative to any prior license;
 - d) Whether the for-profit corporation planned, implemented, monitored and reviewed a community benefit program during the prior license period;
 - e) Whether the for-profit corporation maintained, enhanced or disrupted the essential medical services in the affected community or the state;
 - f) Whether the for-profit corporation provided an appropriate amount of charity care necessary to maintain or enhance a safe and accessible healthcare delivery system in the affected community and the state; and,
 - g) Whether the for-profit corporation demonstrated a substantial linkage between the hospital and the affected community by providing one (1) or more of the following benefits: uncompensated care, charity care, cash or in-kind donations to community programs, education and training of professionals in community health issues, relevant research initiatives or essential but unprofitable medical services if needed in the affected community.
- 8.3 The Director may hold a public hearing to solicit input to assess the performance of a for-profit corporation or its affiliates or subsidiaries in providing community benefits in the affected community or the state.

- 8.4 The Director shall have the sole authority to deny a for-profit corporation, its affiliates or subsidiaries, or successors, permission for one (1) or more than one (1) license and, for good cause, may prohibit a for-profit corporation or its affiliates or subsidiaries from filing an application pursuant to the Act for a period not to exceed ten (10) years.

Section 9.0 *Concurrent Review*

- 9.1 The Director may consider the requirements of the Act and the requirements of sections 23-17-1 - 23-17-45 of the Rhode Island General Laws, as amended, together upon completion of the initial application. The Director may approve, approve with conditions, or disapprove one or both requests filed pursuant to the Act and sections 23-17-1 – 23-17-45 of the Rhode Island General Laws, as amended.
- 9.2 The decision of the Director approving or denying a conversion application required by the Act shall be subject to judicial review in accordance with the provisions of sections 42-35-15 and 42-35-16 of the Rhode Island General Laws, as amended. For any conversion subject to the Act, the Director may combine any hearings required by the Act with any hearings on similar or related matters required by sections 23-17-1 – 23-17-45 of the Rhode Island General Laws, as amended and shall consider issues of market share especially as they affect quality, access, and affordability of services.

Section 10.0 *Elimination or Reduction in Emergency Department and Primary Care Services*

- 10.1 No hospital emergency department or primary care services which existed for at least one (1) year and which significantly serve uninsured or underinsured individuals shall be eliminated or significantly reduced without the prior approval of the Director in accordance with section 23-17.14-18 of the Rhode Island General Laws, as amended.
- 10.1.1 Prior to the elimination or significant reduction of an emergency department or primary care services which existed for at least one (1) year whereby a hospital proposes any of the following:
- a) eliminate its emergency department;
 - b) reduce the operation of its emergency department to less than twenty-four (24) hours per day;
 - c) make material reductions in emergency department staff providing emergency health care services;
 - d) eliminate the delivery of primary care services;

- e) reduce by twenty-five percent (25%) or more its hours of operation for delivery of primary care services (including, but not limited to, family practice, pediatrics, internal medicine, obstetrics/gynecology, or mental health services);
- f) make material reductions in the number or qualifications of staff which affects access to or continuity of primary care services;
- g) take other actions which result in a significant reduction in primary care services;

the hospital shall provide to the Director a written plan which shall describe the impact of such proposal and describes the proposed reduction or elimination in a form acceptable for review prior to the implementation of the proposed reduction or elimination.

10.1.2 The written plan describing the proposed reduction or elimination, as required in section 10.1.1 above, shall include, at a minimum, the following information:

- a) a description of the services to be reduced or eliminated;
- b) the proposed change in hours of operation, if any;
- c) the proposed changes in staffing, if any;
- d) the documented length of time the services to be reduced or eliminated have been available at the facility;
- e) the number of patients utilizing those services that are to be reduced or eliminated annually during the most recent three (3) years;
- f) aggregate data delineating the insurance status of the individuals served by the facility during the most recent three (3) years;
- g) data describing the insurance status of those individuals utilizing those services that are to be reduced or eliminated annually during the most recent three (3) years;
- h) the geographical area for which the facility provides services;
- i) identification and description, including supporting data and statistical analyses, of the impact of the proposed elimination or reduction on:
 - 1) access to health care services for traditionally underserved populations, including but not limited to, Medicaid, uninsured and underinsured patients, and racial and ethnic minority populations;

- 2) the delivery of such services on the affected community: emergency and/or primary care in the cities and towns whose residents are regularly served by the hospital (the “affected” cities and towns);
- 3) other licensed hospitals or health care providers in the affected community or cities and towns; and,
- 4) other licensed hospitals or health care providers in the state; and,

j) such other information as the Director deems necessary.

10.1.3 Upon receipt of the completed plan, as described above, in a form acceptable for review, the Director shall determine based upon the public interest in light of attendant circumstances whether the services affected by the proposed elimination or reduction significantly serve uninsured and/or underinsured individuals.

If the Director determines that the services affected by the proposed elimination or reduction do significantly serve uninsured and/or underinsured individuals, the written plan shall be reviewed in accordance with the requirements of section 10.1.4 below and must be approved by the Director prior to the elimination or reduction of said services.

10.1.4 Notwithstanding any other provision in the General Laws, the Director shall have the sole authority to review all plans submitted under this section and the Director shall issue a decision within ninety (90) days from the receipt of the written plan in form and content acceptable for review by the Department or the request shall be deemed approved. If deemed appropriate, the Director may issue public notice and allow a written comment period within sixty (60) days of receipt of the receipt of the proposal.

- a) If the Director disapproves the proposal within ninety (90) days of receipt of the written plan in a form acceptable for review, he/she shall afford written expressed reason(s) for disapproval.

Section 11.0 *Provision of Charity and Uncompensated Care Services*

11.0 All hospitals shall, as a condition of initial and/or continued licensure:

- a) meet the statewide community needs for the provision of charitable care as provided herein;
- b) meet standards for assurance of the continuance of uncompensated care and community benefits as provided herein;
- c) not discourage persons who cannot afford to pay from seeking essential medical services; and,

- d) not encourage persons who cannot afford to pay to seek essential medical services from other providers.
- 11.1 The Director shall, on an annual basis, review each licensed hospital's level of performance in providing charity care and uncompensated care.
- 11.2 The Director shall consider the appropriate amount of charity and uncompensated care necessary to provide safe and adequate treatment, appropriate access and balanced health care delivery to the residents of the state.

Statewide Standards for the Provision of Charity Care Services

- 11.3 The statewide community needs standard shall be the annual average amount of charity care provided by the previously licensed hospital, or by the existing hospital, respectively, in the most recent five (5) years, as determined by the Director, expressed as a proportion of net patient revenues.

Standards for the Provision of Uncompensated Care Services

- 11.4 The standard shall be the annual average amount of uncompensated care provided by the previously licensed hospital, or by the existing hospital, respectively, in the most recent five (5) years, as determined by the Director, expressed as a proportion of net patient revenues.

Section 12.0 Standards for the Provision of Community Benefits

- 12.1 Each licensed hospital shall provide on or before March 1st of each calendar year, a report in a form acceptable to the Director, a detailed description with supporting documentation, evidence of compliance of this section including, but not limited to, the cost of charity care; bad debt; contracted Medicaid shortfalls; and any additional information demonstrating compliance with this section.
- 12.2 On and after 1 January 2001, each licensed hospital shall have a formal, Board-approved plan for the provision of community benefits. This plan shall be updated and Board-approved, at a minimum, every three (3) years. The plan shall incorporate, at a minimum, the following principles:
 - a) The governing body shall adopt/affirm and make public a community benefits mission statement setting forth the hospital's commitment to a formal community benefits plan;
 - b) The governing body, the chief executive officer, and senior management shall be responsible for the oversight of the development and implementation of the community benefits plan, the methods to be followed, the resources to be allocated, and the mechanism for regular evaluation of the plan on no less than an annual basis;

- c) The governing body shall delineate the specific community or communities, including racial or ethnic minority populations, that will be the focus of its community benefits plan and shall involve representatives of that designated community or communities in the planning and implementation process;
 - d) The community benefits plan shall include a comprehensive assessment of the health care needs of the identified community or communities, which shall include, but not be limited to, needs related to the goals articulated in *Healthy Rhode Islanders 2000* of reference 2 and *Healthy Rhode Islanders 2000: Mid-Course Review* of reference 3, as well as a statement of priorities consistent with the hospital's resources; and
 - e) The community benefits plan shall specify the actual or planned dates for implementation of the activities and/or proposals included therein.
- 12.3 If the Department receives sufficient information indicating that a licensed hospital is not in compliance with sections 11.0 and/or 12.0 herein, the Director shall hold a hearing upon ten (10) days notice to the licensed hospital and shall issue in writing findings and appropriate penalties as set forth in section 15.0 herein.

PART III *PENALTIES, ENFORCEMENT, AND SEVERABILITY*

Section 13.0 *Gag Rules Prohibited*

- 13.1 A hospital shall not refuse to contract with or compensate for covered services with an otherwise eligible provider solely because that provider has in good faith communicated with one (1) or more of his or her patients regarding the provisions, terms, or requirements for services of the hospital's products as they relate to the needs of that provider's patients.

Section 14.0 *Perjury*

- 14.1 Any person who is found to have testified falsely under oath before the legislature or the Department of Health pursuant to the Act shall be subject to prosecution for perjury and be subject to the penalties set forth in section 23-17.14-30 of the Act.

Section 15.0 *Failure to Comply*

- 15.1 If any person knowingly violates or fails to comply with any provision of the Act or knowingly gives false or incorrect information the Director may, after notice and opportunity for a prompt and fair hearing to the applicant or licensee, deny, suspend or revoke a license, or in lieu of suspension or revocation of the license, may order the licensee to admit no additional persons to the facility, to provide health services to no additional persons through the facility, or to take corrective action necessary to secure compliance under the Act, or (2) the Superior Court may, after notice and opportunity for a prompt and fair hearing, may impose a fine of not more than one million dollars (\$1,000,000) or impose a prison term of not more than five (5) years.

Section 16.0 *Whistleblower Protections*

- 16.1 Prohibition against discrimination: No person subject to the provisions of the Act, may discharge, demote, threaten or otherwise discriminate against any person or employee with respect to compensation, terms, conditions, or privileges of employment as a reprisal because the person or employee (or any person acting pursuant to the request of the employee) provided or attempted to provide information to the Director or his or her designee regarding possible violation of the Act.
- 16.2 Enforcement: Any person or employee or former employee subject to the provisions of the Act who believes that he or she has been discharged or discriminated against in violation of subsection 16.1 may file a civil action within three (3) years of the date of such discharge or discrimination.
- 16.3 Remedies: If the court determines that a violation has occurred, the court may order the person who committed the violation to:
- a) Reinstate the employee to the employee's former position;

- b) Pay compensatory damages, costs of litigation and attorneys' fees; and/or
- c) Take other appropriate actions to remedy any past discrimination.

16.4 Limitation: The protections of this section shall not apply to any person or employee who:

- a) Deliberately causes or participates in the alleged violation of law or regulation; or
- b) Knowingly or recklessly provides substantially false information to the Director or his or her designee.

Section 17.0 *Judicial Review*

17.1 In accordance with section 23-17.14-34 of the Rhode Island General Laws, as amended, any transacting party aggrieved by a final order of the Department under the Act may seek judicial review in the Superior Court in accordance with section 42-35-15 of the Rhode Island General Laws, as amended.

Section 18.0 *Severability*

18.1 If any provision of these regulations or the application thereof to any facility or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.

REFERENCES

1. Chapter 42-35 of the Rhode Island General Laws, as amended (“Administrative Procedures Act”).
2. *Healthy Rhode Islanders 2000*, Rhode Island Department of Health, January 1994.
3. *Healthy Rhode Islanders 2000: Mid-Course Review*, Rhode Island Department of Health, June 1996.
4. *Healthy Rhode Islanders 2000: Progress Review*, Rhode Island Department of Health, February 2001.
5. *Rules and Regulations for Licensing of Hospitals (R23-17-HOSP)*, Rhode Island Department of Health, November 2000 (E) and subsequent amendments thereto.
6. Donaldson, Molla S., Karl D. Yordy, Kathleen N. Lohr, and Neal A. Vanselow (eds.) *Primary Care: America’s Health in a New Era*. Committee on the Future of Primary Care, Institute of Medicine, National Academy Press, 1996.
7. Chapter 23-17.14 of the Rhode Island General Laws, as amended (“Hospital Conversions Act”).