

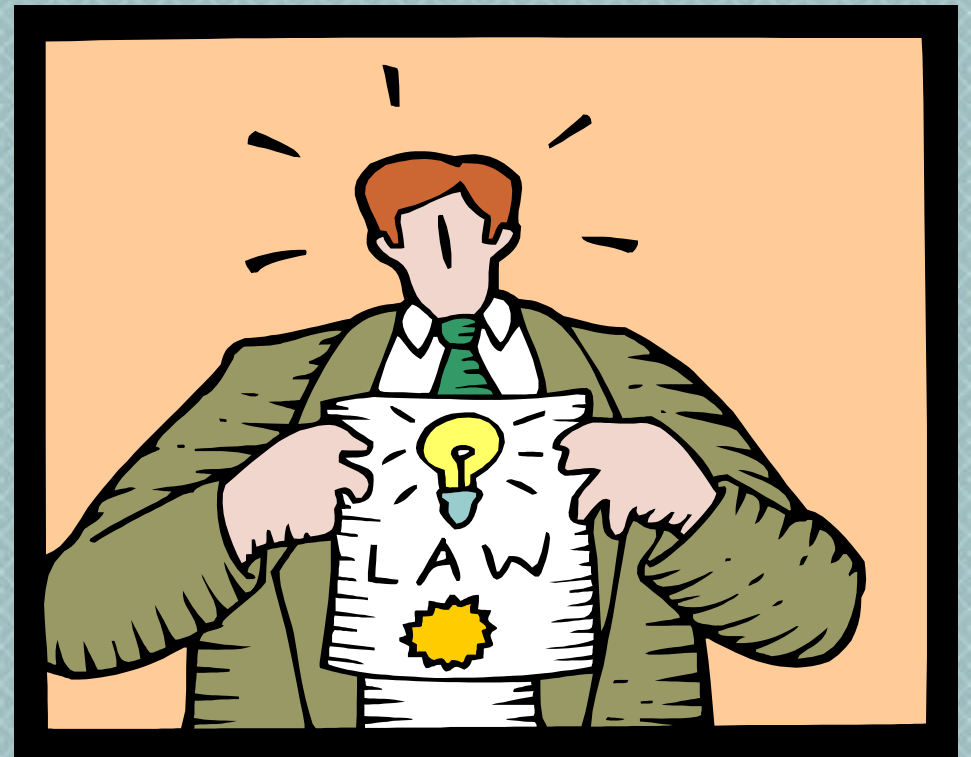
The Hospital Conversions Act

A basic guide to
R.I. Gen. Laws §§ 23-17.14-1, *et seq.*



The Hospital Conversions Act

- R.I. Gen. Laws § 23-17.14-1 *et. seq.*
- Enacted 1997
- Amended 2000
- Amended 2012



Purpose of the HCA: § 23-7.14-3

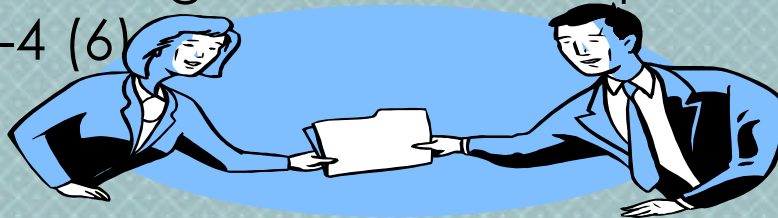
- (1) Assure the viability of a of safe, accessible and affordable healthcare system that is available to all of the citizens of the state;**
- (2) Establish a process to review for-profit hospitals and their affect on the delivery of healthcare and to monitor hospital performance to ensure that the community continues to benefit from the facility;**
- (3) Establish a review process and criteria for review of hospital conversions;**
- (4) Clarify the jurisdiction and authority of DOH to protect public health and welfare and the Dept. of AG to preserve and protect public and charitable assets; and**
- (5) Provide for independent foundations to hold and distribute proceeds of conversions consistent with the acquiree's original purpose.**



What is a hospital conversion?

"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 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 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 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.

RIGL § 23-17.14-4 (6)



Concurrent Review

Requires approvals from both
Departments - § 23-17.14-5

**RI Department of
Health**



**RI Department of
Attorney General**



The Initial Application

- **The Initial Application includes information necessary to address the statutory review criteria of the Departments.**
- **Except for information determined by the AG to be confidential and/or proprietary pursuant to § 23-17.14-32, or otherwise required by law to be maintained as confidential, the Initial Application and supporting documentation shall be considered public. RIGL § 23-17.14-6(c).**
- **73 questions in the current Initial Application.**
- **The information requested represents the minimum amount of information required and additional follow-up requests are made in response to information included in the Initial Application or information generated during the investigation.**

Review Procedure

- Within **30 days** of receipt of Initial Application, the Departments shall advise whether the application is complete.
 - > If not complete, the applicants have 30 working days to submit missing information.
 - > The AG and DOH have 10 working days to review the resubmitted information.
 - > If the additional information is not submitted within the 30 days or if either department determines that the submission is insufficient, the application will be rejected without prejudice and accompanied by a detailed written explanation of the reasons for rejection.

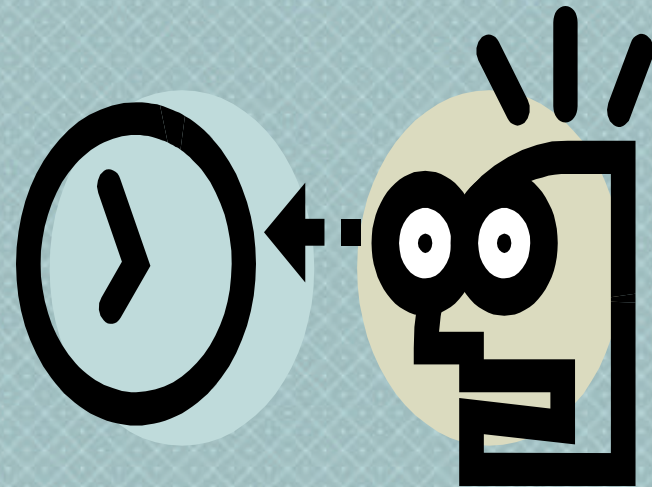


Review Procedure (cont.)

- > If deemed complete, within 30 days, AG's confidentiality determination made per § 23-17.14-32
- > Also, Departments publish:
 - notice of receipt of the Initial Application
 - date for submission of written comments
 - date of public informational meeting

Decision

- Departments shall each approve, approve with conditions, or disapprove the application within **120 days** from the date of acceptance.



The Role of the Attorney General

General Categories for review pursuant to
R.I. Gen. Laws §§ 23-17.14-7(c) and 23-17.14-10(b):

- > **Board of Directors**
- > **Conflicts of Interest**
- > **Fair Market Value**
- > **New Entity**
- > **Bylaws**
- > **Charitable Assets**
- > **Tax Issues**
- > **Character, Commitment,
Competence and Standing in the Community**
- > **Miscellaneous**



Attorney General Review Criteria

§ 23-17.14-7:

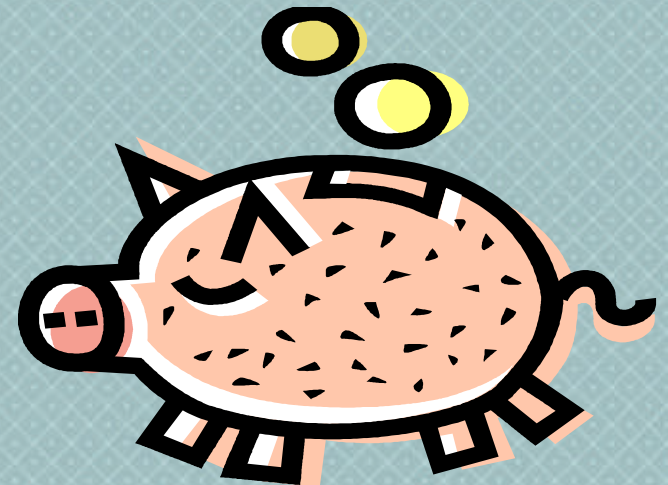
30 criteria for the Attorney General's review of a conversion involving a hospital in which 1 or more of the transacting parties involves **a for profit corporation** as the acquiror and a not for profit corporation as the acquiree.

§ 23-17.14-10:

21 criteria for the Attorney General's review of a conversion involving a hospital in which the transacting parties are limited to **not for profit corporations.**

Foundations

- HCA has numerous provisions regarding the establishment of a foundation with any proceeds of a conversion.
See, RIGL §§ 23-17.14-22 -27.
- Transferred to a charitable foundation operated by a board of directors.
- Contemplates detailed requirements including a 7 member board.



Common Law Authority

- In addition to HCA, Attorney General has common law powers to review issues involving charitable assets.



The Role of DOH

Review Criteria

- (1) Whether the character, commitment, competence, and standing in the community, or any other communities served by the proposed transacting parties are satisfactory;**
- (2) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;**
- (3) 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 in the affected community;**
- (4) 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;**
- (5) Whether the transacting parties have made a commitment to assure the continuation of collective bargaining rights, if applicable, and retention of the workplace;**
- (6) 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;**
- (7) 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.**

For Profit Review add:

- (8) Whether the acquiror has demonstrated that it has satisfactorily met the terms and conditions of approval for any previous conversion.**

RIGL § 23-17.14-8 and 11

Charity Care: § 23-17.14-15

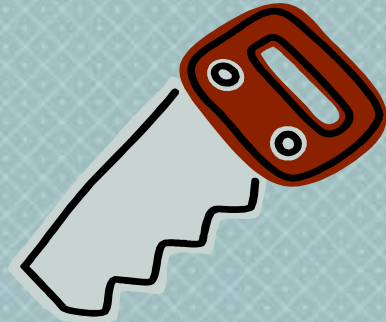
- All licensed hospitals shall, as a condition of initial and/or continued licensure:
 - (1) Meet the statewide community needs for the provision of charitable care;
 - (2) Meet standards for assurance of the continuance of uncompensated case and community benefits;
 - (3) Not discourage persons who cannot afford to pay from seeking essential medical services; and
 - (4) Not encourage persons who cannot afford to pay to seek essential medical services from other providers.
- Charity care reports to DOH before March 1st of each calendar year.
- Department may hold a hearing for non-compliance.

Closings or Reduction of Medical Services: § 23-17.14-18

- No hospital emergency department or primary care services which existed for at least one year and which significantly serve uninsured or underinsured individuals shall be eliminated or significantly reduced without the prior approval of the director.
- Requires a Written Plan to Director of DOH describing impact on: (1) Access to healthcare services for traditionally underserved populations; (2) The delivery of healthcare services on the affected community; and (3) Other licensed hospitals or healthcare providers in the affected community or in the state.
- Director shall issue a decision within ninety (90) days or the request shall be deemed approved. The director may if deemed appropriate, issue public notice and allow a written comment period within sixty (60) days of receipt of the proposal.



HCA Tools



- **Experts:** The departments may engage experts or consultants to assist in their conversion review. § 23-17.14-13
- **Investigations:** Either department may conduct investigations and may require any person, consultant, institution, association, or corporation to appear for questioning or document production. § 23-17.14-14
- **Penalties:** A knowing violation or failure to comply with any provision of this chapter or willingly or knowingly gives false or incorrect information may result in either of the following penalties:
 - (1) The director or attorney general may deny, suspend, or revoke a license or may order the licensee to admit no additional persons to the facility, to provide health services to no additional persons through the facility; or
 - (2) The superior court 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. § 23-17.14-30

HCA Amendments

- Elimination of 3 year ban on for-profit acquiring another hospital.

RIGL § 23-17.14-19

- Mandatory conditions of approval on for profit.

RIGL § 23-17.14-28

- Judicial review of interlocutory actions.

RIGL § 23-17.14-34

- Expeditious review for non-profit.

RIGL § 23-17.14-12.1



Additional HCA Amendments



- No requirement for provision of minutes except those relating to the conversion.
- May request federal review concurrently.
- Look back reduced from 5 years to 3 years.
- Timeframe reduced from 180 days to 120 days.

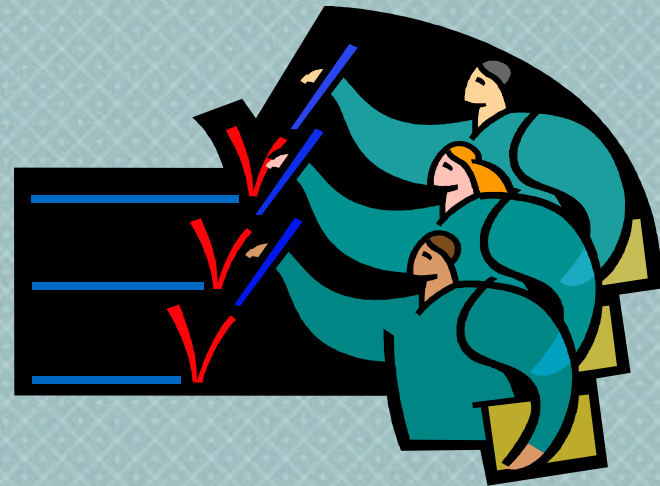
Elimination of 3 year ban on for-profit acquiring another hospital

- Prior to 2012 Amendments a for-profit could not buy another hospital in RI for 3 years after a conversion.
- Now the limit has been eliminated.
- However, for-profit must still meet “super” criteria.



Mandatory conditions of approval on for-profit

- For-profit approvals now have pre-determined conditions.



Mandatory Conditions -DOH

- ◎ **DOH - 8 conditions:**
 - > **Governing Board**
 - > **Contribution to Coordinated Health Planning**
 - > **Restrictions on incentives for out of state hospital services**
 - > **Maintain hospital for a minimum period of time**
 - > **No contracts/arrangements with an affiliate without meeting certain criteria**
 - > **Report to Director annual distribution of profits to owners**
 - > **Allocations or charge to affiliate organization in fiscal year not exceed fair market value**

- ◎ **If Director does not include any of these conditions, must include rationale for not doing so.**

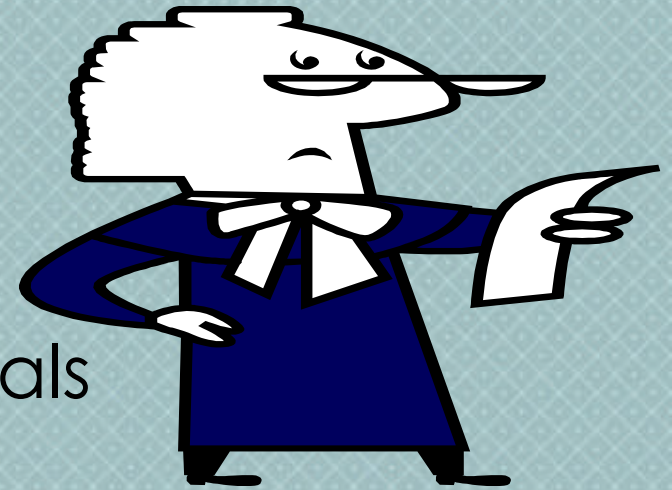
Mandatory Conditions -AG

- **AG - 1 condition:**
 - **Acquiror's adherence to a minimum investment to protect the assets, financial health and well-being of the new hospital and for community benefit.**
- **If AG does not include this condition, must include rationale for not doing so.**

Mandatory Conditions – Reporting and Monitoring

- For 3 years, the acquiror must file reports with the DOH and AG detailing compliance with conditions and any other conditions on the conversion approval or license of the new hospital.
- Failure shall be cause for penalties.
- DOH and AG must monitor acquiror's compliance with conditions and annually review the impact of the conversion on health care costs and services within the communities served.
- Acquiror must pay for costs of monitoring.

Judicial Review



- Standard of review of appeals from agency decisions.
- Now appeal standard is not in accordance with the Administrative Procedures Act.
- Review procedure and criteria.
- Balancing test - “Reasonable interests of the transacting parties and the reasonable interest of the citizens of the state in a safe, accessible, and affordable healthcare system.

The New Expedited Review

- 90 Day Review
- Only in certain cases where distressed hospital is being acquired by a non-profit
 - > Two or more hospitals not in common control with another hospital
 - > One hospital not under common control with another hospital and a hospital system parent corporation
 - > Two affiliated hospitals the conversion of which was previously approved in accordance with Ch. 23-17.14 and another hospital or hospital system parent corporation
- Both must have owned a hospital for at least 3 years



Distressed Hospital

- Facing significant financial hardship that may impair its ability to continue to operate effectively without the proposed conversion.
- Also requires finding by the Director of DOH that the hospital is distressed.



Distressed Hospital Criteria

- ◉ DOH determines if hospital is distressed based upon whether it meets one or more of the following criteria:
 - > Operating loss for the 2 most recently completed fiscal years
 - > Less than 50 days cash-on-hand
 - > Current asset to liability ratio of less than 1.5
 - > Long-term debt to capitalization greater than 75%
 - > Inpatient occupancy rate of less than 50%
 - > Would be classified as below investment grade by a major rating agency

Initial Application to DOH

- Expedited Initial Application
 - > Minimum of 13 categories of information
 - > Same review criteria
- No timeframes for completeness review
- Within 20 days of complete application, DOH will notify the public and afford opportunity to comment.



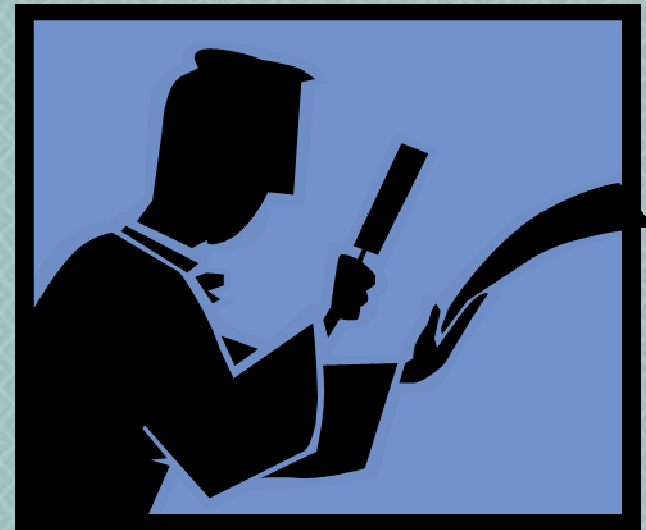
Yearly Reporting

- On or before March 1 of each year a report in a form acceptable to DOH containing all updated financial information required.
- No end date to this requirement.



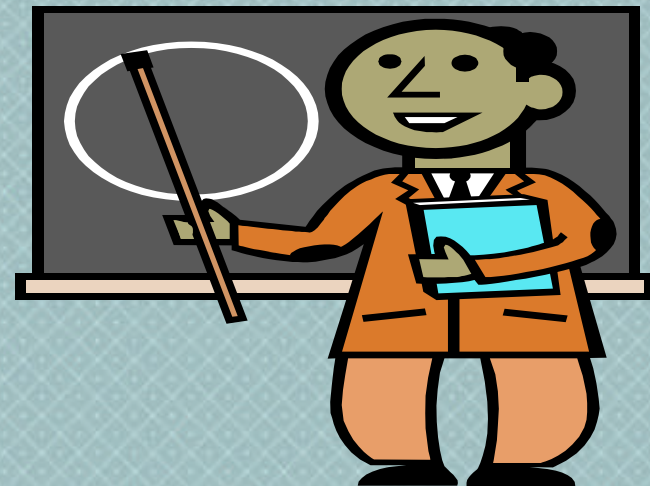
Attorney General Review

- If DOH performs an expedited review, AG performs a review “as it deems necessary”
- Review is, at a minimum, the impact upon the charitable assets of the transacting parties.
- No limit to review.
- Performed concurrently with DOH review.
- Nature of Standard Review –
To be determined....



Expert Costs

- Expert Costs Limited to \$25,000 per \$100,000,000 of total net patient service revenue of the acquiree and acquiror in the most recent fiscal year.
- RIAG and DOH each receive expert fee amount.



Impact of 2012 Changes to HCA Process



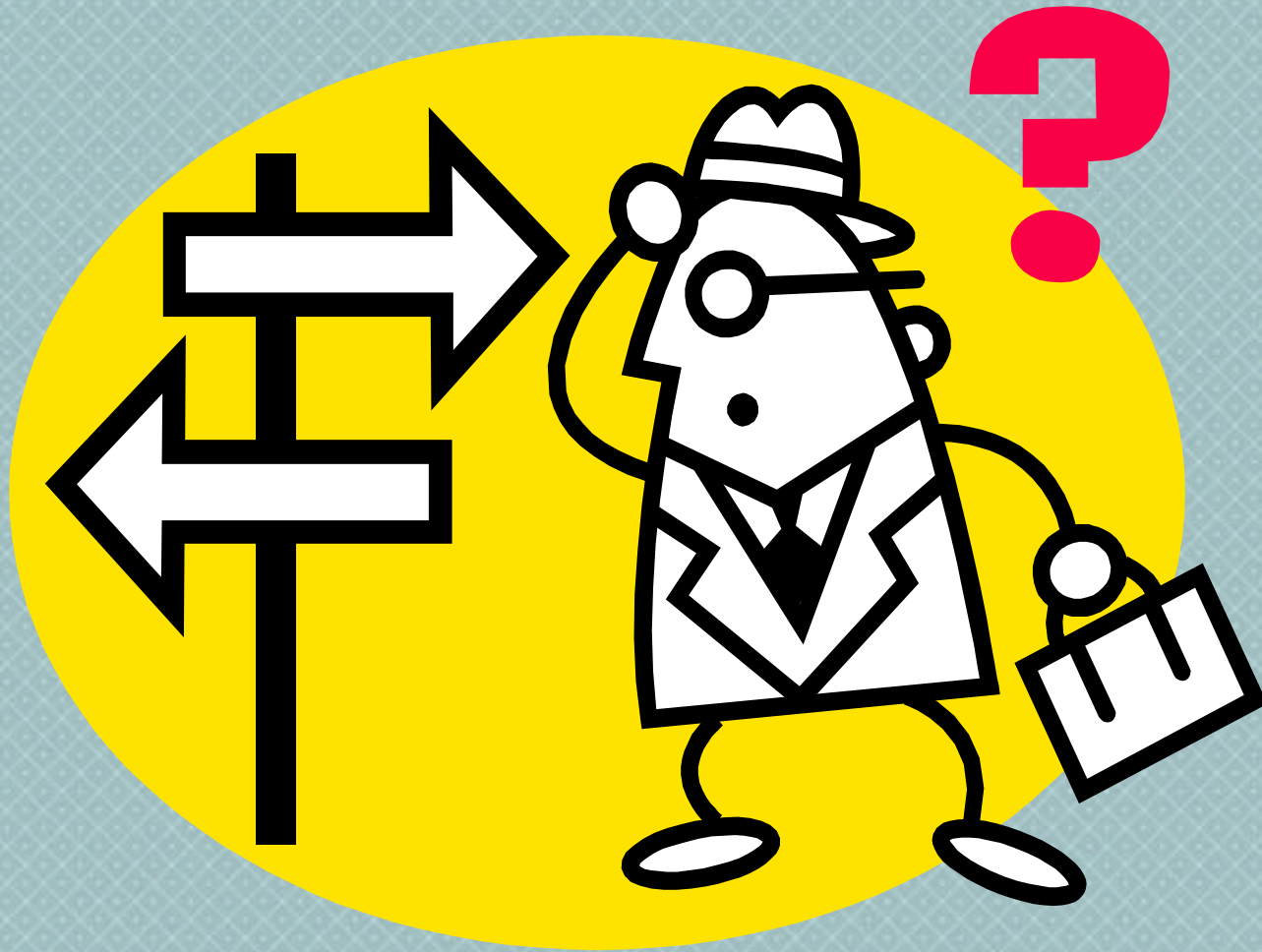
2012 Amendments Public Law

To obtain a copy of the public law, please visit:

<http://www.rilin.state.ri.us/PublicLaws/law12/law12259.htm>



Questions?



Our Charge...



Health Care Planning and Accountability of Advisory Council

Along with the HCA, the RI Coordinated Health Planning Act of 2006 was also revised and has charged the Council with assessing the needs of the state with regard to hospital services and to present recommendations, if any, for modifications to the HCA. The Council shall provide its report and recommendations to the governor and general assembly on or before March 1, 2013.