

# Proposed Legislation: ECMC-Kaleida Consolidation

## MEMORANDUM IN SUPPORT

### Title of Bill:

An Act to amend the Public Authorities Law in relation to the Erie County Medical Corporation and the structure, powers and duties thereof.

### Purpose:

This bill would amend the Erie County Medical Corporation Act to further implement the requirements of the Report of the Commission on Health Care Facilities in the Twenty-First Century, pursuant to Section 31 of Part E of chapter 63 of the laws of 2005.

### Summary of Provisions

Section 1 of the bill would amend the Erie County Medical Corporation Act as follows:

Section 3625 of the Act is amended to add the word "Act" to the short title.

Section 3626 of the Act is amended by modifying the legislative findings to reflect the enactment of legislation creating a commission known as the Commission on Health Care Facilities in the Twenty-First Century (the "Commission"); by describing the charge to the Commission; by describing the legally binding recommendations of the Commission relating to the Erie County Medical Corporation ("ECMC"); by describing that the Commissioner of Health altered the composition of the Board later incorporated as the Western New York Health System; and by describing the intention of the legislature to implement the recommendation of the Commission as it relates to the Erie County Medical Corporation.

Section 3628 of the Act is amended by altering the composition of the board of directors, by having the governor appoint the 15 members of the ECMC board, with one of those members appointed upon the recommendation of the Assembly speaker, and one appointed upon the recommendation of the temporary president of the Senate. It is further amended by limiting the powers of the board to those not otherwise delegated to the board of directors of the Western New York Health System.

Section 3629 of the Act is amended by recognizing the existing bargaining units for county employees as the continuing representatives of those employed at ECMC, who will now be members of new bargaining units as employees of ECMC. Employees will be eligible to be considered for a job vacancy occurring within corresponding collective bargaining units of the county, and such job seniority as they have accumulated as employees of the county will be treated as job seniority as employees of the corporation. For a period of twelve months, employees who are members of collective bargaining units will be protected from layoffs that are a direct consequence of the enactment of this bill.

Sections 3630 and 3631 of the Act are amended by limiting the general powers of the corporation to those not otherwise delegated to the Board of the Western New York Health System.

Section 3632 of the Act is amended by eliminating the statutory requirement that the county provide ECMC with mandatory capital contributions and operating subsidies, effective December 31, 2009. It does not eliminate the county's contractual obligations to make such payments, and does not impair the rights of bondholders. Bondholder rights are further protected by section 3646-a.

Section 3646-a of the Act is amended by delegating to the Western New York Health System certain powers formerly held by the boards of directors of ECMC and of Kaleida Health. These powers include:

- Authority and responsibility for developing, approving and overseeing the implementation of a joint strategic plan for the Hospitals, and the authority for approving the individual strategic plans of the Hospitals.
- Authority for approving certificates of need for each of the Hospitals for any construction that meets the dollar amount established by law for submission of certificates of need applications (or their legal equivalent).
- Authority for approving any merger, consolidation, sale of all or substantially all of the assets, change in governance or control, or academic affiliation involving either of the Hospitals.
- Authority and responsibility for developing and approving the addition, reduction, or elimination of clinical services at either of the Hospitals, provided that the reduction or elimination of clinical services from either Hospital shall not impair such Hospital's obligations under any bonds issued prior to the effective date of this section.
- Authority and responsibility for developing and approving a hold harmless or other revenue sharing formula, whereby each Hospital is held harmless or otherwise protected from any net lost revenue resulting from the aggregate redistribution of services between the facilities to the extent that bondholders of any bonds issued prior to the effective date of this section are not impaired by such redistribution of services, and in the absence of any such bonds, authority for developing and approving such formula.
- Authority and responsibility for negotiating and approving any and all managed care contracts.
- Authority to review and comment on annual operating and capital budgets, borrowings in excess of one percent of annual budgets if such borrowings have not previously been reviewed and commented upon through an annual budget review, and proposed collective bargaining agreements, provided that nothing contained in a Hospital's annual budget submitted for review shall be inconsistent with the strategic plan and CON submissions of WNYHS.

- Authority to develop, approve and oversee a joint quality improvement program, joint professional credentialing, and a shared services agreement.
- Authority and responsibility to approve the appointment of a chief executive officer, treasurer and other executive management of either of the Hospitals, in a manner that ensures an integrated management structure for the Hospitals.

Section 3646-a of the Act further provides that the powers and purposes of Western New York Health System may be amended through the ordinary process for amending the certificate of incorporation of a not-for-profit corporation, without resort to additional legislation.

Section 2 of the bill provides that the legislation shall take effect September 1, 2008 provided that the amendments to section 3632 of the public authorities law shall take effect December 31, 2009.

Justification:

Section 31 of Part E of chapter 63 of the laws of 2005 (the "Legislation") created a commission known as the Commission on Health Care Facilities in the Twenty-First Century (the "Commission"), charged with examining the system of general hospitals and nursing homes in New York state and recommending changes to that system.

The Commission was further charged to make recommendations relating to facilities to be closed, and facilities to be resized, consolidated, converted or restructured. If the Governor approved the recommendations, and the Legislature did not reject them, then they were to be binding upon the facilities, and the Commissioner of Health was bound to implement them. The contingencies for approval were met, and the Commission's specific recommendations of closure, resizing, consolidation, conversion, or restructuring became binding.

Western Acute Care Recommendation 5, page 158 recommended that the facilities controlled by the Erie County Medical Center Corporation and Kaleida Health be joined under a single unified governance structure under the control of an entity other than Erie County Medical Center Corporation, Kaleida Health, or any other public benefit corporation; that this entity consist of a reconstituted single board including representation of Kaleida Health, the Erie County Medical Center Corporation, the University at Buffalo School of Medicine and Biomedical Sciences, and community leaders; and that if the Commissioner of Health determined that the single board proposed by the member entities did not meet these requirements, that the Commissioner of Health alter the composition of the board to satisfy these requirements. Pursuant to this recommendation, the Western New York Health System has been formed, and Kaleida and ECMC are already subject to its authority.

The Commission further states that the new entity have unified management with powers sufficient to compel the service mix provided at any of the individual institutions, under its control; that it utilize existing infrastructure to the extent possible to consolidate all necessary services into clinical centers of excellence, including tertiary, quaternary, psychiatric, and long term care services; and that the joined entity develop new infrastructure in which to locate comprehensive heart and vascular services. The Commission Recommendation requires the Commissioner of Health to "present to the State Legislature any necessary draft legislation... sufficient to implement this recommendation by June 30, 2008."

This legislation would strengthen and increase the formalization of the relationship. It would detail specific powers that are to be assumed by the Western New York Health System, and those that would be retained by the Kaleida and ECMC.

This legislation would allow Kaleida and ECMC to move quickly forward with the implementation of the requirements of the Commission. Working under a unified governance structure, Kaleida and ECMC would have the potential to create a world class health system in Western New York as resources and expertise are focused on developing centers of excellence, including development of the heart vascular center as required by the Commission.

While passage of this legislation is not needed for compliance with the Commission recommendations, it is crucial to the development of world class healthcare facilities for all of Western New York.

Budgetary Implications:

None.

Legislative History:

None

Effective Date:

This bill shall take effect September 1, 2008, provided that the amendments to section 3632 of the public authorities law shall take effect December 31, 2009.