

1044

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sens. LAVALLE, ONORATO, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law and chapter 363 of the laws of 1998, amending the education law relating to state university health care services and facilities, in relation to state university health care services and facilities and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Legislative findings and declaration. The legislature here-
2 by finds and declares that the health sciences centers of the state
3 university of New York have been, are and should continue to be an inte-
4 gral part of the educational mission of the state university, as well as
5 valuable state resources which fulfill important public purposes. The
6 health sciences centers at Brooklyn, Buffalo, Stony Brook and Syracuse
7 and the College of Optometry educate and train physicians, nurses and
8 other health professionals, conduct critical research and deliver health
9 care services to New York citizens within their regions. The scope and
10 magnitude of SUNY health sciences activity are notable. SUNY is a major
11 educator of health professionals offering the majority of the state's
12 registered degree programs in many health fields. SUNY biomedical and
13 health-related research is helping the state respond to many of its most
14 complex problems including AIDS, alcohol and drug abuse and the medical
15 problems of infants and the elderly. The health care services provided
16 at SUNY's hospitals, clinics and ancillary facilities by dedicated
17 public employees treat hundreds of thousands of New York citizens annu-
18 ally and SUNY health care facilities are leading providers of services
19 to medicaid patients.

20 The legislature further finds and declares that the trustees of the
21 state university of New York and the officers and public employees of

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

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1 the health sciences centers have ably pursued the health education,
2 research and care-giving missions of the university within current
3 constraints. The legislature recognizes, however, that the state univer-
4 sity hospitals, clinics, ancillary facilities and health services, which
5 are integral components of the health sciences centers and essential to
6 fulfilling their education and research missions, must function in an
7 increasingly competitive and rapidly changing health care environment.
8 The legislature also recognizes that the many health care reform
9 efforts, including growing emphasis on managed care, will create new
10 challenges for the university and necessitate major changes in how SUNY
11 and its management and public employees conduct its health care efforts.
12 These changes are required to allow the health sciences centers to
13 contribute to their regions by participating in coordinated care efforts
14 and providing the resources to work cooperatively with other health care
15 providers and institutions to develop long-range health care plans.

16 The legislature, therefore, declares that the following measures are
17 necessary and appropriate to strengthen the ability of the trustees and
18 university officers and public employees, to administer, manage and
19 operate the hospitals, clinics and ancillary facilities at SUNY health
20 sciences campuses. The legislature intends that the following measures
21 shall retain the essential public character and mission of these facili-
22 ties as integral parts of the state university health sciences centers
23 and build on authority vested in the state university trustees, should
24 strengthen the ability and define more sharply the powers of the trus-
25 tees and university officers and public employees to allow the health
26 sciences centers the flexibility to offer high quality services through
27 contracts and networks with other health care providers and to continue
28 to deliver health care services in ways that support SUNY's educational
29 and research missions and promote high quality care, optimum access and
30 reasonable costs in the emerging health care environment. Further, the
31 intent of this legislation is to continue to use public employees to the
32 greatest extent practicable in providing health care services.

33 S 2. Subdivision 6 of section 350 of the education law, as added by
34 chapter 363 of the laws of 1998, is amended to read as follows:

35 6. "Clinic" shall mean a facility, LICENSED UNDER ARTICLE TWENTY-EIGHT
36 OF THE PUBLIC HEALTH LAW AS A DIAGNOSTIC AND TREATMENT CENTER, WHICH IS
37 located either within or outside of a state university health care
38 facility providing services related to the medical education mission of
39 the university, but shall not include state university student health
40 services.

41 S 3. Subdivision 16 of section 355 of the education law, as added by
42 chapter 363 of the laws of 1998, is amended and a new subdivision 20 is
43 added to read as follows:

44 16. Subject to laws and regulations applicable to the state university
45 as a health care provider the state university trustees may:

46 a. Notwithstanding SUBDIVISION SIX OF THIS SECTION, SUBDIVISIONS TWO
47 AND THREE OF SECTION ONE HUNDRED TWELVE, section one hundred sixty-three
48 of the state finance law AND SECTION SIXTY-THREE OF THE EXECUTIVE LAW,
49 authorize [contracts for] a state university health care facility [for
50 participation] TO PARTICIPATE in managed care networks and other joint
51 and cooperative arrangements with public, non-profit or business enti-
52 ties [including entering into a maximum of twenty network arrangements
53 per year,] as partners, JOINT VENTURERS, members of non-profit corpo-
54 rations and shareholders of business corporations, and FOR the provision
55 of management and administrative services by or for A state university
56 HEALTH CARE FACILITY. Any contract for the provision of management

1 services shall be subject to any provision of the public health law and
2 health regulations applicable to the state university as a health care
3 provider, including any review by the commissioner of health pursuant to
4 10 NYCRR section 405.3(f). In addition, the commissioner of health shall
5 provide for public comment within thirty days of a submission of any
6 management contract required to be reviewed pursuant to regulation. The
7 trustees may also authorize contracts, including [capitation] RISK-SHAR-
8 ING contracts, for a state university health care facility for the
9 provision of general comprehensive and specialty health care services,
10 directly or through contract with other service providers or entities,
11 including state university employees or entities comprised thereof.
12 Contracts authorized hereunder shall be:

13 (1) consistent with trustee guidelines respecting all terms and condi-
14 tions necessary and appropriate for managed care NETWORKS and other
15 [network,] joint or cooperative arrangements, including GUIDELINES
16 GOVERNING THE AWARDED OF SUCH CONTRACTS, guidelines for comparative
17 review where appropriate, AND GUIDELINES ESTABLISHING CONFLICT-OF-INTER-
18 EST POLICIES;

19 (2) subject to laws and regulations applicable to the state university
20 as a health care provider, including with respect to rates and certif-
21 icates of need; and

22 (3) subject to article fourteen of the civil service law and the
23 applicable provisions of agreements between the state and employee
24 organizations pursuant to article fourteen of the civil service law,
25 PROVIDED, FURTHER, THAT ANY CORPORATION OR OTHER ENTITY CREATED FOR OR
26 BY THE STATE UNIVERSITY OF NEW YORK AND/OR CONTROLLED BY THE STATE
27 UNIVERSITY OF NEW YORK SHALL BE DEFINED AS A CAMPUS FOUNDATION FOR THE
28 PURPOSE OF APPLICABLE PROVISIONS OF SUCH AGREEMENTS.

29 b. (1) Notwithstanding the provisions of PARAGRAPH A OF subdivision
30 [two] FIVE OF THIS SECTION, SUBDIVISIONS TWO AND THREE of section one
31 hundred twelve of the state finance law relating to the dollar threshold
32 requiring the comptroller's approval of contracts [and], subdivision six
33 of section one hundred sixty-three of the state finance law, AND SECTION
34 SIXTY-THREE OF THE EXECUTIVE LAW, authorize contracts for the purchase
35 of goods and services for state university health care facilities WITH-
36 OUT PRIOR APPROVAL BY ANY OTHER STATE OFFICER OR AGENCY:

37 [(1)] (A) for any contract which does not exceed [seventy-five] (I)
38 FIVE HUNDRED thousand dollars IN THE CASE OF SERVICE CONTRACTS LIMITED
39 TO LEGAL, OPERATION REVIEW, PROGRAM REVIEW, STRATEGIC PLANNING, PLANT
40 AND ENGINEERING, ARCHITECTURAL AND TECHNOLOGY ASSESSMENT; AND (II) TWO
41 MILLION FIVE HUNDRED THOUSAND DOLLARS IN THE CASE OF A CONTRACT FOR
42 GOODS; or

43 [(2)] (B) for joint or group purchasing arrangements FOR GOODS which
44 do not exceed [seventy-five] TWO MILLION FIVE HUNDRED thousand dollars
45 [without prior approval by any other state, officer or agency in accord-
46 ance with procedures and requirements found in paragraph a of subdivi-
47 sion five of this section].

48 [(3) contracts] (2) CONTRACTS authorized hereunder shall be subject to
49 article fourteen of the civil service law and the applicable provisions
50 of agreements between the state and employee organizations pursuant to
51 article fourteen of the civil service law, PROVIDED, FURTHER, THAT ANY
52 CORPORATION OR OTHER ENTITY CREATED FOR OR BY THE STATE UNIVERSITY OF
53 NEW YORK AND/OR CONTROLLED BY THE STATE UNIVERSITY OF NEW YORK SHALL BE
54 DEFINED AS A CAMPUS FOUNDATION FOR THE PURPOSE OF APPLICABLE PROVISIONS
55 OF SUCH AGREEMENTS, AND SHALL BE CONSISTENT WITH TRUSTEE GUIDELINES

1 GOVERNING THE AWARDING OF SUCH CONTRACTS, COMPARATIVE REVIEW WHERE
2 APPROPRIATE, AND CONFLICT-OF-INTEREST POLICIES.

3 The trustees are authorized to negotiate annually with the state comp-
4 troller increases in the aforementioned dollar limits.

5 NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF ARTICLE FOUR-C OF THE
6 ECONOMIC DEVELOPMENT LAW, PROCUREMENT CONTRACTS FOR THE PURCHASE OF
7 GOODS AND SERVICES AND FOR JOINT OR GROUP PURCHASING ARRANGEMENTS FOR
8 STATE UNIVERSITY HEALTH CARE FACILITIES IN AN AMOUNT NOT EXCEEDING THE
9 AMOUNTS SET FORTH IN CLAUSES (A) AND (B) OF SUBPARAGRAPH ONE OF THIS
10 PARAGRAPH, OR THE DOLLAR LIMIT INCREASES NEGOTIATED ANNUALLY BY THE
11 TRUSTEES AND THE STATE COMPTROLLER, SHALL NOT BE SUBJECT TO THE
12 PROVISIONS OF SUCH ARTICLE.

13 NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED SIXTY-TWO OF THE
14 STATE FINANCE LAW, STATE UNIVERSITY HEALTH CARE FACILITIES SHALL NOT BE
15 REQUIRED TO PURCHASE GOODS OR SERVICES FROM PREFERRED SOURCES.

16 c. [Authorize] NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION SIX OF
17 THIS SECTION, SUBDIVISIONS TWO AND THREE OF SECTION ONE HUNDRED TWELVE
18 OF THE STATE FINANCE LAW, SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-
19 THREE OF THE STATE FINANCE LAW, AND SECTION SIXTY-THREE OF THE EXECUTIVE
20 LAW, AUTHORIZE contracts for the acquisition BY STATE UNIVERSITY HEALTH
21 CARE FACILITIES OF FACILITIES SUITABLE FOR THE DELIVERY OF HEALTH CARE
22 SERVICES, by purchase, lease, sublease, transfer of jurisdiction or
23 otherwise[, of facilities suitable for the delivery of health care
24 services] and for the construction, repair, maintenance, equipping,
25 rehabilitation or improvement thereof. SUCH FACILITIES MAY BE ACQUIRED
26 IN WHOLE OR IN PART BY STATE UNIVERSITY HEALTH CARE FACILITIES, EITHER
27 DIRECTLY OR THROUGH OWNERSHIP IN A JOINT OR COOPERATIVE ARRANGEMENT
28 AUTHORIZED BY PARAGRAPH A OF THIS SUBDIVISION. Such contracts FOR FACIL-
29 ITIES shall be [subject to approval by the attorney general as to form
30 and by the director of the budget and the state comptroller] EXECUTED
31 UTILIZING STANDARD FORMS APPROVED IN ADVANCE BY THE ATTORNEY GENERAL,
32 AND SHALL BE SUBJECT TO APPROVAL BY THE DIRECTOR OF THE BUDGET AND THE
33 STATE COMPTROLLER WHEN THE AMOUNTS OF SUCH CONTRACTS EXCEED THE DOLLAR
34 THRESHOLDS SET FORTH IN OR ESTABLISHED PURSUANT TO PARAGRAPH B OF THIS
35 SUBDIVISION, AND SHALL BE CONSISTENT WITH TRUSTEE GUIDELINES GOVERNING
36 THE AWARDING OF SUCH CONTRACTS, INCLUDING GUIDELINES REQUIRING COMPAR-
37 ATIVE REVIEW WHERE APPROPRIATE AND ESTABLISHING CONFLICT OF INTEREST
38 POLICIES. Contracts under this paragraph shall be funded from any
39 moneys lawfully available for the expenses of the STATE UNIVERSITY
40 health care facilities.

41 D. CONTRACTS UNDER THIS SUBDIVISION, INCLUDING LEASES, SHALL NOT BE
42 SUBJECT TO THE DOLLAR THRESHOLD OR PUBLIC NOTICE AND COMPETITIVE BIDDING
43 PROVISIONS OF SUBDIVISION FOUR OF SECTION SEVENTY-THREE OF THE PUBLIC
44 OFFICERS LAW, OR TO THE PROVISIONS OF SECTION SEVENTY-FOUR OF SUCH LAW.

45 E. AT LEAST TWO WEEKS PRIOR TO THE EXECUTION OF A CONTRACT OR THE
46 ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE AWARD OF A CONTRACT, AS THE
47 CASE MAY BE, PURSUANT TO ITEM (I) OF CLAUSE (A) OF SUBPARAGRAPH ONE OF
48 PARAGRAPH B OF THIS SUBDIVISION, OR OF A CONTRACT FOR SERVICES PURSUANT
49 TO ITEM (I) OF CLAUSE (A) OF SUBPARAGRAPH ONE OF PARAGRAPH B OF THIS
50 SUBDIVISION, THE CHIEF EXECUTIVE OFFICER OF A HEALTH CARE FACILITY SHALL
51 PROVIDE TO ANY EMPLOYEE ORGANIZATION THAT REPRESENTS HEALTH CARE FACILI-
52 TIES EMPLOYEES NOTICE OF THE PROPOSED CONTRACT, TOGETHER WITH A
53 DESCRIPTION OF THE NATURE AND TERMS AND CONDITIONS OF THE PROPOSED
54 CONTRACT, AND ITS ANTICIPATED IMPACT, IF ANY, ON EMPLOYEES REPRESENTED
55 BY SUCH EMPLOYEE ORGANIZATION. NOTICE PURSUANT TO THIS SUBDIVISION MAY,
56 WHERE APPROPRIATE, BE CONDITIONED UPON EXECUTION OF A CONFIDENTIALITY

1 AGREEMENT BY THE EMPLOYEE ORGANIZATION. UPON WRITTEN CERTIFICATION FROM
2 THE EMPLOYEE ORGANIZATION TO THE CHIEF EXECUTIVE OF A HEALTH CARE FACIL-
3 ITY THAT THE PROPOSED CONTRACT MAY TRIGGER THE PROVISIONS OF SECTION TEN
4 OF CHAPTER THREE HUNDRED SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED
5 NINETY-EIGHT, OR OF A COLLECTIVE BARGAINING AGREEMENT REFERENCED THERE-
6 UNDER, EXECUTION OF THE CONTRACT, OR ISSUANCE OF A REQUEST FOR
7 PROPOSALS, SHALL BE DEFERRED FOR A PERIOD OF TWO ADDITIONAL WEEKS IN
8 ORDER TO ALLOW THE EMPLOYEE ORGANIZATION TO INVOKE ANY RIGHTS OR REME-
9 DIES IT MAY HAVE PURSUANT TO SECTION TEN OF CHAPTER THREE HUNDRED
10 SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-EIGHT, OR PURSUANT TO
11 A COLLECTIVE BARGAINING AGREEMENT REFERENCED THEREUNDER. THE PROVISIONS
12 OF THIS PARAGRAPH SHALL BE SUBJECT TO ARTICLE FOURTEEN OF THE CIVIL
13 SERVICE LAW AND THE APPLICABLE PROVISIONS OF ANY AGREEMENT BETWEEN THE
14 STATE AND ANY EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THE
15 CIVIL SERVICE LAW.

16 20. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTION EIGHT OF THE
17 COURT OF CLAIMS ACT, SUBDIVISION TEN OF THIS SECTION OR ANY OTHER
18 PROVISION OF LAW, A STATE UNIVERSITY HEALTH CARE FACILITY MAY INCLUDE IN
19 A CONTRACT AUTHORIZED BY PARAGRAPH A OF SUBDIVISION SIXTEEN OF THIS
20 SECTION, OTHER THAN A CONTRACT WITH STATE EMPLOYEES RELATING TO TERMS
21 AND CONDITIONS OF THEIR EMPLOYMENT, A PROVISION THAT SOME OR ALL
22 DISPUTES ARISING UNDER OR RELATED TO SUCH CONTRACT SHALL BE RESOLVED BY
23 BINDING ARBITRATION IN ACCORDANCE WITH THE RULES OF A NATIONALLY-RECOG-
24 NIZED ARBITRATION ASSOCIATION.

25 S 4. Section 8 of chapter 363 of the laws of 1998, amending the educa-
26 tion law relating to state university health care services and facili-
27 ties, is amended to read as follows:

28 S 8. 1. Nothing contained in the public officers law or in any other
29 law, rule or regulation, shall be construed or applied to: (A) prohibit
30 state university officers and employees from [(i)] engaging in activ-
31 ities for which no compensation is paid as designees of the state
32 university of New York in managed care networks or other joint and coop-
33 erative programs and arrangements including serving as designees of the
34 state university as directors on boards or other governing bodies of
35 corporations or other entities which may be under contract with state
36 university pursuant to subdivision 16 of section 355 of the education
37 law; or [(ii)] (B) PROHIBIT STATE UNIVERSITY OFFICERS AND EMPLOYEES
38 FROM, OR PRESCRIBE THE REQUIREMENTS FOR, entering into contracts INCLUD-
39 ING, BUT NOT LIMITED TO, LEASES, agreements or other arrangements with
40 state university directly, or through professional corporations or other
41 entities organized or operated by such officers and employees for the
42 delivery of health care services for compensation in furtherance of
43 subdivision 16 of section 355 of the education law; provided, however,
44 that any such contracts, agreements or other arrangements, including any
45 compensation to such officers and employees, shall be subject to article
46 14 of the civil service law and the applicable provisions of any agree-
47 ment between the state and any employee organization pursuant to article
48 14 of the civil service law, PROVIDED, FURTHER, THAT ANY CORPORATION OR
49 OTHER ENTITY CREATED FOR OR BY THE STATE UNIVERSITY OF NEW YORK AND/OR
50 CONTROLLED BY THE STATE UNIVERSITY OF NEW YORK SHALL BE DEFINED AS A
51 CAMPUS FOUNDATION FOR THE PURPOSE OF APPLICABLE PROVISIONS OF SUCH
52 AGREEMENTS and policies and guidelines of the state university board of
53 trustees and provided, further, that such state university officers and
54 employees shall continue to be subject to all appropriate financial
55 disclosure and reporting requirements as defined in section 73-a of the
56 public officers law.

1 2. NOTHING IN PARAGRAPH B OR C OF SUBDIVISION 3 OF SECTION 74 OF THE
2 PUBLIC OFFICERS LAW SHALL PROHIBIT STATE UNIVERSITY OFFICERS AND EMPLOY-
3 EES WHO SERVE AS DESIGNEES OF THE STATE UNIVERSITY ON BOARDS OR OTHER
4 GOVERNING BODIES OF CORPORATIONS OR OTHER ENTITIES WHICH MAY BE UNDER
5 CONTRACT WITH THE STATE UNIVERSITY OR OF WHICH THE STATE UNIVERSITY MAY
6 BE A MEMBER, PARTNER, JOINT VENTURER OR SHAREHOLDER PURSUANT TO SUBDIVI-
7 SION 16 OF SECTION 355 OF THE EDUCATION LAW FROM DISCLOSING CONFIDENTIAL
8 INFORMATION GAINED IN THE COURSE OF THEIR DUTIES INSOFAR AS SUCH INFOR-
9 MATION RELATES DIRECTLY TO THE STATE UNIVERSITY'S PARTICIPATION IN
10 CONTRACTS OR IN NETWORKS AND OTHER JOINT AND COOPERATIVE ARRANGEMENTS
11 AUTHORIZED BY SUCH SUBDIVISION.

12 3. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN SECTIONS 353, 354
13 AND 355 OF THE EDUCATION LAW, OR THE PROVISIONS OF ANY OTHER LAW, THE
14 STATE UNIVERSITY TRUSTEES MAY DELEGATE TO THE PRESIDENTS OF THE HEALTH
15 SCIENCES CENTERS AT BUFFALO AND STONY BROOK, TO THE PRESIDENTS OF THE
16 HEALTH SCIENCES CENTERS AT BROOKLYN AND SYRACUSE, AND TO THE PRESIDENT
17 OF THE COLLEGE OF OPTOMETRY, OR TO THE CHIEF EXECUTIVE OFFICER OF THE
18 STATE UNIVERSITY HEALTH CARE FACILITIES AT EACH SUCH LOCALE, AUTHORITY
19 TO APPOINT AS DIRECTORS ON A BOARD OF A CORPORATION OR AS MEMBERS OF A
20 GOVERNING BODY OF ANOTHER ENTITY WHICH GOVERNS A NETWORK OR OTHER JOINT
21 OR COOPERATIVE ARRANGEMENT AUTHORIZED UNDER SUBDIVISION 16 OF SECTION
22 355 OF THE EDUCATION LAW INDIVIDUALS WHO WILL SERVE AS DESIGNEES OF SUCH
23 STATE UNIVERSITY HEALTH CARE FACILITY. SUCH DESIGNEES SHALL NOT INCLUDE
24 ANY ELECTED OFFICIALS OR TRUSTEES OF THE STATE UNIVERSITY.

25 S 5. Confidential information gained by state university officers and
26 employees while serving as designees of the state university on boards
27 or other governing bodies of corporations or other entities which may be
28 under contract with the state university or of which the state universi-
29 ty may be a member, partner, joint venturer or shareholder pursuant to
30 subdivision 16 of section 355 of the education law shall not be consid-
31 ered a "record" as defined in subdivision 4 of section 86 of the public
32 officers law.

33 S 6. Severability clause. If any clause, sentence, paragraph, subdi-
34 vision, section or part of this act shall be adjudged by any court of
35 competent jurisdiction to be invalid, such judgment shall not affect,
36 impair, or invalidate the remainder thereof, but shall be confined in
37 its operation to the clause, sentence, paragraph, subdivision, section
38 or part thereof directly involved in the controversy in which such judg-
39 ment shall have been rendered. It is hereby declared to be the intent of
40 the legislature that this act would have been enacted even if such
41 invalid provisions had not been included therein.

42 S 7. This act shall take effect immediately and shall expire and be
43 deemed repealed April 1, 2012, provided that any contracts entered into
44 prior to the expiration and repeal of this act shall continue in full
45 force and effect and continue to be subject to the provisions of this
46 act.