

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, JACOBS, TOWNS, PAULIN, HOOPER --
Multi-Sponsored by -- M. of A. BRENNAN, CLARK, COOK, CYMBROWITZ,
DESTITO, DINOWITZ, ENGLEBRIGHT, FARRELL, GLICK, LIFTON, PHEFFER,
P. RIVERA, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to hospital estab-
lishment

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

1 Section 1. Subdivision 1 of section 2801-a of the public health law,
2 as amended by section 57 of part A of chapter 58 of the laws of 2010, is
3 amended to read as follows:

4 1. (A) No hospital, as defined in this article, shall be established
5 except with the written approval of the public health and health plan-
6 ning council. No certificate of incorporation of a business membership
7 or not-for-profit corporation shall hereafter be filed which includes
8 among its corporate purposes or powers the establishment or operation of
9 any hospital, as defined in this article, or the solicitation of
10 contributions for any such purpose, or two or more of such purposes,
11 except with the written approval of the public health and health plan-
12 ning council, and when otherwise required by law of a justice of the
13 supreme court, endorsed on or annexed to the certificate of incorpo-
14 ration. No articles of organization of a limited liability company
15 established pursuant to the New York limited liability company law which
16 includes among its powers or purposes the establishment or operation of
17 any hospital as defined in this article, shall be filed with the depart-
18 ment of state except upon the approval of the public health and health
19 planning council.

20 (B) FOR THE PURPOSES OF THIS SUBDIVISION, A PERSON (OTHER THAN A
21 PERSON ACTING SOLELY AS A MEMBER OF THE GOVERNING BODY OF A HOSPITAL OR
22 AN EMPLOYEE OF A HOSPITAL), PARTNERSHIP, COMPANY, STOCKHOLDER, MEMBER,

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

1 CORPORATION OR OTHER ENTITY SHALL BE DEEMED TO HAVE AUTHORITY TO OPERATE
2 A HOSPITAL IF IT HAS OR SHARES DECISION-MAKING AUTHORITY OVER ANY OF THE
3 FOLLOWING:

4 (I) APPOINTMENT OR DISMISSAL OF A HOSPITAL'S MANAGEMENT-LEVEL EMPLOY-
5 EES OR MEDICAL STAFF;

6 (II) ELECTION OR REMOVAL OF MEMBERS OF THE GOVERNING BOARD OR CORPO-
7 RATE OFFICERS OF THE HOSPITAL;

8 (III) APPROVAL OF THE HOSPITAL'S OPERATING OR CAPITAL BUDGETS;

9 (IV) ADOPTION, APPROVAL OR ENFORCEMENT OF THE HOSPITAL'S OPERATING
10 POLICIES OR PROCEDURES, OR THE MISSION AND PHILOSOPHY OF THE HOSPITAL;

11 (V) APPROVAL OF APPLICATIONS FOR CONSTRUCTION OR ESTABLISHMENT
12 APPROVAL FILED BY OR ON BEHALF OF THE HOSPITAL;

13 (VI) APPROVAL OF HOSPITAL DEBT NECESSARY TO FINANCE THE COST OF
14 COMPLIANCE WITH OPERATIONAL OR PHYSICAL PLANT STANDARDS REQUIRED BY LAW;

15 (VII) APPROVAL OF CONTRACTS FOR MANAGEMENT OF THE HOSPITAL OR FOR
16 CLINICAL SERVICES AT THE HOSPITAL; AND

17 (VIII) APPROVAL OF SETTLEMENTS OF ADMINISTRATIVE PROCEEDINGS OR LITI-
18 GATION TO WHICH THE HOSPITAL IS PARTY THAT EXCEED THE HOSPITAL'S INSUR-
19 ANCE COVERAGE OR COVERAGE BY ANY APPLICABLE SELF-INSURANCE FUND.

20 (C) ANY PERSON, PARTNERSHIP, COMPANY, STOCKHOLDER, MEMBER, OR CORPO-
21 RATION, OR OTHER ENTITY WITH AUTHORITY TO OPERATE A HOSPITAL SHALL BE
22 SUBJECT TO APPROVAL FOR ESTABLISHMENT BY THE PUBLIC HEALTH AND HEALTH
23 PLANNING COUNCIL UNDER THIS SECTION, UNLESS OTHERWISE AUTHORIZED BY THIS
24 CHAPTER TO OPERATE A HOSPITAL WITHOUT SUCH ESTABLISHMENT APPROVAL.

25 (D) ANY ASSIGNMENT OR DELEGATION OF ANY AUTHORITY TO OPERATE A HOSPI-
26 TAL, AS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE SUBJECT
27 TO APPROVAL FOR ESTABLISHMENT BY THE PUBLIC HEALTH AND HEALTH PLANNING
28 COUNCIL UNDER THIS SECTION, EXCEPT FOR:

29 (I) ASSIGNMENT OR DELEGATION BY THE GOVERNING BODY OF THE HOSPITAL TO
30 A COMMITTEE OF THE GOVERNING BODY, A CORPORATE OFFICER OR AN EMPLOYEE OF
31 THE HOSPITAL; OR

32 (II) A MANAGEMENT CONTRACT UNDER WHICH A GOVERNING BODY CONTRACTS WITH
33 AN ENTITY TO MANAGE DAY-TO-DAY OPERATIONS OF A HOSPITAL OR A PORTION OR
34 SERVICE THEREOF, PROVIDED THAT SUCH A MANAGEMENT CONTRACT SHALL REQUIRE
35 THE WRITTEN APPROVAL OF THE COMMISSIONER BEFORE IT MAY TAKE EFFECT.

36 (E) ANY AMENDMENT TO A MISSION STATEMENT OF A HOSPITAL UNDER SECTION
37 TWENTY-EIGHT HUNDRED THREE-L OF THIS ARTICLE SHALL BE SUBJECT TO REVIEW
38 BY THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL PRIOR TO ITS ADOPTION.
39 THE PUBLIC HEALTH COUNCIL SHALL ISSUE AN ADVISORY DETERMINATION DESCRIB-
40 ING THE IMPACT OF SUCH AMENDMENT ON PUBLIC NEED FOR AND THE AVAILABILITY
41 OF HEALTH SERVICES IN ACCORDANCE WITH THIS SECTION.

42 S 2. Subdivision 1 of section 2803-1 of the public health law, as
43 amended by chapter 639 of the laws of 1996, is amended to read as
44 follows:

45 1. The governing body of a voluntary non-profit general hospital must
46 issue an organizational mission statement identifying at a minimum THE
47 MISSION AND PHILOSOPHY OF THE HOSPITAL AS IT RELATES TO THE PROVISION OF
48 ALL HEALTH CARE SERVICES, the populations and communities served by the
49 hospital and the hospital's commitment to meeting the health care needs
50 of the community.

51 S 3. Subdivision 4 of section 2803-1 of the public health law, as
52 amended by chapter 639 of the laws of 1996, is amended to read as
53 follows:

54 4. The governing body shall file with the commissioner its mission
55 statement, its annual implementation report, and at least every three
56 years a report detailing amendments to the statement and reflecting

1 changes in the hospital's operational and financial commitment to meet-
2 ing the health care needs of the community, providing charity care
3 services, and improving access to health care services by the under-
4 served. ANY AMENDMENT TO A MISSION STATEMENT AS IT RELATES TO THE
5 PROVISION OR AVAILABILITY OF HEALTH CARE SERVICES PROVIDED BY A HOSPITAL
6 SHALL BE FILED WITH THE COMMISSIONER AND THE PUBLIC HEALTH AND HEALTH
7 PLANNING COUNCIL AT LEAST NINETY DAYS PRIOR TO ITS ADOPTION BY THE
8 GOVERNING BODY. THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL SHALL
9 REVIEW SUCH AMENDMENT AND ITS IMPACT ON PUBLIC NEED FOR AND THE AVAIL-
10 ABILITY OF HEALTH SERVICES, AND, PURSUANT TO SECTION TWENTY-EIGHT
11 HUNDRED ONE-A OF THIS ARTICLE, SHALL ISSUE AN ADVISORY DETERMINATION
12 WITH RESPECT TO SUCH IMPACT.

13 S 4. This act shall take effect immediately.