

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish, on a temporary basis, a not-for-profit hospital corporation as an instrumentality of the District government to be known as the Not-for-Profit Hospital Corporation to provide community-centered health care east of the Anacostia River, to authorize the corporation to receive the land, improvements on the land, equipment, and other assets of the facility known as the United Medical Center, to operate or retain an operator for the facility, to establish the Not-for-Profit Hospital Corporation Fund to receive the transferred funds of the United Medical Center, the operating revenues of the facility, and any other funds provided to or for the use of the facility, and to disburse funds from the fund to pay the expenses of the corporation and the operations of the hospital, to establish a Board of Directors to manage the corporation, and to establish the rights and responsibilities of the Board of Directors; and to amend the Health Service Planning Program Re-establishment Act of 1996 to exempt the corporation, any operator of the facility, and any successor to the corporation as owner of the facility, including a skilled nursing center at the facility, from certificate-of-need requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Not-for-Profit Hospital Corporation Establishment Temporary Amendment Act of 2010".

TITLE I. NOT-FOR-PROFIT HOSPITAL CORPORATION ESTABLISHMENT.

Sec. 101. Definitions.

For the purposes of this act, the term:

- (1) "Board" means the Board of Directors of the Not-for-Profit Hospital Corporation.
- (2) "Corporation" means the Not-for-Profit Hospital Corporation established by section 102.
- (3) "Fund" means the Not-for-Profit Hospital Corporation Fund established by section 103.
- (4) "Hospital" means:
 - (A) The acute care hospital on the site;

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- (B) The hospital building on the site;
 - (C) All furnishings, fixtures, equipment, supplies, and related amenities located in the acute care hospital and the hospital building; and
 - (D) Any other operations located within the hospital building or on the site, and contracts, leases, or other agreements related to those operations.
- (5) "Site" means the land comprised of approximately 17 acres at 1310 and 1350 Southern Avenue, S.E.

Sec. 102. Establishment of the Not-for-Profit Hospital Corporation.

- (a) There is established as an instrumentality of the District government the Not-for-Profit Hospital Corporation, which shall have a separate legal existence within the District government.
- (b) The primary purpose of the Corporation shall be to:
 - (1) Receive the land, improvements on the land, equipment, and other assets of the United Medical Center;
 - (2) Operate and take all actions to ensure the continued operation of the hospital; and
 - (3) Sell or otherwise transfer all or part of the hospital and site, if a qualified buyer is identified.

Sec. 103. Not-for-Profit Hospital Corporation Fund.

- (a)(1) There is established as a nonlapsing fund the Not-for-Profit Hospital Corporation Fund. The Fund shall be comprised of:
 - (A) Accounts receivable of the Corporation;
 - (B) Transferred funds of the United Medical Center;
 - (C) Funds obtained through payments from third-party payers, and other sources.
- (2) The Mayor may direct the Chief Financial Officer to deposit in the Fund any and all other funds received by or on behalf of the Corporation or the hospital for the purpose of operating the Corporation, the hospital, and any other operations conducted by or through the Corporation on the site.
- (3) All funds deposited into the Fund and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.
- (b) Disbursements from the Fund may be used for all purposes related to operating the Corporation, the hospital, and other operations on the site.

Sec. 104. Board of Directors.

(a)(1)(A) The Corporation shall be governed by a Board of Directors, which shall consist of 14 members, 11 of whom shall be voting members and 3 of whom shall be non-voting members.

(B) Of the voting members, the Mayor shall appoint 6 members, with the advice and consent of the Council, and the Council shall appoint 3 members.

(C) The Chief Financial Officer of the District of Columbia, or his or her designee, and a representative of the entity maintaining the largest collective bargaining agreement with the Corporation, with that representative not being an employee of the Corporation, shall serve as voting *ex officio* members.

(D) The Chief Executive Officer of the Corporation and the Chief Medical Officer of the Corporation, and the President of the District of Columbia Hospital Association, or his or her designee, shall serve as non-voting *ex officio* members.

(2) Members shall have business or management expertise in health-systems management or integrated care-delivery systems or experience as a:

- (A) Practicing physician;
- (B) Nursing executive;
- (C) Finance officer;
- (D) Labor manager; or
- (E) Contract manager.

(b)(A) The terms of the voting members of the initial Board shall be as follows:

(i) Two members appointed by the Mayor and one member appointed by the Council shall serve 3-year terms;

(ii) Two members appointed by the Mayor and one member appointed by the Council shall serve 2-year terms; and

(iii) Two members appointed by the Mayor and one member appointed by the Council shall serve one-year terms.

(B) All subsequent voting-member appointees shall serve 3-year terms.

(c) The Mayor shall submit the names of the Mayor's nominees to the Council within 10 days of the effective date of this act for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved.

(d) No fewer than 90 days before the expiration of a member's term, the Mayor shall submit to the Council the name of a nominee to fill the vacancy. When a vacancy occurs for any reason other than expiration of a term, the Mayor shall submit the name of a nominee to the Council within 45 days after the vacancy occurs for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved. A member appointed to fill a vacancy for an unexpired term shall serve only for the unexpired portion of the term, unless the member is reappointed for a new term.

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(e) A Board member whose term has expired may continue to serve until a new member is appointed or for 180 days, whichever first occurs.

(f) The Board shall elect a chairperson from among the members who shall serve in that capacity for the length of his or her term or 2 years, whichever is shorter.

(g) A Board member shall not be entitled to compensation but may be reimbursed for actual and necessary expenses incurred for performing his or her official duties. Unless prohibited by law, a Board member may engage in private employment, a profession, or a business.

(h) A Board member shall not be held personally liable for an action taken in the course of his or her official duties and responsibilities.

(i) The Mayor shall remove any Board member for misconduct or neglect of duty, as defined in the Corporation's bylaws, or for other good cause, after notice to the Board member and the Board.

(j) The Mayor shall immediately suspend any Board member charged with a misdemeanor or felony and shall remove the Board member if the member is found guilty of the charge.

(k) The Board shall maintain regular contact with the Director of the Department of Health, or successor agency, and shall meet with the Director upon the Director's request.

Sec. 105. Governance of the Corporation.

(a) The powers of the Corporation shall be vested in and exercised by the Board. The Board may take action at a meeting held at a time and place fixed by the bylaws. The Board shall adopt rules for conducting its meetings.

(b)(1) The presence of 5 voting members shall constitute a quorum of the Board. A majority vote of the members present for a quorum shall be necessary for the Board to take any official action.

(2) A Board member shall be considered present for the purpose of establishing or maintaining a quorum either by being physically present at the site specified for the Board meeting or by being electronically present via a speaker telephone, web camera, or other device capable of transmitting the member's voice or voice and image to the Board members physically present and the Board members' voices or voices and images to the member employing electronic means to participate.

(c) The Board shall hold an annual meeting to inform the public of its plans and programs. The Board shall provide notice of the meeting by publishing notice in the District of Columbia Register and a newspaper of general circulation in the District not less than 30 days before the date of the meeting.

(d) The Board shall meet not less than once per month, at least 10 months each year. Board meetings shall comply with the requirements for open meetings pursuant to section 742 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

(e) The Corporation's fiscal year shall coincide with the fiscal year of the District government.

(f) The Board shall appoint the Chief Executive Officer ("CEO") of the United Medical Center as CEO of the Corporation and to be in charge of the day-to-day affairs of the Corporation, including the hospital and other operations at the site. The Board may subsequently conduct a national search to fill the position of CEO. The CEO shall serve at the pleasure of the Board.

(g) The Board may engage a hospital management company to assist in hospital operations and may contract or enter into leases with third parties to operate discrete facilities within the hospital or on the site.

(h) The Board shall hold its first meeting no later than 7 days from the date of the appointment of 7 or more members.

(i) The Board shall determine the qualifications and credentialing for health care professionals to receive the privilege of practicing within a health-care facility under the Corporation's jurisdiction and make reasonable policies and procedures for the conduct of a person on the staff of a facility within the Corporation's jurisdiction, consistent with District law.

Sec. 106. Powers of the Corporation.

The Corporation shall have the powers to:

- (1) Sue and be sued in its corporate name;
- (2) Adopt a corporate seal and alter the seal at its pleasure;
- (3) Adopt, amend, and repeal bylaws governing the manner in which it may conduct business and how the powers vested in it may be exercised;
- (4) Borrow money for any of its corporate purposes pursuant to section 116 and as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *passim*), and other laws of the District; provided, that the Corporation's debts shall not be subject to and shall not be backed by the full faith and credit of the District of Columbia;
- (5) Provide for the payment of obligations as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *passim*), and other laws of the District;
- (6) Establish policies for contracting and procurement that are consistent with the principles of competitive procurement and, subject to District law, make and execute contracts, leases, and all other agreements or instruments necessary and appropriate for the exercise of its powers and the fulfillment of its corporate purposes;
- (7) Subject to Council approval by resolution, acquire, construct, and dispose of real or personal property of every kind, including a health-care facility or an interest in a health-care facility for its corporate purposes;
- (8) Operate, manage, superintend, maintain, repair, equip, and control a health-care facility under its jurisdiction, including seeking all necessary licenses, certifications, or

other permits and establishing and collecting fees, rentals, or other charges, including reimbursement allowances for the sale, lease, or sublease of any health-care facility;

(9) Provide health and medical services to the public directly or by agreement with a person, firm, or private or public corporation or association;

(10) Establish policies governing admissions and health and medical services and fees and other charges, including reimbursement allowances for providing health and medical services;

(11) Provide and maintain resident physician and intern medical services, as appropriate, and sponsor and conduct research, development, planning, evaluation, educational, and training programs, as appropriate;

(12) Provide additional services and adopt a schedule of appropriate charges for additional services consistent with its corporate purposes;

(13) Employ officers, executives, and management personnel who may formulate or participate in the formulation of the plans, policies, and standards or who may administer, manage, or operate the Corporation, fix their qualifications, and prescribe their duties and other terms of employment, compensation, and benefits; except, that such personnel shall be excluded from collective bargaining representation and employ other personnel as may be necessary;

(14) Subject to the requirements of section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003 (117 Stat. 123; D.C. Official Code § 1-329.01), and section 446b of the District of Columbia Home Rule Act, approved October 16, 2006 (120 Stat. 2040; D.C. Official Code § 1-204.46b), apply for and receive donations, gifts, grants of money, real and personal property, services, or other aid;

(15) Maintain or purchase insurance, including errors and omissions insurance, for the Board and officers of the Corporation, or obtain indemnification against losses or liabilities of the Corporation;

(16) Enter into agreements with another organization, public or private, for goods and services as needed for its corporate purposes;

(17) Request and recommend that the Chief Financial Officer of the District of Columbia invest the Corporation's funds and make recommendations to the Chief Financial Officer of the District of Columbia how to administer funds;

(18) Retain or employ auditors, engineers, and private consultants by contract for rendering professional, management, or technical services and advice;

(19) Subject to District law, engage in a joint venture and participate in a network, alliance, consortium pool, or other cooperative arrangement with a public or private entity; and

(20) Do any and all things necessary and proper to carry out its corporate purposes.

Sec. 107. Transfer of assets under Deed of Trust.

Upon foreclosure under the Deed of Trust, Security Agreement, Fixture Filing and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or upon any other transfer of assets, the Mayor is authorized to transfer all of the assets, including cash, accounts receivable, and real and personal property, of United Medical Center to the Corporation.

Sec. 108. Personnel administration.

(a) The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1978 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), shall not apply to employees of the Corporation.

(b) Within 6 months of the first meeting of the Board, the Corporation shall promulgate policies, practices, and procedures relating to terms and conditions of employment for personnel employed by the Corporation. Until the Corporation establishes a personnel system subject to applicable laws, the personnel system of the United Medical Center existing the day prior to the effective date of this act shall continue to apply to the Corporation and its employees.

(c) Subject to federal and District law, the Corporation shall assume and be bound by all personnel contracts and existing collective bargaining agreements with labor organizations that represent employees transferred to the Corporation.

(d) This section shall not be construed to limit the right of the Board to reorganize, restructure, reclassify, or eliminate positions.

(e) The Corporation shall give a hiring preference to qualified District residents.

(f) The Corporation shall have independent personnel authority, including the authority to establish its own personnel system, and shall not be subject to the District of Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), or its implementing regulations.

(g) The Corporation, with advice from the Chief Executive Officer, shall develop a personnel system that includes rules prohibiting an employee from having a direct or indirect financial interest that conflicts with, or would appear to conflict with, the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(h) The Board members and the CEO shall not have any interest, direct or indirect, as principal, surety, or otherwise in contract, where the expense or consideration of the contract is payable from Corporation funds.

Sec. 109. Budget.

The Board shall submit its proposed fiscal year 2011 operating budget and each subsequent operating budget for the Corporation to the Mayor on the date that District departments and agencies are required to submit proposed budgets to the Mayor.

Sec. 110. Transfer of employees.

(a) The employees of United Medical Center shall be transferred to the Corporation with the same rights and obligations they enjoyed as employees of the United Medical Center.

(b) The employees transferred from the United Medical Center to the Corporation shall not be governed by the District of Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), or its implementing regulations ("CMPA") and shall not enjoy any rights, benefits, or obligations afforded by the CMPA.

Sec. 111. Procurement law inapplicable.

(a) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and its implementing regulations shall not apply to the Corporation; except, that the Corporation shall be required to comply with the requirements regarding multiyear contracts and contracts in excess of \$1 million during a 12-month period pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 105a of the District of Columbia Procurement Practices Act of 1985, effective March 8, 1991 (D.C. Law 8-257; D.C. Official Code § 2-301.05a).

(b) Procurement policies employed by the United Medical Center on the day prior to the effective date of this act shall continue until the Corporation develops new procurement policies.

Sec. 112. Exemption from taxation.

The assets and income of the Corporation shall be exempt from taxation by the District government.

Sec. 113. Reports to the Mayor and the Council.

On or before December 29 of each year, the Corporation shall submit to the Mayor and the Council a report that sets forth for the prior fiscal year its operations and accomplishments, revenues and expenses, assets and liabilities at the end of the fiscal year, and the status of reserves, depreciation, and special, sinking, or other funds.

Sec. 114. Representation and indemnification.

(a) The officers and employees of the Corporation shall not be considered District government employees for purposes of the District of Columbia Employee Non-liability Act, approved July 14, 1960 (74 Stat. 519; D.C. Official Code § 2-411 *et seq.*), and the District of Columbia shall not be liable for any acts or occurrences of the Corporation regardless of whether the Corporation purchases insurance or whether purchased insurance covers any act or omission of an act.

(b) The District of Columbia may, upon request by the Corporation and at the discretion of the Attorney General for the District of Columbia "(Attorney General)", provide

representation through the Office of the Attorney General to the Corporation and its officers and employees for legal matters related to their official duties.

(c) The Corporation may retain outside counsel, other than the Attorney General, at its own expense to provide representation for the Corporation and its officers and employees in actual or anticipated litigation related to their official duties and functions or in any other legal proceeding, lawsuit, grievance, or arbitration filed against the Corporation, its officers, or its employees.

(d) An action other than an action for medical negligence or malpractice may not be maintained against the Corporation for unliquidated damages to persons or property unless, within 6 months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the CEO of the approximate time, place, cause, and circumstances of the injury or damage.

(e) The District of Columbia and its officers and employees shall not be liable for and may not be made a party to any lawsuits or claims arising from the operation of the Corporation.

Sec. 115. General Counsel.

(a) The Corporation may have a General Counsel who shall:

- (1) Be appointed by the CEO;
- (2) Be an attorney admitted in good-standing to the practice of law in the District of Columbia;
- (3) Be qualified by experience and training to advise the Corporation with respect to legal issues related to its powers and duties;
- (4) Have an attorney-client relationship with the Corporation; and
- (5) Advocate vigorously for the positions of the Corporation on legal issues.

(b) The General Counsel, with the consent of the CEO, may employ staff attorneys and other personnel.

Sec. 116. Debts and borrowing.

(a) The Corporation is authorized by the Council pursuant to section 490(a)(6) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 809; D.C. Official Code § 1-204.90(a)(6)), to incur debt, including lines of credit, to carry out the authorized purposes of the Corporation. The Corporation may, at any time, and from time to time, enter into debt obligations, by resolution of the Board. Debt of the Corporation shall be payable solely from the revenues of the Corporation from whatever source derived and shall not be issued in the form of obligations maturing longer than 5 years, including renewals. The Corporation shall have the power to incur indebtedness regardless of whether the interest payable by the Corporation or the income derived by the holders of the evidence of the indebtedness is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxable income on the recipients. No official, employee, or agent of the Corporation shall be held personally liable solely because a debt

instrument is issued.

(b) Any debt created pursuant to this section shall not:

(1) Be considered general obligation debt of the District for any purpose, including the limitation on the annual aggregate limit on debt of the District of Columbia under section 603(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.03(b));

(2) Constitute a lending of the public credit for private undertakings for purposes of section 602(a)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.02(a)(2));

(3) Be a pledge of or involve the full faith and credit of the District of Columbia, other than with respect to any dedicated taxes; or

(4) Constitute a debt of the District.

Sec. 117. Continuation of privileges to practice.

(a) A health-care professional who has the privilege of practicing at the United Medical Center as of the effective date of this act shall retain practice privileges with the Corporation until the:

(1) Privilege expires;

(2) Board alters or amends the privilege; or

(3) Board revokes the privilege.

(b) The Board shall retain the policies regarding determining the qualifications for health-care professionals to receive the privilege of practicing that existed at United Medical Center on the day prior to the effective date of this act until the Corporation replaces the policies pursuant to section 105(i).

Sec. 118. The Chief Financial Officer of the District of Columbia shall exercise authority over the Corporation consistent with section 424 of the District of Columbia Home Rule Act, approved April 17, 1995 (109 Stat. 142; D.C. Official Code §§ 1-204.24a, 1-204.24b, and 1-204.24c).

TITLE II. CERTIFICATE OF NEED AMENDMENT.

Sec. 201. Section 8(b) of the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-407(b)), is amended by adding a new paragraph (15) to read as follows:

"(15) Changes in ownership, whether voluntary or involuntary, of the short-term, acute-care hospital known as the United Medical Center and a long-term acute care hospital and a skilled nursing facility at the same location, known as the Southern Avenue Facilities, shall be exempt from the certificate of need requirements for the purpose of:

“(A) Allowing the transfer from the owner of record to another owner of all or a portion of the Southern Avenue Facilities;

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“(B) Notwithstanding any other provision of District law, allowing the owner of record, a subsequent owner, or caretaker, regardless of whether the transfer is voluntary or involuntary, to close or terminate a health service outside of the United Medical Center within 30 days after the effective date of the Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2010, passed on emergency basis on June 29, 2010 (Enrolled version of Bill 18-877) (“Hospital Act”); or

“(C) Allowing the entity acquiring the United Medical Center to establish, within 90 days of the effective date of the Hospital Act, a skilled nursing facility with no more than 120 beds in the existing buildings located in the 1300 block of Southern Avenue, S.E.”.

TITLE III. GENERAL PROVISIONS.

Sec. 301. Applicability.

Title I of this act shall apply upon a foreclosure under the Deed of Trust, Security Agreement, Fixture Filing, and Restrictive Covenants, signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or other voluntary transfer of assets covered by the Deed of Trust, Security Agreement, Fixture Filing, and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007.

Sec. 302. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 303. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia