110-RICR-30-00-3

TITLE 110 – Attorney General

CHAPTER 30 – CIVIL DIVISION

SUBCHAPTER 00 – N/A

PART 3 – Rules and Regulations Pertaining to Hospital Conversions Act

3.1 Authority

A. These Rules and Regulations (the "Rules") are promulgated pursuant to the authority set forth in R.I. Gen. Laws §§ 23-17.14-30 and 23-17.14-32. This Part has been prepared in accordance with the requirements of the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

3.2 Purpose

A. These Rules are promulgated to accomplish the principles of R.I. Gen. Laws Chapter 23-17.14, the Hospital Conversions Act (the "Act").

3.3 Severability

A. If any provision of this Part or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the validity of the remainder of this Part and the application of such provisions to other persons and circumstances shall not be affected thereby.

3.4 Definitions

A. For purposes of these regulations, the following terms shall have the following meanings:

1. "Acquiree" means the person or persons that lose(s) any ownership or control in the new hospital as a result of a conversion, as the terms “conversion”, “new hospital”, and “person(s)” are defined within this Part

2. “Acquiror” means the person or persons that gain(s) an ownership or control in the new hospital as a result of a conversion, as the terms “conversion”, “new hospital”, and “person(s)” are defined within this Part.

3. "Conversion" means any transfer by a person or persons of an ownership or membership interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition that 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 the transfer, a person, together with all persons affiliated with the 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 that results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in membership that results in a new person gaining or acquiring a controlling vote in the hospital.

4. "Hospital" means a person or governmental entity licensed in accordance with RI. Gen. Laws Chapter 23-17 to establish, maintain, and operate a hospital.

5. "Hospital Conversions Act" or the "Act" means R.I. Gen. Laws Chapter 23-17.14.

6. "Letter of Deficiency" or "LOD" means a written warning or notification concerning one or more actual, suspected, or threatened violations of the Act which may require the transacting party to take actions necessary to achieve compliance. The Letter of Deficiency may establish a deadline by which the transacting party must achieve compliance to avoid a fine or other remedial action.

7. "New hospital" means the acquiree hospital as it exists after the completion of a conversion.

8. "Notice of Violation" or "NOV" means a formal notice of one or more violations issued in accordance with R.I. Gen. Laws 23-17.14-30, which:

    a. cites the statute or regulation allegedly violated;

    b. states the fine and other relief deemed appropriate by the Attorney General, including whether such fine will be assessed once, daily, or in some other frequency during the continuation of the violation;

    c. if the violation is curable, specifies a reasonable deadline or deadlines by which the transacting party shall either:

        (1) come into compliance with the requirements described in the NOV; or

        (2) submit a written proposal setting forth how and when that transacting party proposes to achieve complaince;

    d. informs the transacting party:

(1) of their right to file a timely written request for an adjudicatory hearing regarding the alleged violation, the fine or remedy imposed, or both;

(2) that the written request for a hearing must be filed with, and received by, the Department of Attorney General within twenty (20) days after service of the NOV;

(3) that the NOV shall become a final order of the Department of Attorney General upon the transacting party's waiver of, or failure to timely request, an adjudicatory hearing; and

(4) that the fine shall continue to accrue from the date the NOV is issued until the transacting party achieves complete compliance, pursuant to § 3.12 of this Part.

e. identifies the designated contact at the Department of Attorney General to whom correspondence and inquiries regarding the NOV shall be directed;

f. states the and manner by which the fine must be paid if the transacting party against whom a fine is assessed waives, or fails to timely request, an adjudicatory hearing and elects to pay the fine; and

g. states the Attorney General's authority to pursue further administrative or judicial enforcement action.

9. "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.

10. "Transacting parties" means the acquiree and the acquiror.

B. For purposes of these regulations, all other terms not expressly defined herein shall have the meanings as defined in the Hospital Conversions Act, R.I. Gen. Laws § 23-17-14.4.

3.5 Review Process

A. Approval by the Attorney General and the Department of Health

1. A conversion shall require review and approval from the Department of Attorney General and from the Department of Health in accordance with the provisions of the Act; except as provided for under R.I. Gen. Laws § 23-17.14-12.1 hereof, but shall remain subject to the authority of the Attorney General pursuant to R.I. Gen. Laws § 23-17.14-21.

B. Initial Application

1. The transacting parties shall file an initial application on forms available from the Department of Attorney General and the Department of Health.

2. Two (2) copies of the initial application shall be provided to each of the Department of Attorney General and Department of Health simultaneously by United States mail, certified, return receipt requested. The transacting parties shall also file an electronic version of the initial application in a format acceptable to the Department of Attorney General and Department of Health.

3. Except for information determined by the Attorney General in accordance with R.I. Gen. Laws § 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 public records and shall be available for inspection upon request

C. Review Process

1. Within thirty (30) days after receipt of an initial application, the Department of Attorney General and Department of Health shall jointly advise the applicant, in writing, whether the application is complete, and, if not, shall specify all additional information the applicant is required to provide.

2. The applicant will submit the additional information within thirty (30) working days. If the additional information is submitted within the thirty (30) day period, the Department of Attorney General and Department of Health 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 the thirty (30) day period or if either agency determines the additional information submitted by the applicant is insufficient, the application will be rejected without prejudice to the applicant's right to resubmit, the rejection to be accompanied by a detailed written explanation of the reasons for rejection. If the Department of Attorney General and Department of Health determine the additional information to be as requested, the applicant will be notified, in writing, of the date of acceptance of the application.

3. Within thirty (30) working days after acceptance of the initial application, the Department of Attorney General shall render its determination on confidentiality pursuant to R.I. Gen. Laws § 23-17.14-32 and the Department of Attorney General and Department of Health 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 the application. The notice shall:

a. State that an initial application has been received and accepted for review;

b. State the names of the transacting parties;

c. State the date by which a person may submit written comments to the Department of Attorney General or Department of Health; and

d. 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 the notice.

4. The Department of Attorney General and Department of Health shall each approve, approve with conditions directly related to the proposed conversion, or disapprove the application within one hundred twenty (120) days of the date of acceptance of the application.

D. Expedited Review

1. If the Department of Health determines that a conversion should receive an expedited review pursuant to R.I. Gen. Laws § 23-17.14-12.1, the Department of Attorney General shall perform a review of the proposed transaction as it deems necessary, including, at a minimum, its impact upon the charitable assets of the transacting parties. The Attorney General's review shall be done concurrently with the Department of Health review and shall not extend the length of the review process. For this review, the Department of Attorney General shall be entitled to costs in accordance with R.I. Gen. Laws §§ 23-17.14-13 and 23-17.14-12.1(f).

3.6 Public Meeting

A. At least one public information meeting shall be held by the Department of Attorney General and the Department of Health. The transacting parties shall pay the costs of the required notice of the meeting and for a transcript of the meeting to be produced by a stenographer identified by the transacting parties and agreed upon by the Departments. The transacting parties shall provide copies of the transcript of the meeting on an expedited basis (no more than 10 days after the public meeting) to the Department of Attorney General and the Department of Health.

3.7 Confidentiality

A. The Attorney General has the power to decide whether any information required of an applicant is confidential and/or proprietary.

B. The decisions by the Attorney General shall be made prior to any public notice of an initial application or any public review of any information.

C. The Attorney General's determination shall be binding on the Attorney General, the Department of Health, and all experts or consultants engaged by the Attorney General or the Department of Health.

3.8 Failure to Comply

A. The Attorney General may take any corrective action necessary to address knowing and/or willful violations of the provisions of the Hospital Conversions Act, including but not limited to the imposition of a fine of not more than two million dollars (§2,000,000) per violation.

B. The Department of Attorney General may impose a fine against a transacting party for any knowing violation of the Act, including, but not limited to:

1. Failure to submit a hospital conversion application for approval pursuant to the Act prior to the effectuation of the transaction;

2. Violation of any condition of approval, including, but not limited to, conditions of approval established pursuant to R.I. Gen. Laws § 23-17.14-28;

3. Failure to pay the costs and fees of any consultant, expert, or monitor retained by the Attorney General, or to establish an escrow account or other mechanism to pay such costs, as directed by the Attorney General, pursuant to R.I. Gen. Laws § 23-17.14-28(d);

4. Failure to comply with charity care requirements pursuant to R.I. Gen. Laws § 23-17.14-15;

5. Imposition of a gag rule in violation of R.I. Gen. Laws § 23-17.14-16;

6. A material breach of the terms of any agreement entered into pursuant to R.I. Gen. Laws § 23-17.14-13;

7. Elimination or significant reduction of medical services which significantly serve uninsured or underinsured individuals without prior approval by the Department of Health pursuant to R.I. Gen. Laws § 23-17.14-18;

8. With respect to a conversion subject to the requirements of R.I. Gen. Laws § 23-17.14-22, failure to transfer any proceeds from the sale and any endowments, restricted, unrestricted, and special purpose funds to a charitable foundation operated by a board of directors, in accordance with the requirements of R.I. Gen. Laws § 23-17.14-22;

9. Discrimination against a whistleblower pursuant to R.I. Gen. Laws § 23-17.14-29;

10. Knowing and willful failure to provide true, correct, and/or complete information in response to any requirement under the Act, including in the initial application, in response to any information request from the Attorney General or any consultant, expert, or monitor retained by the Attorney General pursuant to R.I. Gen. Laws § 23-17.14-13 and § 23-17.14-28(d), and/or in any reporting required pursuant to R.I. Gen. Laws § 23-17.14-28(d) or otherwise required by any conditions of approval;

11. Perjury under any part of the Act or this Part; and

12. Violations of any other provisions of the Hospital Conversions Act.

3.9 Notice of Violation

A. Whenever the Attorney General determines that a transacting party has violated one or more provisions of the Act, the Attorney General may, in its discretion, issue a Letter of Deficiency and/or Notice of Violation, as defined herein, to the transacting party notifying them of the violation(s).

3.10 Establishing a Knowing or Willful Violation

A. A violation shall be deemed to be knowing and willful if:

1. The transacting party has received a letter of deficiency or other communication from the Attorney General notifying the transacting party of the violation and failed to comply within the time specified;

2. The transacting party has provided false or incorrect information to the Attorney General with a notarized certification that such information is true, correct, and/or complete;

3. The transacting party has eliminated or significantly reduced medical services without the requisite approval; or

4. The transacting party fails to meet any other criteria for coming into compliance, as determined by the Attorney General in its sole discretion, provided such criteria are communicated in writing to the transacting party under the notice provisions of this regulation.

3.11 Penalty Matrix

A. The following table may be used to determine the amount of fine imposed for any knowing and/or willful violation of R.I. Gen. Laws Chapter 23-17.14.

Type of Violation

		I	II	III
Extent of Deviation	Major	$10,001 to $25,000 per violation	$5,001 to $10,000 per violation	Up to $5,000 per violation
	Moderate	$5,001 to $10,000 per violation	$1,001 to $5,000 per violation	Up to $1,000 per violation
	Minor	$1,001 to $5,000 per violation	$501 to $1,000 per violation	Up to $500 per violation

B. Nothing in this section shall supersede, replace, or otherwise limit the Attorney General's authority to impose, in accordance with the notice requirements of § 3.9 of this Part, an immediate fine of up to two million dollars ($2,000,000) for any discrete violation of the Hospital Conversion Act, as determined necessary by the Attorney General, including, but not limited, noncompliance involving acts or omissions that: (1) pose an immediate threat to patient health or safety; (2) involve fraud or other serious financial misconduct; (3) undermine the authority of the Attorney General to regulate hospital conversions pursuant to the Act and this Part; or (4) impact the security of the Rhode Island health care system.

3.12 Calculation of Fines

A. The total amount of any fine may be calculated in accordance with the guidelines set forth in this section and the Penalty Matrix in § 3.11 of this Part. The applicable penalty range is reached by first determining the "type of violation" and "extent of deviation" of the alleged violation.

1. "Type of Violation" refers to the nature of the legal requirement allegedly violated and reflects the extent of actual or potential harm.

a. Type I violations include violations of legal requirements identified by the Attorney General as directly related to the protection of public health, safety, welfare, or the environment, and/or the protection of the public fisc. Such violations include, but are not necessarily limited to:

(1) Acts which pose an actual or potential for direct harm to public health, safety, welfare, or the environment, and/or have imposed actual or potential direct costs on the state;

(2) Acts or failures to act which are of major importance to the regulatory program;

(3) Failure to obtain a required facility license or approval; or

(4) Failure to report an unauthorized activity which actually or potentially threatens public health, safety, welfare or the environment, or which imposes actual or potential direct costs on the State.

b. Type II violations include violations of legal requirements identified by the Attorney General as important but indirectly related to the protection of public health, safety, welfare or the environment and/or protection of the public fisc. Such violations include, but are not necessarily limited to:

(1) Acts which pose an actual or potential indirect harm to the public health, safety, welfare, or environment, and/or have imposed actual or potential indirect costs on the State of Rhode Island.

(2) Acts or failures to act which are of moderate importance to the regulatory program; and/or

(3) Failure to comply with any procedure required by any law administered by the Department of Attorney General or by a Rule or Regulation adopted pursuant to the Department of Attorney General's authority that is more than incidental to the prevention of harm to the public health, safety, welfare or the environment, or to its authority to control costs to the State.

c. Type III violations include violations of legal requirements identified by the Attorney General as important but incidental to the protection of public health, safety, welfare or the environment and/or protection of the public fisc. Such violations include, but are not necessarily limited to:

(1) Acts of noncompliance with reporting requirements or methods which are incidental to the ability and obligation of the Department of Attorney General to enforce the provisions of the Act, this Part, or other laws administered by the Department of Attorney General.

2. "Extent of Deviation" refers to the degree to which the violation is out of compliance with the legal requirement allegedly violated. The Attorney General's assessment of whether a violation is a minor, moderate, or

major deviation from the standard shall be based upon an evaluation of one (1) or more of the following factors:

a. The extent to which the act or failure to act was out of compliance;

b. Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance;

c. Whether the transacting party has previously failed to comply with any rule, regulation, order, statute, permit, license or approval issued or adopted by the Attorney General or the Department of Health, or any other law or regulation which the Attorney General or the Department of Health has the authority or responsibility to enforce;

d. The degree of willfulness, including, but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable;

e. The amount or nature of any economic or other benefit obtained as a result of noncompliance;

f. The need to disincentivize or deter future noncompliance;

g. The ability of the transacting party to comply;

h. The ability of the transacting party to pay potential fines; and

i. Any other factor(s) that may be relevant in determining the amount of a fine, provided that any such factor(s) shall be set forth in the Notice of Violation or other written notice of the assessment of a fine.

B. Accrual of Fines

1. Fines may accrue on a daily, weekly, monthly, or other incremental basis until compliance is achieved, at the sole discretion of the Attorney General. Where fines accrue incrementally, the following framework may apply:

a. Each day of a continued violation may be considered a separate violation, and fines may accrue for each day that the violation is repeated, continues, or remains in place.

b. When applicable, the period for calculating the fine for a violation begins on the day following the earliest of the following applicable events, as determined by the Attorney General:

(1) Receipt or posting of a notice or order issued by the Attorney General;

(2) Expiration of a compliance deadline;

(3) Expiration of a consent agreement whereby the Attorney General agrees to stay enforcement of a fine; or

(4) Expiration of an extension of a compliance deadline or consent agreement.

C. Nothing in this section shall supersede, replace, or otherwise limit the Attorney General's authority to impose, in accordance with the notice requirements of § 3.9 of this Part, an immediate fine of up to two million dollars ($2,000,000) for any discrete violation of the Hospital Conversion Act, as determined necessary by the Attorney General, including, but not limited, noncompliance involving acts or omissions that: (1) pose an immediate threat to patient health or safety; (2) involve fraud or other serious financial misconduct; (3) undermine the authority of the Attorney General to regulate hospital conversions pursuant to the Act and this Part; or (4) impact the security of the Rhode Island health care system.

3.13 Hearings for Contested Cases

A. Any person against whom the issuing agency seeks to assess a fine for a violation of the Act has the right to request a hearing thereon.

B. The request for a hearing must be filed with the issuing agency within twenty (20) days after service of the notice assessing said fine.

C. All hearings and reviews required under the provisions of R.I. Gen. Laws § 23-17.14-30 shall be held in accordance with R.I. Gen. Laws § 42-35-9.

3.14 Assessment of Fines - Enforcement

A. The assessment of a fine shall become a final order of the issuing agency upon the person's election to waive, or failure to timely request, an administrative hearing on the violation and/or fine. The Attorney General may also, by summons and complaint, seek to enforce said final order in a court of competent jurisdiction.

3.15 Authority of the Attorney General

A. Nothing herein shall limit the authority of the Attorney General to take other corrective action as the Attorney General deems necessary to secure compliance with the Act pursuant to R.I. Gen. Laws § 23-17.14-30.

3.16 Judicial Review

A. Judicial review is available to any transacting party in accordance with R.I. Gen. Laws § 23-17.14-34.