NEW YORK STATE OF OPPORTUNITY. Department of Health

Establishment Models

September 13, 2018

CORPORATE PARENT MODELS

PASSIVE CORPORATION
Parent/Member

→ Establishment Approval NOT Required

POWERS OF PARENT OVER CORPORATION A

- Appoint Board of Directors
- Approve changes to Certificate of Incorporation & Bylaws
- Approve corporate merger or dissolution

HOSPITAL OPERATING CORPORATION A

ACTIVE CORPORATION
Parent/Member

→ Must Receive Establishment Approval as a Co-operator of Hospital B

POWERS OF PARENT OVER CORPORATION B

- Approve budgets
- Approve policies & procedures
- Approve filing of Certificate of Need applications
- Approve management & clinical service contracts

HOSPITAL OPERATING CORPORATION B

NEW YORK STATE OF OPPORTUNITY. Department of Health

- 10 NYCRR 600.9 (c) bars an individual, partnership or corporation which has not received establishment approval to participate in the total gross income or net revenue of a medical facility.

- §2801-a (1) of the New York State Public Health Law requires that no hospital shall be established without the written approval of the Public Health and Health Planning Council (PHHPC).

- Since passive parents are not established, they can not share in any net revenues of a medical facility, nor are passive parents regulated by the Department of Health.

- An active parent is legally established by PHHPC. As such, an active parent is the co-established operator of its child medical facility and can share in revenues.

10 NYCRR 405.1 (c) requires in relevant part that any person, partnership, stockholder, corporation or other entity with the authority to operate a hospital must be approved for establishment by PHHPC [and] a person, partnership, stockholder, corporation or other entity is an operator of a hospital if it has the decision-making authority over any of the following:

(1) appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by members of a not-for-profit corporation;

(2) approval of hospital operating and capital budgets;

(3) adoption or approval of hospital operating policies and procedures;

(4) approval of certificate of need applications filed on or behalf of the hospital;

(5) approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;

(6) approval of hospital contracts for management or clinical services; and

(7) approval of settlement of administrative proceeding or litigation to which the hospital is party, except approval by members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Proposed Limited Establishment Policy

- Under the current policy co-operators of an Article 28 facility must be fully established and are fully responsible and liable for all establishment powers.
- Historically, PHHPC has not allowed co-operators of an Article 28 facility to have a limited establishment arrangement.
- Use of limited establishment would allow the active parent of an Article 28 facility to be responsible and liable for only the portion of the 10 NYCRR 405.1 (c) establishment powers that the co-operators agree, and PHHPC approves, are the responsibility of the active parent.

- There have been requests by certain entities that the Department, with the consent of PHHPC, allow limited establishment in certain circumstances.

- There has been a growing development of national models for healthcare systems outside of New York in which a national entity joins with a local health care system to co-operate facilities. This allows local facilities to retain autonomy to continue to manage daily operations of the facility– and allows the national entity to infuse resources to these facilities.

- Many entities do not wish to be a passive parent since they would be barred from sharing in the revenues of the facility and from exercising certain powers that they believe they can use to contribute to the long-term sustainability of the local co-operator.

- Only PHHPC would be able to permit limited establishment powers. §2801-a (10) (a)of the Public Health Law requires that:

  The public health and health planning council, by a majority vote of its members, shall adopt and amend rules and regulations, to effectuate the provisions and purposes of this section, and to provide for the revocation, limitation or annulments of approvals of establishment.

- 10 NYCRR 405 (b) requires that:

  the hospital have a governing body legally responsible for directing the operation of the hospital in accordance with its mission. If the hospital does not have an organized body then persons or persons legally responsible for the conduct of the hospital should carry out its functions.

- Based on the “governing body” language found in 10 NYCRR 405(b) and 600.9, PHHPC should require at least one of the co-operators to be liable and responsible for **all** of the establishment powers. This would insure that the Department can utilize its regulatory authority to hold an Article 28 licensed entity fully accountable and prevents the scenario of co-operators accusing each other of responsibility. In most instances, the Department expects this would be the local co-operator.

- The use of limited establishment should be limited in scope. Only models in which the limited establishment co-operator is the parent of the fully established child operator should be allowed.

- In order to insure transparency, all co-operators would need to be listed on the Operating Certificate, including the downstream providers of the child co-operator, regardless of their establishment status.