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

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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:

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

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

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

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

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

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

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

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

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

(1) consistent with trustee guidelines respecting all terms and conditions necessary and appropriate for managed care NETWORKS and other [network,] joint or cooperative arrangements, including GUIDELINES GOVERNING THE AWARDING OF SUCH CONTRACTS, guidelines for comparative review where appropriate, AND GUIDELINES ESTABLISHING CONFLICT-OF-INTEREST POLICIES;

(2) subject to laws and regulations applicable to the state university as a health care provider, including with respect to rates and certificates of need; and

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

b. (1) Notwithstanding the provisions of PARAGRAPH A OF subdivision [two] FIVE OF THIS SECTION, SUBDIVISIONS TWO AND THREE of section one hundred twelve of the state finance law relating to the dollar threshold requiring the comptroller's approval of contracts [and], subdivision six of section one hundred sixty-three of the state finance law, AND SECTION SIXTY-THREE OF THE EXECUTIVE LAW, authorize contracts for the purchase of goods and services for state university health care facilities WITHOUT PRIOR APPROVAL BY ANY OTHER STATE OFFICER OR AGENCY:

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

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

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

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

The trustees are authorized to negotiate annually with the state comptroller increases in the aforementioned dollar limits.

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

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

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

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

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

AGREEMENT BY THE EMPLOYEE ORGANIZATION. UPON WRITTEN CERTIFICATION FROM THE EMPLOYEE ORGANIZATION TO THE CHIEF EXECUTIVE OF A HEALTH CARE FACILITY THAT THE PROPOSED CONTRACT MAY TRIGGER THE PROVISIONS OF SECTION TEN OF CHAPTER THREE HUNDRED SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-EIGHT, OR OF A COLLECTIVE BARGAINING AGREEMENT REFERENCED THEREUNDER, EXECUTION OF THE CONTRACT, OR ISSUANCE OF A REQUEST FOR PROPOSALS, SHALL BE DEFERRED FOR A PERIOD OF TWO ADDITIONAL WEEKS IN ORDER TO ALLOW THE EMPLOYEE ORGANIZATION TO INVOKE ANY RIGHTS OR REMEDIES IT MAY HAVE PURSUANT TO SECTION TEN OF CHAPTER THREE HUNDRED SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED NINETY-EIGHT, OR PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT REFERENCED THEREUNDER. THE PROVISIONS OF THIS PARAGRAPH SHALL BE SUBJECT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW AND THE APPLICABLE PROVISIONS OF ANY AGREEMENT BETWEEN THE STATE AND ANY EMPLOYEE ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

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

S 4. Section 8 of chapter 363 of the laws of 1998, amending the education law relating to state university health care services and facilities, is amended to read as follows:

S 8. 1. Nothing contained in the public officers law or in any other law, rule or regulation, shall be construed or applied to: (A) prohibit state university officers and employees from [(i)] engaging in activities for which no compensation is paid as designees of the state university of New York in managed care networks or other joint and cooperative programs and arrangements including serving as designees of the state university as directors on boards or other governing bodies of corporations or other entities which may be under contract with state university pursuant to subdivision 16 of section 355 of the education law; or [(ii)] (B) PROHIBIT STATE UNIVERSITY OFFICERS AND EMPLOYEES FROM, OR PRESCRIBE THE REQUIREMENTS FOR, entering into contracts INCLUDING, BUT NOT LIMITED TO, LEASES, agreements or other arrangements with state university directly, or through professional corporations or other entities organized or operated by such officers and employees for the delivery of health care services for compensation in furtherance of subdivision 16 of section 355 of the education law; provided, however, that any such contracts, agreements or other arrangements, including any compensation to such officers and employees, shall be subject to article 14 of the civil service law and the applicable provisions of any agreement between the state and any employee organization pursuant to article 14 of the civil service law, PROVIDED, FURTHER, THAT ANY CORPORATION OR OTHER ENTITY CREATED FOR OR BY THE STATE UNIVERSITY OF NEW YORK AND/OR CONTROLLED BY THE STATE UNIVERSITY OF NEW YORK SHALL BE DEFINED AS A CAMPUS FOUNDATION FOR THE PURPOSE OF APPLICABLE PROVISIONS OF SUCH AGREEMENTS and policies and guidelines of the state university board of trustees and provided, further, that such state university officers and employees shall continue to be subject to all appropriate financial disclosure and reporting requirements as defined in section 73-a of the public officers law.

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

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

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

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

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