

**[23 R.I Gen. Laws §§ 23-15-1 through 23-15-11.]**

**§§ 23-15-1 through 23-15-11: Health Care Certificate of Need Act of Rhode Island**

**§ 23-15-1. Short title.**

This chapter may be cited as the "Health Care Certificate of Need Act of Rhode Island".

**§ 23-15-2. Definitions.**

As used in this chapter:

- (1) "Affected person" means and includes the person whose proposal is being reviewed, or the applicant, health-care facilities located within the state that provide institutional health services, the state medical society, the state osteopathic society, those voluntary nonprofit area-wide planning agencies that may be established in the state, the state budget office, the office of health insurance commissioner, any hospital or medical-service corporation organized under the laws of the state, the statewide health coordinating council, contiguous health-systems agencies, and those members of the public who are to be served by the proposed, new, institutional health services or new health-care equipment.
- (2) "Cost-impact analysis" means a written analysis of the effect that a proposal to offer or develop new, institutional health services or new health-care equipment, if approved, will have on health-care costs and shall include any detail that may be prescribed by the state agency in rules and regulations.
- (3) "Director" means the director of the Rhode Island state department of health.
- (4)(i) "Health-care facility" means any institutional health-service provider, facility or institution, place, building, agency, or portion of them, whether a partnership or corporation, whether public or private, whether organized for profit or not, used, operated, or engaged in providing health-care services that are limited to hospitals, nursing facilities, home nursing-care provider, home-care provider, hospice provider, inpatient rehabilitation centers (including drug and/or alcohol abuse treatment centers), freestanding, emergency-care facilities as defined in § 23-17-2, certain facilities providing surgical treatment to patients not requiring hospitalization (surgi-centers, multi-practice, physician ambulatory-surgery centers and multi-practice, podiatry ambulatory-surgery centers) and facilities providing inpatient hospice care. Single-practice physician or podiatry ambulatory-surgery centers (as defined in subdivisions 23-17-2(16) and 23-17-2(17), respectively) are exempt from the requirements of chapter 15 of this title; provided, however, that such exemption shall not apply if a single-practice physician or podiatry ambulatory-surgery center is established by a medical practice group (as defined in § 5-37-1) within two (2) years following the formation of such medical practice group, when such medical practice group is formed by the merger or consolidation of two (2) or more medical practice groups or the acquisition of one medical practice group by another medical practice group. The term "health-care facility" does not include Christian Science institutions (also known as Christian Science

nursing facilities) listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

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

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

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

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

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

(9) "New health-care equipment" means any single piece of medical equipment (and any components that constitute operational components of the piece of medical equipment) proposed to be utilized in conjunction with the provision of services to patients or the public, the capital costs of which would exceed two million two hundred fifty thousand dollars (\$2,250,000); provided, however, that the state agency shall exempt from review any application that proposes one-for-one equipment replacement as defined in regulation. Further, beginning July 1, 2012, and each July thereafter, the amount shall be adjusted by the percentage of increase in the consumer price index for all urban consumers (CPI-U) as published by the United States Department of Labor Statistics as of September 30 of the prior calendar year.

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

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

(ii) Any expenditure, except acquisitions of an existing health-care facility, that will not result in a change in the services or bed capacity of the health-care facility by, or on behalf of, an existing health-care facility in excess of five million two hundred fifty thousand dollars (\$5,250,000) which is a capital expenditure including expenditures for predevelopment activities; provided further, beginning July 1, 2012, and each July thereafter, the amount shall be adjusted by the percentage of increase in the consumer price index for all urban consumers (CPI-U) as published by the United States Department of Labor Statistics as of September 30 of the prior calendar year.

(iii) Where a person makes an acquisition by, or on behalf of, a health-care facility or health maintenance organization under lease or comparable arrangement or through donation, which would have required review

if the acquisition had been by purchase, the acquisition shall be deemed a capital expenditure subject to review.

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

(v) Any health service proposed to be offered to patients or the public by a health-care facility that was not offered on a regular basis in or through the facility within the twelve-month (12) period prior to the time the service would be offered, and that increases operating expenses by more than one million five hundred thousand dollars (\$1,500,000), except that the state agency may exempt from review, by rules and regulations promulgated for this chapter, any health service involving reclassification of bed capacity made to licensed nursing facilities. Further, beginning July 1, 2012, and each July thereafter, the amount shall be adjusted by the percentage of increase in the consumer price index for all urban consumers (CPI-U) as published by the United States Department of Labor Statistics as of September 30 of the prior calendar year.

(vi) Any new or expanded tertiary or specialty-care service, regardless of capital expense or operating expense, as defined by and listed in regulation, the list not to exceed a total of twelve (12) categories of services at any one time and shall include full-body magnetic resonance imaging and computerized axial tomography; provided, however, that the state agency shall exempt from review any application that proposes one-for-one equipment replacement as defined by and listed in regulation. Acquisition of full body magnetic resonance imaging and computerized axial tomography shall not require a certificate-of-need review and approval by the state agency if satisfactory evidence is provided to the state agency that it was acquired for under one million dollars (\$1,000,000) on or before January 1, 2010, and was in operation on or before July 1, 2010.

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

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

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

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

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

**§ 23-15-3. Purpose.**

The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the authorization and allocation of new institutional health services and new health care equipment.

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

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

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

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

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

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

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

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

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

- (4) The availability of alternative, less costly, or more effective methods of providing services or equipment, including economies or improvements in service that could be derived from feasible cooperative or shared services;
- (5) The immediate and long term financial feasibility of the proposal, as well as the probable impact of the proposal on the cost of, and charges for, health services of the applicant;
- (6) The relationship of the services proposed to be provided to the existing health care system of the state;
- (7) The impact of the proposal on the quality of health care in the state and in the population area to be served by the applicant;
- (8) The availability of funds for capital and operating needs for the provision of the services or equipment proposed to be offered;
- (9) The cost of financing the proposal including the reasonableness of the interest rate, the period of borrowing, and the equity of the applicant in the proposed new institutional health service or new equipment;
- (10) The relationship, including the organizational relationship of the services or equipment proposed, to ancillary or support services;
- (11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing within the state;
- (12) Special needs of entities such as medical and other health professional schools, multidisciplinary clinics, and specialty centers; also, the special needs for and availability of osteopathic facilities and services within the state;
- (13) In the case of a construction project:
  - (i) The costs and methods of the proposed construction,
  - (ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; and
  - (iii) The proposed availability and use of safe patient handling equipment in the new or renovated space to be constructed.
- (14) Those appropriate considerations that may be established in rules and regulations promulgated by the state agency with the advice of the health services council;
- (15) The potential of the proposal to demonstrate or provide one or more innovative approaches or methods for attaining a more cost effective and/or efficient health care system;

- (16) The relationship of the proposal to the need indicated in any requests for proposals issued by the state agency;
- (17) The input of the community to be served by the proposed equipment and services and the people of the neighborhoods close to the health care facility who are impacted by the proposal;
- (18) The relationship of the proposal to any long-range capital improvement plan of the health care facility applicant.
- (19) Cost impact statements forwarded pursuant to subsection 23-15-6(e).
- (f) In conducting its review, the health services council shall perform the following:
- (1) Within one hundred and fifteen (115) days after initiating its review, which must be commenced no later than thirty-one (31) days after the filing of an application, the health services council shall determine as to each proposal whether the applicant has demonstrated need at the time and place and under the circumstances proposed, and in doing so may apply the criteria and standards set forth in subsection (e) of this section; provided however, that a determination of need shall not alone be sufficient to warrant a recommendation to the state agency that a proposal should be approved. The director shall render his or her decision within five (5) days of the determination of the health services council.
- (2) Prior to the conclusion of its review in accordance with § 23-15-6(e), the health services council shall evaluate each proposal for which a determination of need has been established in relation to other proposals, comparing proposals with each other, whether similar or not, establishing priorities among the proposals for which need has been determined, and taking into consideration the criteria and standards relating to relative need and affordability as set forth in subsection (e) of this section and § 23-15-6(f).
- (3) At the conclusion of its review, the health services council shall make recommendations to the state agency relative to approval or denial of the new institutional health services or new health care equipment proposed; provided that:
- (i) The health services council shall recommend approval of only those proposals found to be affordable in accordance with the provisions of § 23-15-6(f); and
- (ii) If the state agency proposes to render a decision that is contrary to the recommendation of the health services council, the state agency must render its reasons for doing so in writing.
- (g) Approval of new institutional health services or new health care equipment by the state agency shall be subject to conditions that may be prescribed by rules and regulations developed by the state agency with the advice of the health services council, but those conditions must relate to the considerations enumerated in subsection (e) and to considerations that may be established in regulations in accordance with subsection (e)(14).

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

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

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

### **§ 23-15-4.1. Exemption for nonclinical capital expenditures.**

Notwithstanding the requirements of any other provisions of any general or public laws, capital expenditures by a health care facility that are not directly related to the provision of health services as defined in this chapter, including, but not limited to, capital expenditures for parking lots, billing computer systems, and telephone systems, shall not require a certificate of need review and approval by the state agency.

### **§ 23-15-4.2. Exemption for research.**

Notwithstanding the requirements of any other provisions of any general or public laws, capital expenditures by a health care facility related to research in basic biomedical or medical research areas that are not directly related to the provision of clinical or patient care services shall not require a certificate of need review and approval by the state agency.

### **§ 23-15-4.3. Repealed.**

### **§ 23-15-4.4. Exemption for voter approved capital bond issues for health care facilities.**

Notwithstanding the requirements of any other provisions of any general law or public laws, voter approved state bond issues authorizing capital expenditures for state health care facilities shall not require a certificate of need review and approval by the state agency.



**§ 23-15-5. Expeditious review.**

(a) Any person who proposes to offer or develop new institutional health services or new health care equipment for documented emergency needs; or for the purpose of eliminating or preventing documented fire or safety hazards affecting the lives and health of patients or staff; or for compliance with accreditation standards required for receipt of federal or state reimbursement; or for any other purpose that the state agency may specify in rules and regulations, may apply for an expeditious review. The state agency may exercise its discretion in recommending approvals through an expeditious review, except that no new institutional health service or new health care equipment may be approved through the expeditious review if provision of the new institutional health service or new health care equipment is contra-indicated by the state health plan as may be formulated by the state agency. Specific procedures for the conduct of expeditious reviews shall be promulgated in rules and regulations adopted by the state agency with the advice of the health services council.

(b) The decision of the state agency not to conduct an expeditious review shall be reconsidered upon a written petition to the state agency, and the state agency shall be required to respond to the written petition within ten (10) days stating whether expeditious review is granted. If the request for reconsideration is denied, the state agency shall state the reasons in writing why the expeditious request had been denied.

(c) The decision of the state agency in connection with an expeditious review shall be rendered within thirty (30) days after the commencement of said review.

(d) Any healthcare facility that provides a service performed in another state and that is not performed in the state of Rhode Island, or such service is performed in the state on a very limited basis, shall be granted expeditious review upon request under this section, provided that such service, among other things, has a clear effect on the timeliness, access, or quality of care and is able to meet licensing standards.

**§ 23-15-6. Procedures for review.**

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

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

(1) Provision that the state agency established a process requiring potential applicants to file a detailed letter of intent to submit an application at least forty-five (45) days prior to the submission of an application and that the state agency shall undertake reviews in a timely fashion no less often than twice a year and give written notification to affected persons of the beginning of the review including the proposed schedule for the



review, the period within which a public meeting may be held, and the manner by which notification will be provided of the time and place of any public meeting so held.

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

(3) Provision that, if the state agency fails to act upon an application within the applicable period established in subsection (b)(2), the applicant may apply to the superior court of Providence County to require the state agency to act upon the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In the case or review of proposals by health care facilities who by contractual agreement, chapter 19 of title 27, or other statute are required to adhere to an annual schedule of budget or reimbursement determination to which the state is a party, the state budget office, the office of the health insurance commissioner, and hospital service corporations organized under chapter 19 of title 27 shall forward to the health services council within forty-five (45) days of the initiation of the review of the proposals by the health services council under § 23-15-4(f)(1):

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

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

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

#### **§ 23-15-6.1. Action subsequent to review.**

Development of any new institutional health services or new health care equipment approved by the state agency must be initiated within one year of the date of the approval and may not exceed the maximum amount of capital expenditures specified in the decision of the state agency without prior authorization of the state agency. The state agency, with the advice of the health services council, shall adopt procedures for the review of the applicant's failure to develop new institutional health services or new health care equipment within the timeframe and capital limitation stipulated in this section, and for the withdrawal of approval in the absence of a good faith effort to meet the stipulated timeframe.

#### **§ 23-15-7. Health services council.**

The health services council, established in accordance with chapter 17 of this title, shall function as the advisory body to the state agency in discharging the purpose of this chapter.

#### **§ 23-15-8. Funds for administration.**

There is authorized to be appropriated from the state treasury those sums that may be necessary for the purposes of administering this chapter.

**§ 23-15-9. Severability.**

If any provision of this chapter or the application of any provision of this chapter to any person or circumstances shall be held invalid, the invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable.

**§ 23-15-10. Application fees.**

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

**§ 23-15-11. Reports, use of experts, all costs and expenses.**

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