

5254

2015-2016 Regular Sessions

I N A S S E M B L Y

February 13, 2015

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the
Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to authorizing
the Erie county medical center corporation to enter into agreements
for the creation and operation of a health care delivery system
network

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

1 Section 1. Section 3626 of the public authorities law is amended by
2 adding a new subdivision 8 to read as follows:
3 8. AS A FREE-STANDING PUBLIC HEALTH CARE PROVIDER, THE CORPORATION IS
4 AT A COMPETITIVE DISADVANTAGE IN THE CURRENT AND EMERGING HEALTH CARE
5 ENVIRONMENT, YET IT CANNOT BECOME PART OF A LARGER SYSTEM OF CORPORATE
6 ENTITIES WHILE MAINTAINING ITS PUBLIC STATUS. SIGNIFICANT INVESTMENTS IN
7 THE PUBLIC ASSETS OF THE CORPORATION AND ITS EFFORTS TO PROVIDE HIGH
8 QUALITY HEALTH CARE SERVICES TO MEDICALLY UNDERSERVED POPULATIONS ARE
9 JEOPARDIZED BY THE CORPORATION'S INABILITY TO COMPETE ON ITS OWN AND BY
10 POTENTIAL LIMITS ON ITS ABILITY TO COLLABORATE WITH OTHER PUBLIC AND
11 PRIVATE PROVIDERS, ENTITIES AND INDIVIDUALS. THE STATE FINDS THAT THE
12 BENEFITS OF COLLABORATION BY THE CORPORATION OUTWEIGH ANY ADVERSE IMPACT
13 ON COMPETITION. THE BENEFITS OF THE CORPORATION'S COLLABORATIVE EFFORTS
14 INCLUDE PRESERVING AND EXPANDING NEEDED HEALTH CARE SERVICES IN ITS
15 PRIMARY SERVICE AREA; CONSOLIDATING UNNEEDED OR DUPLICATIVE HEALTH CARE
16 SERVICES; ENHANCING THE QUALITY OF, AND EXPANDING ACCESS TO, HEALTH CARE
17 DELIVERED TO MEDICALLY UNDERSERVED POPULATIONS; LOWERING COSTS AND
18 IMPROVING THE EFFICIENCY OF THE HEALTH CARE SERVICES IT DELIVERS; AND
19 ACHIEVING IMPROVED REIMBURSEMENT FROM NON-GOVERNMENTAL PAYORS. BASED ON
20 THE FINDINGS CONTAINED IN THIS SECTION, THE STATE HEREBY AFFIRMATIVELY
21 EXPRESS A POLICY TO ALLOW THE CORPORATION TO ENGAGE IN COLLABORATIVE
22 ACTIVITIES CONSISTENT WITH ITS HEALTH CARE PURPOSES, NOTWITHSTANDING
23 THAT THOSE COLLABORATIONS MAY HAVE THE EFFECT OF DISPLACING COMPETITION

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

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1 IN THE PROVISION OF HOSPITAL, PHYSICIAN OR OTHER HEALTH CARE-RELATED
2 SERVICES. WITH RESPECT TO THE COLLABORATIVE ACTIVITIES CONTEMPLATED IN
3 THIS SECTION AND IN SUBDIVISION TEN OF SECTION THIRTY-SIX HUNDRED THIR-
4 TY-ONE OF THIS TITLE, THE CORPORATION AND THE PUBLIC OR PRIVATE ENTITIES
5 AND INDIVIDUALS WITH WHICH IT COLLABORATES SHALL BE IMMUNIZED FROM
6 LIABILITY UNDER THE FEDERAL AND STATE ANTITRUST LAWS.

7 S 2. Section 3631 of the public authorities law is amended by adding a
8 new subdivision 10 to read as follows:

9 10. (A) IN CARRYING OUT ITS HEALTH CARE PURPOSES THROUGH THE EXERCISE
10 OF THE SPECIAL POWERS EXERCISED PURSUANT TO THIS SECTION AND THE GENERAL
11 POWERS EXERCISED PURSUANT TO SECTION THIRTY-SIX HUNDRED THIRTY OF THIS
12 TITLE, THE CORPORATION IS AUTHORIZED TO ENGAGE IN ARRANGEMENTS,
13 CONTRACTS, INFORMATION SHARING AND OTHER COLLABORATIVE ACTIVITIES WITH
14 PUBLIC OR PRIVATE ENTITIES AND INDIVIDUALS IRRESPECTIVE OF THE COMPET-
15 ITIVE CONSEQUENCES OF THESE ACTIVITIES AND NOTWITHSTANDING THAT THESE
16 ACTIVITIES MAY HAVE THE EFFECT OF DISPLACING COMPETITION IN THE
17 PROVISION OF HOSPITAL, PHYSICIAN, OR OTHER HEALTH CARE-RELATED SERVICES.
18 THESE COLLABORATIVE ACTIVITIES MAY INCLUDE WITHOUT LIMITATION: JOINT
19 VENTURES; JOINT NEGOTIATIONS WITH PHYSICIANS, HOSPITALS AND PAYORS,
20 WHETHER SUCH NEGOTIATIONS RESULT IN SEPARATE OR COMBINED AGREEMENTS;
21 LEASES; AND/OR AGREEMENTS WHICH INVOLVE DELIVERY SYSTEM NETWORK CREATION
22 AND OPERATION, PROVIDED THAT, THE CORPORATION SHALL EXERCISE STATE OVER-
23 SIGHT BY DETERMINING WHETHER PARTICULAR COLLABORATIONS WITH PUBLIC OR
24 PRIVATE ENTITIES AND INDIVIDUALS FURTHER THE INTERESTS OF THE STATE AS
25 SET FORTH IN THIS SUBDIVISION AND IN SUBDIVISION EIGHT OF SECTION THIR-
26 TY-SIX HUNDRED TWENTY-SIX OF THIS TITLE. IN UNDERTAKING THESES COLLABO-
27 RATIVE ACTIVITIES, THE CORPORATION AND THE PUBLIC OR PRIVATE ENTITIES
28 AND INDIVIDUALS WITH WHICH IT COLLABORATES SHALL BE IMMUNIZED FROM
29 LIABILITY UNDER THE FEDERAL AND STATE ANTITRUST LAWS.

30 (B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE CORPORATION
31 AND ITS COLLABORATORS SHALL REMAIN SUBJECT TO GENERALLY APPLICABLE
32 PROVISIONS OF THE PUBLIC HEALTH LAW AND REGULATIONS THEREUNDER. IN ADDI-
33 TION, THE CORPORATION SHALL FILE AN ANNUAL REPORT WITH THE STATE DEPART-
34 MENT OF HEALTH, AS ADDITIONAL STATE OVERSIGHT, CONCERNING THE IMPACT OF
35 THE COLLABORATIONS AUTHORIZED UNDER THIS SECTION ON THE ADVANTAGES AND
36 DISADVANTAGES IDENTIFIED BY THE DEPARTMENT OF HEALTH IN ITS REQUEST FOR
37 APPLICATIONS FOR HEAL NY PHASE 21, ENTITLED "RESTRUCTURING INITIATIVES
38 IN MEDICAID REDESIGN," AND CONCERNING THE IMPACT ON REIMBURSEMENT TO THE
39 CORPORATION'S FACILITIES BY MANAGED CARE ORGANIZATIONS WITH RESPECT TO
40 COMMERCIAL PLAN MEMBERS, INCLUDING THE EXTENT TO WHICH RATES HAVE BEEN
41 NEGOTIATED THAT MORE FAIRLY COMPENSATE THE CORPORATION'S FACILITIES FOR
42 THE COST OF PROVIDING SERVICES TO COMMERCIAL ENROLLEES, WITHOUT
43 CROSS-SUBSIDY FROM MEDICAID OR OTHER GOVERNMENTAL PROGRAMS. IN RESPONSE
44 TO THE REPORT, THE DEPARTMENT OF HEALTH SHALL HAVE SIXTY DAYS AFTER THE
45 REPORT HAS BEEN FILED TO REQUEST, IN WRITING, THAT THE CORPORATION MAKE
46 CHANGES TO ITS POLICIES TO ENSURE THAT THE COLLABORATIONS AUTHORIZED
47 UNDER THIS SECTION FURTHER THE INTERESTS OF THE STATE.

48 S 3. This act shall take effect immediately.