WEST VIRGINIA CODE CHAPTER 18 ARTICLE 11C

WV Legislature

§18-11C-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Agreement" means the long-term lease and agreement to be entered into between the board and the corporation pursuant to section four of this article;

(b) "Assets" means all assets of the board constituting tangible and intangible personal property credited to the hospital on the financial ledgers and equipment inventories of the university at the transfer date, and as more particularly or additionally identified or supplemented in the agreement, excluding all hospital funds deposited with the State Treasurer;

(c) For the purposes of this article, "board" or "board of trustees" means the West Virginia University board of Governors;

(d) "Corporation" means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article;

(e) "Corporation employees" means employees of the corporation;

(f) "Directors" means the board of directors of the corporation;

(g) "Existing facilities" means the West Virginia University hospital and clinics, other than those used for student health and family practice, presently existing at the West Virginia University medical center in Morgantown and owned and operated by the board;

(h) "Health science schools" means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university considered by the board to be health sciences;

(i) "Hospital" means the inpatient and outpatient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the existing facilities and any other health care service components of the West Virginia University medical center at Morgantown rendering patient care services and more particularly identified by the agreement;

(j) "Liabilities" means all liabilities, except those specifically excluded by section four of this article, credited to the hospital on the financial ledgers of the university at the transfer date and as more particularly or additionally identified, supplemented or limited in the agreement;

(k) "Medical personnel" means both university personnel and corporation employees;

(l) "New facilities" means a new hospital facility and out-patient clinics, appurtenant

WV Legislature

facilities, equipment and necessary services to be acquired, built, operated or contracted for by the corporation on property leased from the board within Monongalia County, West Virginia, pursuant to the agreement;

(m) "Transfer date" means July 1, 1984, or any later date agreed upon by the board and the corporation and filed with the Secretary of State;

(n) "University" means West Virginia University;

(o) "University personnel" means those employees of the board or the university for whose services the corporation contracts with the board or the university, as appropriate; and

(p) "West Virginia health system" or "system" means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description set forth in section three-a of this article.

WV Legislature

§18-11C-2. Findings.

(a) It is hereby found and determined with regard to the hospital that:

(1) The purposes of the existing facilities are to facilitate the clinical education and research of the health science schools and to provide patient care, including specialized services not widely available elsewhere in West Virginia. The eventual termination of the services in lieu of replacement or modernization would create an unreasonable hardship on patients in the area and throughout the state;

(2) These purposes separately and collectively serve the highest public interest and are essential to the public health and welfare, but must be realized in the most efficient manner and at the lowest cost practicable and consistent with these purposes;

(3) It is unnecessarily costly and administratively cumbersome for the board to finance, manage and carry out the patient care activities of an academic institution within the existing framework of a state agency. The patient care operations are more efficiently served by contemporary legal, management and procedural structures utilized by similarly situated private entities throughout the nation;

(4) It is fiscally desirable that the state separate the business and service functions of the hospital from the educational functions of the health science schools, that the board cease operation of the existing facilities, that the board transfer the operations to the corporation, that the board pay certain existing sums and assign the assets and certain leasehold interests to the corporation in order to acquire the corporation's agreement to provide certain space and services and to assume the liabilities, that the agreement and certain other contractual relationships between the board and the corporation be authorized, and that the existing facilities operated by the corporation, and subsequently the new facilities owned and operated by the corporation, be self-sufficient and serve to remove the tax burden of operating the existing facilities from the state;

(5) A not-for-profit corporate structure with appropriate governance consistent with the delivery of health care to the patient and academic need of the university is the best means of assuring prudent financial management and the future economy of operation under rapidly changing market conditions, regulation and reimbursement; and

(6) The interests of the citizens of the state will be best met by the board's entering into and carrying out the provisions of the agreement as soon as possible, to provide independence and flexibility of management and funding while enabling the state's tertiary health care and health science education needs to be better served.

(b) It is hereby found and determined with regard to the West Virginia health system that:

(1) The interests of the citizens of the state will be best served by ensuring the continued vitality and viability of the West Virginia based health care institutions which are devoted to

WV Legislature

addressing the state's tertiary health care and health science education needs and which possess the flexibility and resources to effectively and efficiently compete in a rapidly changing health care environment;

(2) The best interests of the state, and the mission and purposes of the corporation created by this article, will best be met by the authorization and creation of a West Virginia health system as a not-for-profit corporate structure to serve as the parent corporation of the corporation created pursuant to this article and other corporations and institutions;

(3) The citizens of the state are best served by requiring representative governance by the board while maintaining flexibility so that the West Virginia health system may, over time, authorize and stimulate the creation of an integrated health care delivery system which may be comprised of one or more affiliated institutions; and

(4) The citizens of the state are best served by the creation of a coordinated, integrated, efficient and effective health science and health care delivery system which is accountable to the citizens of the state, responsive to the health care and health science education needs of the citizens of the state, and responsive to the financial pressures of a dynamic health care environment.

WV Legislature

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the vice chancellor for health sciences of the Higher Education Policy Commission, one designee of the board: Provided, That if the position of vice chancellor for health sciences has not been filled, the board shall designate one additional member to serve until the position is filled, the vice president for health sciences of the university, the vice president for administration and finance of the university, the chief of the medical staff of the hospital, the dean of the school of medicine of the university, the dean of the school of nursing of the university and the chief executive officer of the corporation, all of whom shall serve as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the West Virginia health system board. The West Virginia health system board shall select and appoint the seven appointed members in accordance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, however, That the current directors of the corporation shall continue to serve until they resign or their term expires. On and after the effective date of this section, the seven appointed directors shall be appointed by the system board for staggered six-year terms. The system board shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district.

(b) The corporation shall report its audited records publicly and to the Joint Committee on Government and Finance at least annually.

(c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the benefit of the university.

WV Legislature

§18-11C-3a. Description to be met by the West Virginia health system.

(a) The West Virginia health system shall be a nonstock, not-for-profit corporation established pursuant to the provisions of article one, chapter thirty-one of this code, known as the "West Virginia Corporation Act". The system shall have the general powers of a corporation including, but not limited to, the power and authority to affiliate, in any manner, with the corporation and other health care providers to establish an integrated health care delivery system.

(b) The West Virginia health system shall meet the following description:

(1) The board of directors of the system shall initially consist of eleven voting members, all of whom shall represent the university. As the system affiliates with other health care providers, representatives of those providers may be appointed to the board. The West Virginia health system board shall provide for the manner and appointment of nonuniversity representatives.

The voting members representing the university are hereby designated as "university representatives". The university representatives shall include the following ex officio members: the president of the university, who shall serve as chair of the board of directors; the vice president for health sciences of the university; a member or designee of the board of trustees; and a member of the medical staff of the corporation. For each of the seven remaining university representative positions the directors of the corporation shall submit a list of three nominees to the Governor for each open university representative position. If there is more than one open university position at any one time, the directors of the corporation may not nominate any person for more than one of the open university positions. The Governor may appoint the board member from the list of nominees submitted or he or she may reject the list of nominees for any open university position and request that the directors of the corporation submit a list of three different nominees for that open university position. The board members appointed by the Governor shall be appointed with the advice and consent of the Senate. The directors of the corporation shall select its nominees and the Governor shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district. The appointed university representatives shall serve six-year terms: Provided, That of the initial members appointed, three members shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years.

(2) The number of members of the West Virginia health system's board may be increased by the majority vote of the existing system board members. The number of university representative positions on the system's board shall be increased, as a matter of law, upon a passing vote by the board to increase the number of nonuniversity representatives so that the total number of university representatives shall at all times constitute a majority of voting members of the system's board. Any additional system board positions which are created shall be created to provide for representation valuable to the board, including, but not limited to, representation of hospitals or health care providers which may, from time to

WV Legislature

time, become affiliated with the system. Newly created university representative positions shall be filled in accordance with the provisions of subdivision (3) of this subsection. To the extent possible, persons appointed to newly-created university representative positions shall be appointed to staggered terms so that the terms of approximately one third of the appointed university representatives expire every two years.

(3) Any vacancies in the university representative positions shall be filled with qualified university representatives pursuant to the ex officio designation or nomination and appointment procedure set forth in subdivision (1) of this subsection, so as to maintain the university's required majority of voting members of the system's board. To permit the orderly operation of the system, vacant university representative positions may be filled on an interim basis, as follows: (i) If the vacant position is one of the ex officio positions, then the position may be filled by the individual designated by the university to serve in the position on an acting or interim basis, or if no individual has been designated, the position may be filled by a member or designee of the board of trustees of the university; (ii) if the vacant position is among the appointed university representatives, then the position may be filled by an additional member or designee of the board of trustees of the university until the vacancy can be filled pursuant to the nomination and appointment process set forth in subdivision (1) of this subsection.

(c) The system's board shall make audited records of the system available to the public and provide those records to the Joint Committee on Government and Finance at least annually.

(d) The system may not, in any manner, assign, transfer or divest its rights in or to its membership in the corporation.

(e) For purposes of organizing, incorporating and conducting the business of the West Virginia health system or otherwise implementing the provisions of this article, the ex officio members of the system's board are authorized to act on behalf of the system until the remainder of the system's board members can be appointed and confirmed.

WV Legislature

§18-11C-4. Agreement; required provisions.

Notwithstanding section three, article twenty-three of this chapter, or section ten, article three, chapter twelve of this code, or any other provision of this code to the contrary, the board is hereby authorized to enter into the agreement with the corporation, which agreement shall contain the following provisions, subject to further specification as shall be mutually agreed upon by the board and the corporation;

(a) On the transfer date, the board shall disburse and pay to the corporation the sums on deposit in the following accounts as reflected on the financial ledgers of the university:

(i) That portion of accounts numbered 928000, 928001, 928002 and 928003 which are made up from hospital revenue;

(ii) The capital reserve account numbered 9285, which is accumulated through the capital surcharge on patient receipts;

(iii) The cafeteria account numbered 8612330000;

(iv) The kidney reimbursement account numbered 8610108810;

(v) The general stores account numbered 8610601230;

(vi) The home dialysis account numbered 8610601450;

(vii) The vending income account numbered 8610600180;

(viii) The optical shop account numbered 8610601350;

(ix) The emergency medical education account numbered 8610601460;

(x) The radiation safety account numbered 8610600320; and

(xi) The Monongalia General Hospital an account numbered 8610106530: Provided, That the aggregate amount so paid to the corporation shall not exceed $3,400,000; and shall assign to the corporation all the assets, a leasehold interest in the existing facilities prior to completion of the new facilities and a leasehold interest in the proposed site for the new facilities, which site shall be mutually agreed upon by the board and the corporation, for a period not to exceed ninety-nine years, all in order to acquire the corporation's agreement to provide not less than one hundred thousand square feet of space in the new facilities for educational and research purposes, to provide an annual allowance of not less than $4 million for residents' and interns' expenses and an annual clinical teaching subsidy of not less than $6 million, to provide other property or services to be specified in the agreement nad to assume the liabilities, including the accounts payable, but excluding liabilities for other than accrued sick leave, accrued annual leave and unemployment compensation benefits relating to corporation employees arising prior to the transfer date and excluding

WV Legislature

other liabilities of a contingent nature. Effective on the transfer date, the corporation shall assume responsibility for and shall defend, indemnify and hold harmless the university, the board and the state with respect to all liabilities and duties of the university or the board pursuant to contracts and agreements for commodities, services and supplies utilized by the hospital, and all claims for breach of contract resulting from the corporation's action or failure to act after the transfer date. The value and the adequacy of the services by and other agreements of the corporation shall be mutually agreed upon by the board and the corporation. Upon completion of the construction and occupation of the new facilities the lease upon the existing facilities shall terminate.

(b) On and after the transfer date, the corporation shall lease, manage and operate the existing facilities, subject to the provisions of this article, and shall construct, own and operate the new facilities, and shall have the power to encumber and otherwise deal with the assets, without limitation or regard to their sources: Provided, That the corporation shall have no power to mortgage or otherwise encumber the real property constituting a part of the existing facilities.

(c) The existing facilities and, subsequently, the new facilities will serve as the primary clinical setting for health science school students to receive educational and research experiences. The university faculty shall have exclusive medical and dental staff privileges at the existing facilities and, subsequently, at the new facilities.

(d) The corporation may utilize both corporation employees and university personnel. On or after the transfer date, each university employee working in the hospital shall elect to be either a corporation employee or a part of university personnel. No university employee may be required to become an employee of the corporation as the condition of employment or promotion. All university personnel are university employees in all respects.

(e) If reasonable progress toward construction of new facilities has not been made by July 1, 1985, the agreement shall automatically terminate, and the transfers of operations of the existing facilities and the assets and liabilities under the agreement shall revert to the board and the university.

(f) After completion of construction of the new facilities and vacation of the existing facilities by the corporation, the board and the university may not use the existing facilities or otherwise provide services competing with the new facilities: Provided, That the existing facilities may be used for student health and family practice clinics and for medical support services and other appropriate university purposes which will not compete with the services offered by the new facilities.

(g) The new facilities shall be constructed by the corporation in a manner so as to provide sufficient space for conducting clinical education for the health science schools.

WV Legislature

§18-11C-5. Exemption from certain requirements; audit.

In order, as expeditiously as possible, to cease operation of the existing facilities by the board, to transfer the operations of the existing facilities and the assets and liabilities to the corporation, which will construct the new facilities, at the same time maintaining the educational services of an operating hospital facility, the transactions provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the Attorney General and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an audit by an independent Auditor mutually agreed upon by the board and the corporation.

WV Legislature

§18-11C-6. Conflicts of interest; statement; penalties.

(a) Notwithstanding any other provisions of this code to the contrary, officers and employees of the board and the university may hold appointments to offices of the corporation and the system and be members of the boards of directors, or officers or employees of other entities contracting with the corporation, the system or the board or the university. The board and the directors of the corporation and the system, as the case may be, must be informed of the appointments annually, and either the board or the directors of the corporation or the system may require that an appointment be terminated to avoid an actual or potential conflict of interest as determined by the appropriate board: Provided, That between the first and fifteenth day of January of each year, every member of the board of the corporation and the system shall file a written statement, which shall be fully available for public disclosure, with the appropriate chairman of the board, under oath, setting forth:

(1) The name of every person, firm, corporation, association, partnership, sole proprietorship or other business association in which the member, the member's spouse or the unemancipated minor child or children of the member, in their own or the member's name, or beneficially, own at least ten percent of such business entity, or of which he or they are an officer, director, agent, attorney, representative, employee, partner or employer, and which to his actual knowledge is then furnishing or within the previous calendar year has furnished to the state, the board of trustees, West Virginia University or the corporation or system defined in this article, commodities or printing as those terms are defined in section one, article one, chapter five-a of this code; and

(2) Any other interest or relationship which might reasonably be expected to be affected by action taken by the board of the corporation or the system or which in the public interest should be disclosed.

Those persons to whom the provisions of subdivisions (1) and (2) of this subsection are not applicable shall file a written statement to that effect with the chairman of the board at the same time the reports specified in subdivisions (1) and (2) are required to be filed.

(b) Any person who fails or refuses to file a written statement under oath as required in subsection (a) of this section shall, by operation of law, be automatically removed from the board until the statement is filed.

(c) Any person who intentionally files a false statement under this section is guilty of a misdemeanor and, upon conviction there of, shall be confined in jail not less than six months nor more than one year.

WV Legislature

§18-11C-7. No waiver of sovereign immunity.

Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the board, the university or any officer or employee thereof of sovereign immunity.

WV Legislature

§18-11C-8. Not obligation of the state.

Obligations of the corporation and the system shall not constitute debts or obligations of the university, the board or the state.

WV Legislature

§18-11C-8a. Agreements subject to other provisions of law.

Any agreements entered into between the system and any county hospital, municipal hospital or hospital created by special act of the Legislature shall be subject to the provisions of section three-a, article twenty-three, chapter eight of this code. No agreements entered into by the system shall relieve any hospital of any obligation or responsibility imposed upon it by law, except to the extent that actual and timely performance thereof by the system or any of its members may be offered in satisfaction of the obligation or responsibility.

WV Legislature

§18-11C-9. Sections and provisions severable.

The sections of this article, and the provisions and parts of said sections, are severable, and it is the intention to confer the whole or any part of the powers provided for in this article, and, if any of said sections, or the provisions or parts of any said sections, or the application thereof to any person or circumstance, are for any reason held unconstitutional or invalid, it is the intention that the remaining sections of this article, and the remaining provisions or parts of any said sections, shall remain in full force and effect.

WV Legislature

§18-11C-10. Liberal construction.

This article, being necessary for the health, safety, convenience and welfare of the people of the state, shall be liberally construed to effectuate the purposes hereof.

WV Legislature