

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Representatives Long, Amaral, Moffitt, Lewiss, and Savage

Date Introduced: May 02, 2006

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-15-2, 23-15-4, 23-15-6 and 23-15-10 of the General Laws in
2 Chapter 23-15 entitled "Determination of Need for New Health Care Equipment and New
3 Institutional Health Services" are hereby amended to read as follows:

4 **23-15-2. Definitions.** -- As used in this chapter:

5 (1) "Affected person" means and includes the person whose proposal is being reviewed,
6 or the applicant, health care facilities located within the state which provide institutional health
7 services, the state medical society, the state osteopathic society, those voluntary nonprofit area-
8 wide planning agencies that may be established in the state, the state budget office, [the office of](#)
9 [the health insurance commissioner](#), any hospital or medical service corporation organized under
10 the laws of the state, the statewide health coordinating council, contiguous health systems
11 agencies, and those members of the public who are to be served by the proposed new institutional
12 health services or new health care equipment.

13 (2) "Cost impact analysis" means a written analysis of the effect that a proposal to offer
14 or develop new institutional health services or new health care equipment, if approved, will have
15 on health care costs and shall include any detail that may be prescribed by the state agency in
16 rules and regulations.

17 (3) "Director" means the director of the Rhode Island state department of health.

18 (4) (i) "Health care facility" means any institutional health service provider, facility or
19 institution, place, building, agency, or portion of them, whether a partnership or corporation,

1 whether public or private, whether organized for profit or not, used, operated, or engaged in
2 providing health care services, which are limited to hospitals, nursing facilities, inpatient
3 rehabilitation centers (including drug and/or alcohol abuse treatment centers), and facilities
4 providing surgical treatment to patients not requiring hospitalization (surgi-centers) and inpatient
5 hospice care. The term "health care facility" does not include Christian Science institutions (also
6 known as Christian Science nursing facilities) listed and certified by the Commission for
7 Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

8 (ii) Any provider of hospice care who provides hospice care without charge shall be
9 exempt from the provisions of this chapter.

10 (5) "Health care provider" means a person who is a direct provider of health care
11 services (including but not limited to physicians, dentists, nurses, podiatrists, physician assistants,
12 or nurse practitioners) in that the person's primary current activity is the provision of health care
13 services for persons.

14 (6) "Health services" means organized program components for preventive, assessment,
15 maintenance, diagnostic, treatment, and rehabilitative services provided in a health care facility.

16 (7) "Health services council" means the advisory body to the Rhode Island state
17 department of health established in accordance with chapter 17 of this title, appointed and
18 empowered as provided to serve as the advisory body to the state agency in its review functions
19 under this chapter.

20 (8) "Institutional health services" means health services provided in or through health
21 care facilities and includes the entities in or through which the services are provided.

22 (9) "New health care equipment" means any single piece of medical equipment (and any
23 components which constitute operational components of the piece of medical equipment)
24 proposed to be utilized by a health care provider (whether practicing alone or as a member of a
25 partnership, corporation, organization, or association) in conjunction with the provision of
26 services to patients or the public, the capital costs of which would exceed one million dollars
27 (\$1,000,000); provided, however, that the state agency shall be exempt from review any
28 application which proposes one for one equipment replacement as defined in regulation.

29 (10) "New institutional health services" means and includes:

30 (i) Construction, development, or other establishment of a new health care facility.

31 (ii) Any expenditure except acquisitions of an existing health care facility which will not
32 result in a change in the services or bed capacity of the health care facility by or on behalf of an
33 existing health care facility in excess of two million dollars (\$2,000,000) which is a capital
34 expenditure including expenditures for predevelopment activities.

1 (iii) Where a person makes an acquisition by or on behalf of a health care facility or
2 health maintenance organization under lease or comparable arrangement or through donation,
3 which would have required review if the acquisition had been by purchase, the acquisition shall
4 be deemed a capital expenditure subject to review.

5 (iv) Any capital expenditure which results in the addition of a health service or which
6 changes the bed capacity of a health care facility with respect to which the expenditure is made,
7 except that the state agency may exempt from review by rules and regulations promulgated for
8 this chapter any bed reclassifications made to licensed nursing facilities and annual increases in
9 licensed bed capacities of nursing facilities that do not exceed the greater of ten (10) beds or ten
10 percent (10%) of facility licensed bed capacity and for which the related capital expenditure does
11 not exceed two million dollars (\$2,000,000).

12 (v) Any health service proposed to be offered to patients or the public by a health care
13 facility which was not offered on a regular basis in or through the facility within the twelve (12)
14 month period prior to the time the service would be offered, and which increases operating
15 expenses by more than seven hundred and fifty thousand dollars (\$750,000), except that the state
16 agency may exempt from review by rules and regulations promulgated for this chapter any health
17 service involving reclassification of bed capacity made to licensed nursing facilities.

18 (vi) Any new or expanded tertiary or specialty care service, regardless of capital expense
19 or operating expense, as defined by and listed in regulation, the list not to exceed a total of twelve
20 (12) categories of services at any one time.

21 (11) "Person" means any individual, trust or estate, partnership, corporation (including
22 associations, joint stock companies, and insurance companies), state or political subdivision, or
23 instrumentality of a state.

24 (12) "Predevelopment activities" means expenditures for architectural designs, plans,
25 working drawings and specifications, site acquisition, professional consultations, preliminary
26 plans, studies, and surveys made in preparation for the offering of a new institutional health
27 service.

28 (13) "State agency" means the Rhode Island state department of health.

29 (14) "To develop" means to undertake those activities which, on their completion, will
30 result in the offering of a new institutional health service or new health care equipment or the
31 incurring of a financial obligation, in relation to the offering of that service.

32 (15) "To offer" means to hold oneself out as capable of providing, or as having the
33 means for the provision of, specified health services or health care equipment.

34 **23-15-4. Review and approval of new health care equipment and new institutional**

1 **health services.** -- (a) No health care provider or health care facility shall develop or offer new
2 health care equipment or new institutional health services in Rhode Island, the magnitude of
3 which exceeds the limits defined by this chapter, without prior review by the health services
4 council and approval by the state agency; except that review by the health services council may
5 be waived in the case of expeditious reviews conducted in accordance with section 23-15-5, and
6 except that health maintenance organizations which fulfill criteria to be established in rules and
7 regulations promulgated by the state agency with the advice of the health services council shall be
8 exempted from the review and approval requirement established in this section upon approval by
9 the state agency of an application for exemption from the review and approval requirement
10 established in this section which contain any information that the state agency may require to
11 determine if the health maintenance organization meets the criteria.

12 (b) No approval shall be made without an adequate demonstration of need by the
13 applicant at the time and place and under the circumstances proposed, nor shall the approval be
14 made without a determination that a proposal for which need has been demonstrated is also
15 affordable by the people of the state.

16 (c) No approval of new institutional health services for the provision of health services to
17 inpatients shall be granted unless the written findings required in accordance with section 23-15-
18 6(b)(6) are made.

19 (d) Applications for determination of need shall be filed with the state agency on a date
20 fixed by the state agency together with plans and specifications and any other appropriate data
21 and information that the state agency shall require by regulation, and shall be considered in
22 relation to each other no less than once a year. A duplicate copy of each application together with
23 all supporting documentation shall be kept on file by the state agency as a public record.

24 (e) The health services council shall consider, but shall not be limited to, the following in
25 conducting reviews and determining need:

26 (1) The relationship of the proposal to state health plans that may be formulated by the
27 state agency;

28 (2) The impact of approval or denial of the proposal on the future viability of the
29 applicant and of the providers of health services to a significant proportion of the population
30 served or proposed to be served by the applicant;

31 (3) The need that the population to be served by the proposed equipment or services has
32 for the equipment or services;

33 (4) The availability of alternative, less costly, or more effective methods of providing
34 services or equipment, including economies or improvements in service that could be derived

1 from feasible cooperative or shared services;

2 (5) The immediate and long term financial feasibility of the proposal, as well as the
3 probable impact of the proposal on the cost of, and charges for, health services of the applicant;

4 (6) The relationship of the services proposed to be provided to the existing health care
5 system of the state;

6 (7) The impact of the proposal on the quality of health care in the state and in the
7 population area to be served by the applicant;

8 (8) The availability of funds for capital and operating needs for the provision of the
9 services or equipment proposed to be offered;

10 (9) The cost of financing the proposal including the reasonableness of the interest rate,
11 the period of borrowing, and the equity of the applicant in the proposed new institutional health
12 service or new equipment;

13 (10) The relationship, including the organizational relationship of the services or
14 equipment proposed, to ancillary or support services;

15 (11) Special needs and circumstances of those entities which provide a substantial
16 portion of their services or resources, or both, to individuals not residing within the state;

17 (12) Special needs of entities such as medical and other health professional schools,
18 multidisciplinary clinics, and specialty centers; also, the special needs for and availability of
19 osteopathic facilities and services within the state;

20 (13) In the case of a construction project:

21 (i) The costs and methods of the proposed construction, and

22 (ii) The probable impact of the construction project reviewed on the costs of providing
23 health services by the person proposing the construction project;

24 (14) Those appropriate considerations that may be established in rules and regulations
25 promulgated by the state agency with the advice of the health services council;

26 (15) The potential of the proposal to demonstrate or provide one or more innovative
27 approaches or methods for attaining a more cost effective and/or efficient health care system;

28 (16) The relationship of the proposal to the need indicated in any requests for proposals
29 issued by the state agency;

30 (17) The input of the community to be served by the proposed equipment and services
31 and the people of the neighborhoods close to the health care facility who are impacted by the
32 proposal;

33 (18) The relationship of the proposal to any long-range capital improvement plan of the
34 health care facility applicant.

1 (f) In conducting its review, the health services council shall perform the following:

2 (1) Within one hundred and fifteen (115) days after initiating its review, which must be
3 commenced no later than thirty-one (31) days after the filing of an application, the health services
4 council shall determine as to each proposal whether the applicant has demonstrated need at the
5 time and place and under the circumstances proposed, and in doing so may apply the criteria and
6 standards set forth in subsection (e) of this section; provided however, that a determination of
7 need shall not alone be sufficient to warrant a recommendation to the state agency that a proposal
8 should be approved. The director shall render his or her decision within five (5) days of the
9 determination of the health services council.

10 (2) Prior to the conclusion of its review in accordance with section 23-15-6(e), the health
11 services council shall evaluate each proposal for which a determination of need has been
12 established in relation to other proposals, comparing proposals with each other, whether similar
13 or not, establishing priorities among the proposals for which need has been determined, and
14 taking into consideration the criteria and standards relating to relative need and affordability as
15 set forth in subsection (e) of this section and section 23-15-6(f).

16 (3) At the conclusion of its review, the health services council shall make
17 recommendations to the state agency relative to approval or denial of the new institutional health
18 services or new health care equipment proposed; provided that:

19 (i) The health services council shall recommend approval of only those proposals found
20 to be affordable in accordance with the provisions of section 23-15-6(f); and

21 (ii) If the state agency proposes to render a decision that is contrary to the
22 recommendation of the health services council, the state agency must render its reasons for doing
23 so in writing.

24 (g) Approval of new institutional health services or new health care equipment by the
25 state agency shall be subject to conditions that may be prescribed by rules and regulations
26 developed by the state agency with the advice of the health services council, but those conditions
27 must relate to the considerations enumerated in subsection (e) and to considerations that may be
28 established in regulations in accordance with subsection (e)(14).

29 (h) The offering or developing of new institutional health services or health care
30 equipment by a health care facility without prior review by the health services council and
31 approval by the state agency shall be grounds for the imposition of licensure sanctions on the
32 facility, including denial, suspension, revocation, or curtailment or for imposition of any
33 monetary fines that may be statutorily permitted by virtue of individual health care facility
34 licensing statutes.

1 (i) No government agency and no hospital or medical service corporation organized
2 under the laws of the state shall reimburse any health care facility or health care provider for the
3 costs associated with offering or developing new institutional health services or new health care
4 equipment unless the health care facility or health care provider has received the approval of the
5 state agency in accordance with this chapter. Government agencies and hospital and medical
6 service corporations organized under the laws of the state shall, during budget negotiations, hold
7 health care facilities and health care providers accountable to operating efficiencies claimed or
8 projected in proposals which receive the approval of the state agency in accordance with this
9 chapter.

10 (j) In addition, the state agency shall not make grants to, enter into contracts with, or
11 recommend approval of the use of federal or state funds by any health care facility or health care
12 provider which proceeds with the offering or developing of new institutional health services or
13 new health care equipment after disapproval by the state agency.

14 [\(19\) Cost impact statements forwarded pursuant to subsection 23-15-6\(e\).](#)

15 **23-15-6. Procedures for review.** -- (a) The state agency, with the advice of the health
16 services council, and in accordance with the Administrative Procedures Act, chapter 35 of title
17 42, after public hearing pursuant to reasonable notice, which notice shall include affected persons,
18 shall promulgate appropriate rules and regulations that may be designated to further the
19 accomplishment of the purposes of this chapter including the formulation of procedures that may
20 be particularly necessary for the conduct on reviews of particular types of new institutional health
21 services or new health care equipment.

22 (b) Review procedures promulgated in accordance with subsection (a) shall include at
23 least the following, except that substitute procedures for the conduct of expeditious and
24 accelerated reviews may be promulgated by the state agency in accordance with section 23-15-5:

25 (1) Provision that [the state agency established a process requiring potential applicants to](#)
26 [file a detailed letter of intent to submit an application at least forty-five \(45\) days prior to the](#)
27 [submission of an application and that](#) the state agency shall undertake reviews in a timely fashion
28 no less often than twice a year and give written notification to affected persons of the beginning
29 of the review including the proposed schedule for the review, the period within which a public
30 meeting may be held, and the manner by which notification will be provided of the time and place
31 of any public meeting so held.

32 (2) Provision that no more than one hundred and twenty (120) days shall elapse between
33 initial notification of affected persons and the final decision of the state agency.

34 (3) Provision that, if the state agency fails to act upon an application within the

1 applicable period established in subsection (b)(2), the applicant may apply to the superior court of
2 Providence County to require the state agency to act upon the application.

3 (4) Provision for review and comment by the health services council and any affected
4 person, including but not limited to those parties defined in section 23-15-2(1) and the department
5 of business regulation, the department of mental health, retardation, and hospitals, the department
6 of human services, health maintenance organizations, and the state professional standards review
7 organization, on every application for the determination of need.

8 (5) Provision that a public meeting may be held during the course of the state agency
9 review at which any person may have the opportunity to present testimony. Procedures for the
10 conduct of the public meeting shall be established in rules and regulations promulgated by the
11 state agency with the advice of the health services council.

12 (6) (i) Provision for issuance of a written decision by the state agency which shall be
13 based upon the findings and recommendations of the health services council unless the state
14 agency shall afford written justification for variance from that decision.

15 (ii) In the case of any proposed new institutional health service for the provision of
16 health services to inpatients, a state agency shall not make a finding that the proposed new
17 institutional health service is needed, unless it makes written findings as to:

18 (A) The efficiency and appropriateness of the use of existing inpatient facilities
19 providing inpatient services similar to those proposed;

20 (B) The capital and operating costs (and their potential impact on patient charges),
21 efficiency, and appropriateness of the proposed new institutional health services; and

22 (C) Makes each of the following findings in writing:

23 (I) That superior alternatives to inpatient services in terms of cost, efficiency, and
24 appropriateness do not exist and that the development of alternatives is not practicable;

25 (II) That, in the case of new construction, alternatives to new construction (e.g.,
26 modernization or sharing arrangements) have been considered and implemented to the maximum
27 extent practicable;

28 (III) That patients will experience serious problems in terms of costs, availability, or
29 accessibility, or any other problems that may be identified by the state agency, in obtaining
30 inpatient care of the type proposed in the absence of the proposed new service; and

31 (IV) That, in the case of a proposal for the addition of beds for the provision of skilled
32 nursing or intermediate care, the relationship of the addition to the plans of other agencies of the
33 state responsible for providing and financing long-term care (including home health services) has
34 been considered.

1 (7) Provision for the distribution of the decision of the state agency, including its
2 findings and recommendations, to the applicant and to affected persons.

3 (8) Provision that the state agency may approve or disapprove in whole or in part any
4 application as submitted, but that the parties may mutually agree to a modification of any element
5 of an application as submitted, without requiring resubmission of the application.

6 (9) (i) Provision that any person affected may request in writing reconsideration of a
7 state agency decision if the person:

8 (A) Presents significant relevant information not previously considered by the state
9 agency;

10 (B) Demonstrates that there have been significant changes in factors or circumstances
11 relied upon by the state agency in reaching its decision;

12 (C) Demonstrates that the state agency has materially failed to follow its adopted
13 procedures in reaching its decision; or

14 (D) Provides any other basis for reconsideration that the state agency may have
15 determined by regulation to constitute good cause.

16 (ii) Procedures for reconsideration shall be established in regulations promulgated by the
17 state agency with the advice of the health services council.

18 (10) Provision that upon the request of any affected person, the decision of the state
19 agency to issue, deny, or withdraw a certificate of need or to grant or deny an exemption shall be
20 administratively reviewed under an appeals mechanism provided for in the rules and regulations
21 of the state agency, with the review to be conducted by a hearing officer appointed by the director
22 of health. The procedures for judicial review shall be in accordance with the provisions of section
23 42-35-15.

24 (c) The state agency shall publish at least annually a report of reviews of new
25 institutional health services and new health care equipment conducted, together with the findings
26 and decisions rendered in the course of the reviews. The reports shall be published on or about
27 February 1 of each year and shall contain evaluations of the prior year's statutory changes where
28 feasible.

29 (d) All applications reviewed by the state agency and all written materials pertinent to
30 state agency review, including minutes of all health services council meetings, shall be accessible
31 to the public upon request.

32 (e) In the case or review of proposals by health care facilities who by contractual
33 agreement, chapter 19 of title 27, or other statute are required to adhere to an annual schedule of
34 budget or reimbursement determination to which the state is a party, the state budget office, [the](#)

1 [office of the health insurance commissioner](#), and hospital service corporations organized under
2 chapter 19 of title 27 shall forward to the health services council within forty-five (45) days of the
3 initiation of the review of the proposals by the health services council under section 23-15-
4 4(f)(1):

5 (1) A cost impact analysis of each proposal which analysis shall include, but not be
6 limited to, consideration of increases in operating expenses, per diem rates, health care insurance
7 premiums, and public expenditures; and

8 (2) Comments on acceptable interest rates and minimum equity contributions and/or
9 maximum debt to be incurred in financing needed proposals.

10 (f) The health services council shall not make a recommendation to the state agency that
11 a proposal be approved unless it is found that the proposal is affordable to the people of the state.
12 In determining whether or not a proposal is affordable, the health service council shall consider
13 the condition of the state's economy, the statements of authorities and/or parties affected by the
14 proposals, and any other factors that it may deem appropriate.

15 **23-15-10. Application fees.** -- The state agency shall require that any applicant for
16 certificate of need submit an application fee prior to requesting any review of matters pursuant to
17 the requirements of this chapter; except that health care facilities owned and operated by the state
18 of Rhode Island shall be exempt from this application fee requirement. The application fee shall
19 be paid by check made payable to the general treasurer. ~~The~~ [Except for applications that propose](#)
20 [new or expanded tertiary or specialty care services as defined in subdivision 23-15-2\(10\)\(vi\)](#),
21 submission of any application filed in accordance with section 23-15-4(d) shall include an
22 application fee of five hundred dollars (\$500) per application plus an amount equal to one ~~third~~
23 [quarter](#) of one percent ~~(0.33%)~~ [\(0.25%\)](#) of the total capital expenditure costs associated with the
24 application. For an application filed in accordance with the requirements of section 23-15-5
25 (Expeditious review), the application shall include an application processing fee of seven hundred
26 and fifty dollars (\$750) per application plus an amount equal to one ~~third~~ [quarter](#) of one percent
27 ~~(0.33%)~~ [\(0.25%\)](#) of the total capital expenditure costs associated with the application.
28 [Applications that propose new or expanded tertiary or specialty care services as defined in](#)
29 [subdivision 23-15-2\(10\)\(vi\), shall include an application fee of ten thousand dollars \(\\$10,000\)](#)
30 [plus an amount equal to one quarter of one percent \(0.25%\) of the total capital expenditure costs](#)
31 [associated with the application.](#) Application fees shall be non-refundable. All fees received
32 pursuant to this chapter shall be deposited in the general fund.

33 SECTION 2. Chapter 23-15 of the General Laws entitled "Determination of Need for
34 New Health Care Equipment and New Institutional Health Services" is hereby amended by

1 adding thereto the following section:

2 **23-15-11. Reports, use of experts, costs.** ~~Reports, use of experts, costs and~~
3 ~~expenses.~~ -- The state agency may in effectuating the purposes of this chapter engage experts or
4 consultants including, but not limited to, actuaries, investment bankers, accountants, attorneys, or
5 industry analysts. Except for privileged or confidential communications between the state agency
6 and engaged attorneys, all copies of final reports prepared by experts and consultants, and all
7 costs and expenses associated with the reports, shall be public. All costs and expenses incurred
8 under this provision shall be the responsibility of the applicant in an amount to be determined by
9 the determined by the director as he or she shall deem appropriate. No application made pursuant
10 to the requirements of this chapter shall be considered complete unless an agreement has been
11 executed with the director for the payment of all costs and expenses in accordance with this
12 section. The maximum cost and expense to an applicant for experts and/or consultants that may
13 be required by the state agency shall be twenty thousand dollars (\$20,000); provided however,
14 that the maximum amount shall be increased by regulations promulgated by the state agency on
15 or after January 1, 2008 by the most recently available annual increase in the federal consumer
16 price index as determined by the state agency.

17 SECTION 3. This act shall take effect upon passage.

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LC03107/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY

1 This act would amend the definitions section, review and approval section, procedures for
2 review section, and application fees section of the chapter in the general laws entitled
3 "Determination of Need for New Health Care Equipment and New Institutional Health Services."
4 The act would also allow state agencies to use certain experts when carrying out this chapter, the
5 cost of which, including any reports prepared, would be borne by the applicants in an amount
6 determined by the director of the Rhode Island Department of Health

7 This act would take effect upon passage.

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