

PROGRAM BILL # 16

GOVERNOR'S PROGRAM BILL

2013

MEMORANDUM

AN ACT to amend the public health law, in relation to authorizing the commissioner of health to establish a corporation to organize a network of hospitals in Brooklyn and to amend chapter 56 of the laws of 2013, amending the education law and the public health law, relating to funding to SUNY Downstate Medical Center and directing the restructuring of hospital, in relation to Medicaid funds for delivery system reform incentive payments and Medicaid Redesign Team initiatives

Purpose of Bill:

This bill would authorize the Commissioner of Health ("Commissioner") to establish a corporation for the public purposes of: (1) improving quality of health care in Brooklyn through an integrated network of hospitals and (2) supporting the teaching programs and core academic mission of the State University at New York ("SUNY") Downstate Medical Center.

Summary of Provisions:

Section 1 of the bill would add a new Public Health Law ("PHL") § 2824 to authorize the Commissioner to establish a corporation under the Not-for-Profit Corporations Law that would act as a public hospital for the purpose of coordinating a network of hospitals located in Brooklyn, including SUNY University Hospital of Brooklyn ("Downstate Hospital") and all private hospitals that elect to participate. The corporation's purposes would include:

- improving the overall health of the Brooklyn population;
- promoting the efficient delivery of health care services within the borough;
- negotiating contracts with third party payers;
- assuring opportunities for training medical professionals;
- receiving funds from any source and disbursing funds as appropriate and as permissible under federal law;

- establishing a process to solicit public input to help inform the corporation's activities; and
- conducting such other activities that may be necessary and appropriate to serve the bill's objectives.

The new PHL § 2824 also would authorize the corporation to enter into agreements with participating hospitals, direct the Commissioner to issue operating certificates listing the corporation as a co-operator of each participating hospital, and deem the corporation to be acting as a public hospital. However, the bill would prohibit the corporation from directly providing services and would provide that none of the liabilities or obligations of the participating hospitals would be imposed upon the corporation.

In addition, the new section would establish that it is the State's policy to provide immunity from federal and state antitrust claims for collaborative arrangements among participating hospitals through the active supervision of such arrangements by the corporation.

Section 2 of the bill would amend PHL § 2807(20) to add the corporation to the list of entities that can provide the non-federal share of the inter-governmental transfers ("IGTs") necessary for federal Delivery System Reform Incentive Program ("DSRIP") funds, subject to agreement with the Department of Health.

Section 3 of the bill would amend PHL § 2807(21) to add the corporation to the list of entities that can provide the non-federal share of the IGTs necessary for the use of Medicaid funds to implement Medicaid Redesign Team initiatives.

Section 4 of the bill would amend PHL § 2807(6) to extend flexible procurement provisions for Downstate Hospital beyond academic fiscal year 2013-14.

Section 5 of the bill provides that the bill would take effect immediately, but would sunset at such time as the Commissioner determines that its objectives have been satisfied or six years after enactment, whichever is sooner. At such time, the Commissioner would be required to issue new operating certificates to the participating hospitals that no longer list the corporation as a co-operator.

Existing Law:

PHL § 2801-a provides for establishment of hospitals, which requires the approval of the Public Health and Health Planning Council.

Statement in Support:

The State has a strong interest in the quality, accessibility, efficiency and viability of health care in Brooklyn. The current health care delivery system in Brooklyn is fragmented and ill-equipped to provide the 2.5 million residents of Kings County with consistent and sustainable access to quality care.

At the same time, financial difficulties at SUNY Downstate Medical Center have threatened the viability of SUNY's academic enterprise. SUNY Downstate's medical college educates many physicians who go on to practice in New York City, and maintaining this academic presence is critical to meeting health care needs in Brooklyn over the long term.

To organize an economical and effective response to the challenges of meeting the health care needs of the residents of Kings County and the State of New York, this bill would authorize the Commissioner to establish a corporation that would create a network of Brooklyn hospitals for the purpose of transforming the delivery of health care in the borough. This would promote the vital public purposes of: (1) improving quality of health care through clinical integration and facilities for the benefit of the residents of the State of New York and Kings County, including persons in need of health care services without the ability to pay as required by law; and (2) supporting the teaching programs and core academic mission of SUNY Downstate.

The achievement of these objectives is primarily dependent upon the receipt of federal DSRIP funding, which would be made available through a Section 1115 Medicaid waiver approved by the Centers for Medicare and Medicaid Services. In addition, the corporation would establish a process to solicit public input to help inform its activities.

Hospital participation would include SUNY Downstate Hospital, as indicated in the Downstate Sustainability Plan completed pursuant to L.2013, c.56, part Q, and all private hospitals that elect to participate. Hospitals operated by the New York City Health and Hospitals Corporation ("HHC") would not be eligible to participate, since it is an existing public hospital network, but it is anticipated that the corporation would coordinate with HHC if HHC asked.

Participating hospitals would give the corporation control over certain aspects of their operation in exchange for participating in DSRIP funding, and the corporation would be listed on such hospitals' operating certificates as a "co-operator." However, the corporation is not designed to execute the day-to-day operation of any participating hospital and would not be responsible for any of their liabilities or obligations. This structure would allow the corporation to serve the important governmental functions of promoting a sustainable health care system in Brooklyn and furthering SUNY Downstate's academic mission.

Budget Implications:

This legislation is not anticipated to have any direct fiscal impact to the State, but legislation is necessary to fully implement the SUNY Downstate Sustainability Plan completed pursuant to L.2013, c.56, part Q. Such plan relies on a significant expansion of clinical and academic affiliations with other Brooklyn providers in order to achieve financial stability for Downstate Hospital as well as to preserve the medical school and other health science programs of Downstate Medical Center. DSRIP funding will not have a direct fiscal impact to the State, as it will be allocated by the corporation to participating hospitals pursuant to an approved waiver for the purpose of achieving the transformation of health care in Brooklyn.

Effective Date:

This bill would take effect immediately, but would sunset at such time as the Commissioner determines that its objectives have been satisfied or six years after enactment, whichever is sooner. At such time, the Commissioner would be required to issue new operating certificates to the participating hospitals that no longer list the corporation as a co-operator.