S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the ownership by business corporations of residential health care facilities and to repeal subdivision 9 of section 2801-a of such law relating thereto

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

Section 1. Subparagraph (i) of paragraph (b) of subdivision 4 of section 2801-a of the public health law, as amended by chapter 667 of the laws of 1997, is amended to read as follows:

(i) Any transfer, assignment or other disposition of ten percent or more of an interest or voting rights in a partnership or limited liability company, which is the operator of a hospital to a new partner or member, shall be approved by the public health council in accordance with the provisions of subdivisions two and three of this section, OR PARAGRAPH (I) OF THIS SUBDIVISION IN THE CASE WHERE THE NEW PARTNER IS A CORPORATION THE STOCK OF WHICH IS OWNED BY ANOTHER CORPORATION except that: (A) any such change shall be subject to the approval by the public health council in accordance with paragraph (b) of subdivision three of this section only with respect to the new partner or member, and any remaining partners or members who have not been previously approved for that facility in accordance with such paragraph, and (B) such change shall not be subject to paragraph (a) of subdivision three of this section.

S 2. Paragraph (c) of subdivision 4 of section 2801-a of the public health law, as amended by chapter 538 of the laws of 1998, is amended to read as follows:

(c) Any transfer, assignment or other disposition of ten percent or more of the stock or voting rights thereunder of a corporation which is the operator of a hospital or which is a member of a limited liability company which is the operator of a hospital to a new stockholder, or any

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

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transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than ten percent of the stock or voting rights thereunder of such corporation by any person not previously approved by the public health council for that corporation shall be subject to approval by the public health council in accordance with the provisions of subdivisions two and three of this section and rules and regulations pursuant thereto; except that: any such transaction shall be subject to the approval by the public health council in accordance with paragraph (b) of subdivision three of this section, OR PARAGRAPH (I) OF THIS SUBDIVISION IN THE CASE WHERE THE NEW STOCKHOLDER OR PRINCIPAL STOCKHOLDER IS A CORPORATION WHICH IS OWNED BY ANOTHER CORPORATION, only with respect to a new stockholder or a new principal stockholder; and shall not be subject to paragraph (a) of subdivision three of this section. In the absence of such approval, the operating certificate of such hospital shall be subject to revocation or suspension. No prior approval of the public health council shall be required with respect to a transfer, assignment or disposition of ten percent or more of the stock or voting rights thereunder of a corporation which is the operator of a hospital or which is a member of a limited liability company which is the owner of a hospital to any person previously approved by the public health council for that corporation. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the stockholder completes and files with the public health council notice on forms to be developed by the public health council, which shall disclose such information as may reasonably be necessary for the public health council to determine whether it should bar the transaction. Such transaction will be final as of the intended effective date unless, prior thereto, the public health council shall state specific reasons for barring such transactions under this paragraph and shall notify each party to the proposed transaction. Nothing in this paragraph shall be construed as permitting a person not previously approved by the public health council for that corporation to become the owner of ten percent or more of the stock of a corporation which is the operator of a hospital or which is a member of a limited liability company which is the owner of a hospital without first obtaining the approval of the public health council.

S 3. Paragraphs (d) and (e) of subdivision 4 of section 2801-a of the public health law, as amended by chapter 667 of the laws of 1997, are amended to read as follows:

(d) No hospital shall be approved for establishment which would be operated by a limited partnership[, or]. NO HOSPITAL, EXCEPT A RESIDENTIAL HEALTH CARE FACILITY, SHALL BE APPROVED FOR ESTABLISHMENT WHICH WOULD BE OPERATED by a partnership any of the members of which are not natural persons. A RESIDENTIAL HEALTH CARE FACILITY WHICH WOULD BE OPERATED BY A PARTNERSHIP ANY OF THE MEMBERS OF WHICH ARE CORPORATIONS, THE STOCK OF WHICH IS OWNED BY ANOTHER CORPORATION, MAY BE APPROVED FOR ESTABLISHMENT IF THE CORPORATION MEETS THE REQUIREMENTS OF PARAGRAPH (I) OF THIS SUBDIVISION.

(e) No hospital, EXCEPT A RESIDENTIAL HEALTH CARE FACILITY, shall be approved for establishment which would be operated by a corporation any of the stock of which is owned by another corporation or a limited liability company if any of its corporate members' stock is owned by another corporation.

S 4. Subdivision 4 of section 2801-a of the public health law is amended by adding a new paragraph (i) to read as follows:

(I) NO RESIDENTIAL HEALTH CARE FACILITY SHALL BE APPROVED FOR ESTABLISHMENT WHICH WOULD BE OPERATED BY A CORPORATION ANY OF THE STOCK OF WHICH IS OWNED BY ANOTHER CORPORATION UNLESS THE APPLICANT IS A CORPORATION ORGANIZED UNDER THE BUSINESS CORPORATION LAW, HAS FULL LEGAL AUTHORITY OVER THE OPERATION OF THE FACILITY, AND DESIGNATES AN AGENT FOR SERVICE OF PROCESS PURSUANT TO SECTION THREE HUNDRED FIVE OF THE BUSINESS CORPORATION LAW.

REVIEW OF THE CHARACTER, COMPETENCE, AND STANDING IN THE COMMUNITY OTHERWISE REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION SHALL BE GOVERNED BY THE PROVISIONS OF THIS PARAGRAPH. THE APPLICANT SHALL:

(I) SUBMIT THE NAME, RESIDENTIAL ADDRESS, BUSINESS TITLE AND BUSINESS ADDRESS OF EACH OFFICER OR MEMBER OF THE BOARD OF DIRECTORS OF THE APPLICANT AND EACH NATURAL PERSON WHO IS A PRINCIPAL STOCKHOLDER OF THE APPLICANT. THE CORPORATION SHALL ALSO SUBMIT THE NAME AND ADDRESS OF EACH HEALTH CARE INSTITUTION WHERE ANY SUCH PERSON SERVES AS AN OFFICER OR MEMBER OF THE BOARD OF DIRECTORS, OR IS A PRINCIPAL STOCKHOLDER OF A HEALTH CARE INSTITUTION. IN THE EVENT ANOTHER CORPORATION (A PARENT CORPORATION) OWNS TEN PERCENT OR MORE OF THE APPLICANT'S STOCK THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH SHALL ALSO BE PROVIDED FOR THE OFFICERS AND MEMBERS OF THE BOARD OF DIRECTORS OF THE PARENT CORPORATION AND PRINCIPAL STOCKHOLDERS OF THE PARENT CORPORATION. FOR THE PURPOSES OF THIS SECTION, THE PUBLIC HEALTH COUNCIL MAY ADOPT RULES AND REGULATIONS RELATIVE TO WHAT CONSTITUTES PARENT CORPORATIONS AND SUBSIDIARY CORPORATIONS. ALL PARENT CORPORATIONS SHALL DESIGNATE AN AGENT FOR SERVICE OF PROCESS PURSUANT TO SECTION THREE HUNDRED FIVE OF THE BUSINESS CORPORATION LAW.

(II) SUBMIT AN AFFIDAVIT FROM AN OFFICER OF THE APPLICANT CERTIFYING, TO THE BEST OF HIS OR HER KNOWLEDGE PURSUANT TO DILIGENT INQUIRY, THAT NO OFFICER OR DIRECTOR OF THE APPLICANT, NOR ANY NATURAL PERSON WHO IS A PRINCIPAL STOCKHOLDER OF THE APPLICANT, HAS BEEN:

(1) ADJUDICATED BANKRUPT OR INSOLVENT,

(2) CONVICTED OF A CRIMINAL OFFENSE OTHER THAN TRAFFIC VIOLATIONS OR OTHER MINOR OFFENSES NOT INVOLVING MORAL TURPITUDE, OR

(3) THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE, NOT SUBSEQUENTLY REVERSED, SUSPENDED OR VACATED, OF ANY COURT OF COMPETENT JURISDICTION OF ANY STATE OR FEDERAL AUTHORITY, CONCERNING A VIOLATION OF ANY LAW OR REGULATION RELATING TO HEALTH OR OTHER HEALTH CARE FACILITY LICENSING PROVISIONS, QUALITY OF CARE PROVISIONS, OR RELATING TO ANY REIMBURSEMENT PROGRAM FOR HEALTH CARE COSTS OR CHARGES, AND NO SUCH ACTION IS CURRENTLY PENDING.

IN THE EVENT ANOTHER CORPORATION (A PARENT CORPORATION) OWNS TEN PERCENT OR MORE OF THE APPLICANT'S STOCK, AN OFFICER OF THE PARENT CORPORATION SHALL SUBMIT AN AFFIDAVIT CONTAINING SUCH INFORMATION CONCERNING OFFICERS, DIRECTORS AND NATURAL PERSONS WHO ARE PRINCIPAL STOCKHOLDERS OF THE PARENT CORPORATION. IN THE EVENT THAT THE OFFICER IS UNABLE TO CERTIFY THESE FACTS, THEN THE AFFIDAVIT SHALL SET FORTH THE CIRCUMSTANCES OF ANY EXCEPTION TO THIS CERTIFICATION, AND THE CORPORATION SHALL DEMONSTRATE TO THE SATISFACTION OF THE PUBLIC HEALTH COUNCIL THE GOOD CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY OF ALL SUCH PERSONS TO WHOM SUCH EXCEPTIONS PERTAIN.

(III) SUBMIT AN AFFIDAVIT FROM AN OFFICER OF THE APPLICANT LISTING, TO THE BEST OF HIS OR HER KNOWLEDGE PURSUANT TO DILIGENT INQUIRY, THE HEALTH CARE FACILITIES OWNED AND OPERATED IN THE UNITED STATES BY THE APPLICANT, AND AN AFFIDAVIT FROM AN OFFICER OF THE PARENT CORPORATION, IF ANY, LISTING FACILITIES OWNED AND OPERATED IN THE UNITED STATES BY

THE PARENT CORPORATION OR OTHER SUBSIDIARIES OF THE PARENT CORPORATION; THE ADDRESS OF EACH SUCH FACILITY; AND THE DATES OF OWNERSHIP AND OPERATION OF EACH SUCH FACILITY. IN THE EVENT THAT ANY SUCH FACILITY HAS BEEN SUBJECTED, WHILE OWNED AND OPERATED BY THE APPLICANT, ITS PARENT CORPORATION, OR OTHER SUBSIDIARIES OF ITS PARENT CORPORATION, TO FINANCIAL PENALTIES OR SUSPENSION OR REVOCATION OF ITS OPERATING CERTIFICATE OR LICENSE, OR HAS HAD ITS ACCREDITATION BY THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS REVOKED OR SUSPENDED, BECAUSE OF FAILURE TO COMPLY WITH PROVISIONS GOVERNING THE CONDUCT AND OPERATION OF THE FACILITY, THE AFFIDAVIT MUST DESCRIBE THE NATURE OF THE VIOLATION, THE AGENCY OR BODY ENFORCING THE VIOLATION (INCLUDING ITS NAME AND ADDRESS), THE STEPS TAKEN BY THE FACILITY TO REMEDY THE VIOLATION, AND AN INDICATION OF WHETHER THE SUSPENSION OR REVOCATION HAS BEEN TERMINATED, OR ACCREDITATION HAS SINCE BEEN RESTORED. THE CORPORATION AND ANY PARENT CORPORATIONS SHALL DEMONSTRATE TO THE SATISFACTION OF THE PUBLIC HEALTH COUNCIL THAT DESPITE ANY SUCH FINANCIAL PENALTIES, SUSPENSION OR REVOCATIONS, THAT A SUBSTANTIALLY CONSISTENT HIGH LEVEL OF CARE IS BEING OR WAS BEING RENDERED AT EACH HOSPITAL OR HEALTH CARE FACILITY.

THE AFFIDAVIT MUST DEMONSTRATE TO THE SATISFACTION OF THE PUBLIC HEALTH COUNCIL, AFTER MEMBERS OF HEALTH SYSTEMS AGENCIES HAVING GEOGRAPHICAL JURISDICTION OF THE AREA WHERE THE INSTITUTION IS TO BE LOCATED HAVE BEEN AFFORDED AN ADEQUATE OPPORTUNITY TO BE HEARD, THAT THE APPLICANT, ITS PARENT CORPORATION, AND OTHER SUBSIDIARIES OF ITS PARENT CORPORATION, ARE NOT ENGAGED IN OPERATING HEALTH CARE FACILITIES WHERE THE CARE RENDERED IS LESS THAN A SUBSTANTIALLY HIGH LEVEL OF CARE.

ANY TRANSFER, ASSIGNMENT OR OTHER DISPOSITION OF TEN PERCENT OR MORE OF THE STOCK OR VOTING RIGHTS THEREUNDER OF A CORPORATION WHICH IS THE OPERATOR OF A RESIDENTIAL HEALTH CARE FACILITY OR OF ITS PARENT CORPORATION, OR ANY TRANSFER, ASSIGNMENT OR OTHER DISPOSITION OF THE STOCK OR VOTING RIGHTS THEREUNDER OF SUCH A CORPORATION OR OF ITS PARENT CORPORATION WHICH RESULTS IN THE OWNERSHIP OR CONTROL OF MORE THAN TEN PERCENT OF THE STOCK OR VOTING RIGHTS THEREUNDER OF SUCH CORPORATION OR ITS PARENT CORPORATION BY ANY PERSON OR CORPORATION SHALL BE SUBJECT TO APPROVAL BY THE PUBLIC HEALTH COUNCIL IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. IN THE ABSENCE OF SUCH APPROVAL, THE APPLICATION SHALL BE SUBJECT TO REVOCATION OR SUSPENSION.

S 5. Subdivision 9 of section 2801-a of the public health law is REPEALED and a new subdivision 9 is added to read as follows:

9. (A) ONLY A NATURAL PERSON, PARTNERSHIP OR LIMITED LIABILITY COMPANY MAY HEREAFTER UNDERTAKE TO ENGAGE IN THE BUSINESS OF OPERATING OR CONDUCTING A HOSPITAL, AS DEFINED IN THIS ARTICLE, EXCEPT A RESIDENTIAL HEALTH CARE FACILITY, FOR PROFIT, EXCEPT THAT: (I) A PERSON, PARTNERSHIP OR CORPORATION WHICH OWNED AND WAS OPERATING A HOSPITAL ON APRIL FOURTH, NINETEEN HUNDRED FIFTY-SIX, MAY CONTINUE TO OWN AND OPERATE SUCH HOSPITAL; (II) A BUSINESS CORPORATION MAY, WITH THE APPROVAL OF THE PUBLIC HEALTH COUNCIL, AND IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION, UNDERTAKE TO ENGAGE IN THE BUSINESS OF OPERATING OR CONDUCTING A HOSPITAL, AS DEFINED IN THIS ARTICLE FOR PROFIT, PROVIDED THAT SUCH CORPORATION SHALL NOT DISCRIMINATE BECAUSE OF RACE, COLOR, CREED, NATIONAL ORIGIN OR SPONSOR IN ADMISSION OR RETENTION OF PATIENTS.

(B) A NATURAL PERSON, BUSINESS CORPORATION OR A PARTNERSHIP MAY HEREAFTER UNDERTAKE TO ENGAGE IN THE BUSINESS OF OPERATING OR CONDUCTING A RESIDENTIAL HEALTH CARE FACILITY, AS DEFINED IN THIS ARTICLE, FOR PROFIT, EXCEPT THAT: (I) A PERSON, PARTNERSHIP OR CORPORATION WHICH OWNED AND WAS OPERATING A RESIDENTIAL HEALTH CARE FACILITY ON APRIL

FOURTH, NINETEEN HUNDRED FIFTY-SIX, MAY CONTINUE TO OWN AND OPERATE SUCH RESIDENTIAL HEALTH CARE FACILITY; (II) A BUSINESS CORPORATION MAY, WITH THE APPROVAL OF THE PUBLIC HEALTH COUNCIL, AND IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION, UNDERTAKE TO ENGAGE IN THE BUSINESS OF OPERATING OR CONDUCTING A RESIDENTIAL HEALTH CARE FACILITY, AS DEFINED IN THIS ARTICLE FOR PROFIT, PROVIDED THAT SUCH CORPORATION SHALL NOT DISCRIMINATE BECAUSE OF RACE, COLOR, CREED, NATIONAL ORIGIN OR SPONSOR IN ADMISSION OR RETENTION OF PATIENTS; (III) A BUSINESS CORPORATION OWNING AND OPERATING A NURSING HOME ON MAY TWENTY-SECOND, NINETEEN HUNDRED NINETY-NINE, IN ACCORDANCE WITH APPLICABLE PROVISIONS OF LAW, MAY CONTINUE TO OWN AND OPERATE SUCH NURSING HOME; (IV) A PERSON WHO, OR A PARTNERSHIP WHICH, IS OPERATING A PRIVATE PROPRIETARY NURSING HOME IN ACCORDANCE WITH APPLICABLE PROVISIONS OF LAW MAY, WITH THE APPROVAL OF THE PUBLIC HEALTH COUNCIL, AND IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION AND ANY RULES AND REGULATIONS THEREUNDER FORM A BUSINESS CORPORATION TO ENGAGE IN THE BUSINESS OF OPERATING OR CONDUCTING SUCH NURSING HOME, PROVIDED, HOWEVER, THAT SUCH CORPORATION SHALL NOT DISCRIMINATE BECAUSE OF RACE, COLOR, CREED, NATIONAL ORIGIN OR SPONSOR IN ADMISSION OR RETENTION OF PATIENTS; (V) A BUSINESS CORPORATION OPERATING A NURSING HOME, WHICH CORPORATION WAS FORMED WITH THE APPROVAL OF THE STATE BOARD OF SOCIAL WELFARE, MAY CONTINUE TO OWN AND OPERATE SUCH NURSING HOME.

S 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.