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

4790

2015-2016 Regular Sessions

I N S E N A T E

April 17, 2015

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 and the public authorities law, in relation to establishing a private equity pilot program

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

Section 1. Section 2801-a of the public health law is amended by adding a new subdivision 17 to read as follows:

17. (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH A PILOT PROGRAM TO ASSIST IN RESTRUCTURING HEALTH CARE DELIVERY SYSTEMS BY ALLOWING FOR INCREASED CAPITAL INVESTMENT. PURSUANT TO THE PILOT PROGRAM, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL SHALL APPROVE THE ESTABLISHMENT, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (F), (G) AND (H) OF THIS SUBDIVISION AND SUBDIVISION THREE OF THIS SECTION, OF NO MORE THAN TEN BUSINESS CORPORATIONS FORMED UNDER THE BUSINESS CORPORATION LAW. SUCH BUSINESS CORPORATIONS SHALL AFFILIATE, THE EXTENT OF THE AFFILIATION TO BE DETERMINED BY THE COMMISSIONER, WITH AT LEAST ONE ACADEMIC MEDICAL INSTITUTION OR TEACHING HOSPITAL APPROVED BY THE COMMISSIONER. A BUSINESS CORPORATION SHALL NOT BE ELIGIBLE TO PARTICIPATE IN THIS PROGRAM IF ANY OF ITS STOCK, OR THAT OF ANY OF ITS DIRECT OR INDIRECT OWNERS, IS OR WILL BE TRADED ON A PUBLIC STOCK EXCHANGE OR ON AN OVER-THE-COUNTER MARKET.

(B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, BUSINESS CORPORATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED ELIGIBLE TO PARTICIPATE IN DEBT FINANCING PROVIDED BY THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK, LOCAL DEVELOPMENT CORPORATIONS AND ECONOMIC DEVELOPMENT CORPORATIONS.

(C) THE FOLLOWING PROVISIONS OF THIS CHAPTER SHALL NOT APPLY TO BUSINESS CORPORATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION: (I) PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION, RELATING TO STOCKHOLDERS, OTHER THAN PRINCIPAL STOCKHOLDERS; (II) PARAGRAPH (C) OF

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

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SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE DISPOSITION OF STOCK OR VOTING RIGHTS; (III) PARAGRAPHS (D) AND (E) OF SUBDIVISION FOUR OF THIS SECTION, RELATING TO THE OWNERSHIP OF STOCK; AND (IV) PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND FOUR OF THIS CHAPTER, RELATING TO THE OWNERSHIP OF STOCK. NOTWITHSTANDING THE FOREGOING, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MAY REQUIRE THE DISCLOSURE OF THE IDENTITY OF STOCKHOLDERS.

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

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

(A) THE ABILITY OF THE BUSINESS CORPORATION TO ACCOMPLISH ITS PURPOSE;

(B) THE SHAREHOLDERS OF THE BUSINESS CORPORATION;

(C) THE EMPLOYEES AND WORKFORCE OF THE HOSPITAL OR HOSPITALS;

(D) THE INTERESTS OF PATIENTS OF THE HOSPITAL OR HOSPITALS;

(E) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH FACILITIES OF THE HOSPITAL OR HOSPITALS ARE LOCATED; AND

(F) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BUSINESS CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE BUSINESS CORPORATION FROM ITS LONG-TERM PLANS.

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

(A) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTION SEVEN HUNDRED FIFTEEN OR SEVEN HUNDRED SEVENTEEN OF THE BUSINESS CORPORATION LAW; AND

(B) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS AND FACTORS AS PROVIDED IN SECTION SEVEN HUNDRED SEVENTEEN OF THE BUSINESS CORPORATION LAW.

(F) WHILE ANY DECISION TO APPROVE A BUSINESS CORPORATION UNDER THIS SECTION MUST WEIGH AND BALANCE A NUMBER OF FACTORS, IN DETERMINING WHETHER TO APPROVE A BUSINESS CORPORATION UNDER THIS SECTION, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, IN CONSULTATION WITH THE COMMISSIONER, SHALL CONSIDER THE EXTENT TO WHICH THE BUSINESS CORPORATION:

(1) PROVIDES FOR EITHER EQUAL OR MAJORITY GOVERNANCE RIGHTS OF THE NOT-FOR-PROFIT HOSPITAL PARTNER, REGARDLESS OF EQUITY STAKES, THROUGH WEIGHTED CLASS VOTING STRUCTURE OR OTHERWISE;

(2) INCORPORATES A REPRESENTATIVE GOVERNANCE MODEL THAT:

(A) CLEARLY DELINEATES AUTHORITY AND RESPONSIBILITY FOR THE HOSPITAL'S OPERATIONS; AND

(B) DEFINES MECHANISMS FOR APPROVAL OF DESIGNATED SHAREHOLDERS OR INVESTORS;

(3) IS INCORPORATED AS A BENEFIT CORPORATION UNDER THE BUSINESS CORPORATION LAW;

(4) COMMITS TO MAINTAINING OR ENHANCING EXISTING LEVELS OF SERVICES, CHARITY CARE AND CORE COMMUNITY BENEFITS;

(5) IDENTIFIES AN ACTIONABLE STRATEGY TO MONITOR AND MAINTAIN OR IMPROVE QUALITY OF CARE;

(6) EXPLAINS THE LEVEL OF CAPITAL COMMITMENT AND THE MECHANISM OR MECHANISMS FOR INFUSING CAPITAL INTO THE NOT-FOR-PROFIT HOSPITAL PARTNER;

(7) EXPLAINS HOW IT WILL RETAIN THE WORKFORCE, EITHER IN EXISTING JOBS OR THROUGH RETRAINING, AND ADDRESSES OBLIGATIONS OWED TO EMPLOYEE BENEFIT PLANS AND PENSIONS;

(8) WILL CREATE A FOUNDATION TO ADDRESS THE PUBLIC HEALTH NEEDS OF THE COMMUNITY; AND

(9) IDENTIFIES HOW PROFIT DISTRIBUTIONS SHALL BE MADE IN A WAY TO ENSURE THAT THE COMMUNITY'S ACCESS TO QUALITY CARE AND CORE COMMUNITY BENEFITS ARE NOT COMPROMISED AND ACCESS TO CAPITAL IS NOT COMPROMISED.

NONE OF THE FOREGOING FACTORS SHALL BE DISPOSITIVE IN THE APPROVAL OR DISAPPROVAL OF THE BUSINESS CORPORATION.

(G) NO BUSINESS CORPORATION SHALL BE APPROVED UNDER THIS SECTION THAT FAILS TO ATTEST THAT IT WILL PROVIDE THE NOT-FOR-PROFIT HOSPITAL PARTNER WITH THE EXCLUSIVE AUTHORITY OVER FUNCTIONS RELATING TO ITS EXEMPT STATUS.

(H) THE BOARD OF DIRECTORS OF A BUSINESS CORPORATION ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED A "GOVERNING BODY" FOR THE PURPOSES OF SECTION TWENTY-EIGHT HUNDRED THREE-L OF THIS ARTICLE AND SHALL COMPLY WITH THE PROVISIONS OF SUCH SECTION, REGARDLESS OF THE CORPORATION'S PROFIT-MAKING STATUS.

(I) A SALE, LEASE, CONVEYANCE, EXCHANGE, TRANSFER, OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE BUSINESS CORPORATION SHALL NOT BE EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY THE COMMISSIONER.

NO SUCH TRANSACTION MAY OCCUR WITHIN THREE YEARS OF THE COMMISSIONER'S APPROVAL OF THE BUSINESS CORPORATION'S PARTICIPATION IN THE DEMONSTRATION PROJECT. IN APPROVING SUCH A TRANSACTION, THE COMMISSIONER SHALL CONSIDER, AMONG OTHER THINGS, WHETHER THE TRANSACTION:

(1) IMPOSES SAFEGUARDS TO PROTECT QUALITY AND ACCESS TO CORE COMMUNITY SERVICES DURING THE TRANSITION TO THE NEW INVESTOR;

(2) REQUIRES THE SUBSEQUENT INVESTOR TO GUARANTEE ALL OBLIGATIONS, INCLUDING THOSE DESCRIBED IN SUBPARAGRAPH SEVEN OF PARAGRAPH (F) OF THIS SUBDIVISION;

(3) WILL MAINTAIN THE HOSPITAL GOVERNANCE STRUCTURE; AND

(4) IMPOSES MINIMUM CAPITALIZATION CRITERIA POST-TRANSACTION.

(J) NO LATER THAN THREE YEARS AFTER THE ESTABLISHMENT OF A BUSINESS CORPORATION UNDER THIS SUBDIVISION, THE COMMISSIONER SHALL PROVIDE THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY WITH A WRITTEN EVALUATION OF THE PILOT PROGRAM. SUCH EVALUATION SHALL ADDRESS THE OVERALL EFFECTIVENESS OF THE PROGRAM IN ALLOWING FOR ACCESS TO CAPITAL INVESTMENT AND THE IMPACT SUCH ACCESS MAY HAVE ON THE QUALITY OF CARE PROVIDED BY HOSPITALS OPERATED BY BUSINESS CORPORATIONS ESTABLISHED UNDER THIS SUBDIVISION.

S 2. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

SUCH BUSINESS CORPORATIONS AS ARE ESTABLISHED PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION TWENTY-EIGHT HUNDRED ONE-A OF THE PUBLIC HEALTH LAW

FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, REHABILITATION AND IMPROVEMENT, OR OTHERWISE PROVIDING, FURNISHING AND EQUIPPING OF A HOSPITAL OR HOSPITALS.

S 3. Subdivision 1 of section 1680 of the public authorities law is amended by adding a new undesignated paragraph to read as follows:

SUCH BUSINESS CORPORATIONS AS ARE ESTABLISHED PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION TWENTY-EIGHT HUNDRED ONE-A OF THE PUBLIC HEALTH LAW FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, REHABILITATION AND IMPROVEMENT, OR OTHERWISE PROVIDING, FURNISHING AND EQUIPPING OF A HOSPITAL OR HOSPITALS.

S 4. This act shall take effect immediately.