

5092

2013-2014 Regular Sessions

I N   S E N A T E

May 8, 2013

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to directing the commissioner of health to establish a pilot program to assist in the restructuring of health care delivery systems by authorizing increased capital investments in health care facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 2801-a of the public health law is amended by  
2     adding a new subdivision 17 to read as follows:  
3     17. (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A PILOT PROGRAM TO  
4     ASSIST IN RESTRUCTURING HEALTH CARE DELIVERY SYSTEMS BY ALLOWING FOR  
5     INCREASED CAPITAL INVESTMENT IN HEALTH CARE FACILITIES. PURSUANT TO THE  
6     PILOT PROGRAM, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL SHALL  
7     APPROVE THE ESTABLISHMENT, IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVI-  
8     SION THREE OF THIS SECTION, OF NO MORE THAN FIVE BUSINESS CORPORATIONS  
9     FORMED UNDER THE BUSINESS CORPORATION LAW. SUCH BUSINESS CORPORATIONS  
10    SHALL AFFILIATE, THE EXTENT OF THE AFFILIATION TO BE DETERMINED BY THE  
11    COMMISSIONER, WITH AT LEAST ONE ACADEMIC MEDICAL INSTITUTION OR TEACHING  
12    HOSPITAL APPROVED BY THE COMMISSIONER. A BUSINESS CORPORATION SHALL NOT  
13    BE ELIGIBLE TO PARTICIPATE IN THIS PROGRAM IF ANY OF ITS STOCK, OR THAT  
14    OF ANY OF ITS DIRECT OR INDIRECT OWNERS, IS OR WILL BE TRADED ON A  
15    PUBLIC STOCK EXCHANGE OR ON AN OVER-THE-COUNTER MARKET.  
16    (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, BUSINESS  
17    CORPORATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED  
18    ELIGIBLE TO PARTICIPATE IN DEBT FINANCING PROVIDED BY THE DORMITORY  
19    AUTHORITY OF THE STATE OF NEW YORK, LOCAL DEVELOPMENT CORPORATIONS AND  
20    ECONOMIC DEVELOPMENT CORPORATIONS.  
21    (C) THE FOLLOWING PROVISIONS OF THIS CHAPTER SHALL NOT APPLY TO BUSI-  
22    NESS CORPORATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION: (I) PARA-  
23    GRAPH (B) OF SUBDIVISION THREE OF THIS SECTION, RELATING TO STOCKHOLD-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ERS; (II) PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE DISPOSITION OF STOCK OR VOTING RIGHTS; (III) PARAGRAPH (E) OF SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE OWNERSHIP OF STOCK; AND (IV) PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND FOUR OF THIS CHAPTER, RELATING TO THE OWNERSHIP OF STOCK. NOTWITHSTANDING THE FOREGOING, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MAY REQUIRE THE DISCLOSURE OF THE IDENTITY OF STOCKHOLDERS, PROVIDED THAT THE NUMBER OF STOCKHOLDERS DOES NOT EXCEED THIRTY-FIVE.

(D) THE CORPORATE POWERS AND PURPOSES OF A BUSINESS CORPORATION ESTABLISHED AS AN OPERATOR PURSUANT TO THIS SUBDIVISION SHALL BE LIMITED TO THE OWNERSHIP AND OPERATION, OR OPERATION, OF A HOSPITAL OR HOSPITALS SPECIFICALLY NAMED AND THE LOCATION OR LOCATIONS OF WHICH ARE SPECIFICALLY DESIGNATED BY STREET ADDRESS, CITY, TOWN, VILLAGE OR LOCALITY AND COUNTY; PROVIDED, HOWEVER, THAT THE CORPORATE POWERS AND PURPOSES MAY ALSO INCLUDE THE OWNERSHIP AND OPERATION, OR OPERATION, OF A CERTIFIED HOME HEALTH AGENCY OR LICENSED HOME CARE SERVICES AGENCY OR AGENCIES AS DEFINED IN ARTICLE THIRTY-SIX OF THIS CHAPTER OR A HOSPICE OR HOSPICES AS DEFINED IN ARTICLE FORTY OF THIS CHAPTER, IF THE CORPORATION HAS RECEIVED ALL APPROVALS REQUIRED UNDER SUCH LAW TO OWN AND OPERATE, OR OPERATE, SUCH HOME CARE SERVICES AGENCY OR AGENCIES OR HOSPICE OR HOSPICES. SUCH CORPORATE POWERS AND PURPOSES SHALL NOT BE MODIFIED, AMENDED OR DELETED WITHOUT THE PRIOR APPROVAL OF THE COMMISSIONER.

(E) (1) IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS, THE BOARD OF DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS AND OFFICERS OF A BUSINESS CORPORATION ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL CONSIDER THE EFFECTS OF ANY ACTION UPON:

- (A) THE ABILITY OF THE BUSINESS CORPORATION TO ACCOMPLISH ITS PURPOSE;
- (B) THE SHAREHOLDERS OF THE BUSINESS CORPORATION;
- (C) THE EMPLOYEES AND WORKFORCE OF THE BUSINESS;
- (D) THE INTERESTS OF PATIENTS OF THE HOSPITAL OR HOSPITALS;
- (E) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH FACILITIES OF THE CORPORATION ARE LOCATED;
- (F) THE LOCAL AND GLOBAL ENVIRONMENT; AND
- (G) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE CORPORATION FROM ITS LONG-TERM PLANS.

(2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED BY PARAGRAPH ONE OF THIS PARAGRAPH:

(A) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTION SEVEN HUNDRED FIFTEEN OR SEVEN HUNDRED SEVENTEEN OF THE BUSINESS CORPORATION LAW; AND

(B) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS AND FACTORS AS PROVIDED IN SECTION SEVEN HUNDRED SEVENTEEN OF THE BUSINESS CORPORATION LAW.

(F) A SALE, LEASE, CONVEYANCE, EXCHANGE, TRANSFER, OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE CORPORATION SHALL NOT BE EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY THE COMMISSIONER.

(G) NO LATER THAN TWO YEARS AFTER THE ESTABLISHMENT OF A BUSINESS CORPORATION UNDER THIS SUBDIVISION, THE COMMISSIONER SHALL PROVIDE THE GOVERNOR, THE MAJORITY LEADER OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY WITH A WRITTEN EVALUATION OF THE PILOT PROGRAM. SUCH EVALUATION SHALL ADDRESS THE OVERALL EFFECTIVENESS OF THE PROGRAM IN ALLOWING FOR ACCESS TO CAPITAL INVESTMENT IN HEALTH CARE FACILITIES AND THE IMPACT SUCH ACCESS MAY HAVE ON THE QUALITY OF CARE PROVIDED BY HOSPITALS OPERATED BY BUSINESS CORPORATIONS ESTABLISHED UNDER THIS SUBDIVISION.

S 2. This act shall take effect immediately.