

5092

2013-2014 Regular Sessions

I N S E N A T E

May 8, 2013

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.

LBD10580-01-3

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

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

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

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

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

39 (A) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTION  
40 SEVEN HUNDRED FIFTEEN OR SEVEN HUNDRED SEVENTEEN OF THE BUSINESS CORPO-  
41 RATION LAW; AND

42 (B) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS  
43 AND FACTORS AS PROVIDED IN SECTION SEVEN HUNDRED SEVENTEEN OF THE BUSI-  
44 NESS CORPORATION LAW.

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

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

56 S 2. This act shall take effect immediately.