

Chairman Vincent C. Gray
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a not-for-profit hospital corporation as an independent 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 a Fund to receive the monetary assets of 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; 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 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.

1 (2) "Corporation" means the Not-for-Profit Hospital Corporation established by
2 section 102 of this act.

3 (3) "Hospital" means the acute care hospital, the hospital building, all
4 furnishings, fixtures, equipment, supplies and related amenities located therein, and any
5 other operations located within the hospital building, and contracts, leases or other
6 agreements related to operations located within the hospital building or on the site.

7 (4) "Fund" means the Not-for-Profit Hospital Corporation Fund established by
8 section 103 of this act.

9 (5) "Site" means the land comprised of approximately 17 acres at 1310 and 1350
10 Southern Avenue, S.E.

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

12 (a) There is established an independent nonprofit corporation, known as the Not-
13 for-Profit Hospital Corporation, which shall have a separate legal existence within the
14 District government.

15 (b) The primary purpose of the Corporation shall be to receive the land,
16 improvements on the land, equipment, and other assets of United Medical Center, to
17 operate and take all actions to ensure the continued operation of the hospital, and to sell
18 or otherwise transfer all or part of the hospital and site, if a qualified buyer is identified.

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

20 (a) (1) There is established, as a nonlapsing, revolving fund, the Not-for-
21 Profit Hospital Corporation Fund ("Fund"). The Fund shall be comprised of accounts
22 payable of the Corporation, transferred monetary assets of United Medical Center, funds
23 obtained through payments from third party payers, and other sources. The Mayor may

1 direct the Chief Financial Officer to deposit in the Fund any and all other funds received
2 by or on behalf of the Corporation or the hospital for the purpose of operating the
3 Corporation, the hospital, and any other operations conducted by or through the
4 Corporation at the site.

5 (2) All funds shall be deposited into the Fund and shall be held in the Fund
6 without regard to fiscal year limitation. All funds deposited into the Fund shall not revert
7 to the General Fund of the District of Columbia at the end of any fiscal year or at any
8 other time, but shall be continually available for the purpose of operating the Corporation,
9 the hospital, and other operations at the site, subject to authorization by Congress in an
10 appropriations act.

11 (b) Disbursements from the Fund may be used for all purposes related to operating
12 the Corporation established by section 102 of this act, the hospital, and other operations
13 on the site.

14 Sec. 104. Board of Directors.

15 (a) The Corporation shall be governed by a Board of Directors (“Board”), which
16 shall consist of 14 members, 11 of which shall be voting members and 3 of which shall
17 be non-voting members. The Mayor shall appoint 6 members, and the Council of the
18 District of Columbia shall appoint 3 members. The Chief Financial Officer of the District
19 of Columbia or his or her designee and a representative of the entity maintaining the
20 largest collective bargaining agreement with the Corporation, with that representative not
21 being an employee of the Corporation, shall serve as voting *ex officio* members. The
22 Chief Executive Officer of the Corporation and the Chief Medical Officer of the
23 Corporation, and the President of the District of Columbia Hospital Association, or his or

1 her designee, shall serve as non-voting *ex officio* members. Members shall have business
2 or management expertise in health systems management or integrated care delivery
3 systems or may have experience as a practicing physician, nursing executive, finance
4 officer, or labor or contract manager.

5 (b) The terms of the initial Board, other than *ex officio* members, shall be as
6 follows: 2 members appointed by the Mayor and 1 member appointed by the Council
7 shall serve a term of 3 years each; 2 members appointed by the Mayor and 1 member
8 appointed by the Council shall serve a term of 2 years each; and 2 members appointed by
9 the Mayor and 1 member appointed by the Council shall serve a term of 1 year.
10 Subsequent appointees to the Board appointed by the Mayor or the Council shall serve for
11 a 3-year term.

12 (c) The Mayor shall submit the names of the Mayor's nominees to the Council
13 within 10 days of the effective date of this act. The Council may approve or disapprove a
14 nomination by resolution within 45 days after submission of the nominee. If the Council
15 does not adopt a resolution within the 45-day period of review, the nomination shall be
16 deemed approved.

17 (d) Not fewer than 90 days before the expiration of a member's term, the Mayor
18 shall submit to the Council the name of a nominee to fill the vacancy. When a vacancy
19 occurs for any other reason, the Mayor shall submit the name of a nominee to the Council
20 within 45 days after the vacancy occurs. The Council may approve or disapprove a
21 nomination by resolution within 45 days after submission of the nominee. If the Council
22 does not adopt a resolution within the 45-day period of review, the nomination shall be
23 deemed approved. A member appointed to fill a vacancy for an unexpired term shall

1 serve only for the unexpired portion of the term, unless the member is reappointed for a
2 new term.

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

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

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

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

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

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

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

22 Sec. 105. Governance of the Corporation.

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

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

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

11 (d) The Board shall meet not less than once per month, at least 10 months each
12 year. Board meetings shall comply with the requirements for open meetings pursuant to
13 section 742 of the District of Columbia Home Rule Act, approved December 24, 1973
14 (87 Stat. 831; D.C. Official Code § 1-207.42).

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

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

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

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

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

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

17 Sec. 106. Powers of the Corporation.

18 The Corporation shall have the powers to:

19 (a) Sue and be sued in its corporate name;

20 (b) Adopt a corporate seal and alter the seal at its pleasure;

21 (c) Adopt, amend, and repeal bylaws governing the manner in which it may
22 conduct business and how the powers vested in it may be exercised;

1 (d) Borrow money for any of its corporate purposes pursuant to section 116 and
2 as may be permitted under the District of Columbia Home Rule Act, approved December
3 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.02 *passim*) and the laws of the
4 District, provided, that the Corporation's debts shall not be subject to and shall not be
5 backed by the full faith and credit of the District of Columbia;

6 (e) Provide for the payment of obligations as may be permitted under the District
7 of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official
8 Code § 1-201.02 *passim*) and the laws of the District;

9 (f) Establish polices for contracting and procurement that are consistent with the
10 principles of competitive procurement and, subject to District law, make and execute
11 contracts, leases, and all other agreements or instruments necessary and appropriate for
12 the exercise of its powers and the fulfillment of its corporate purposes;

13 (g) Subject to Council approval by resolution, acquire, construct, and dispose of
14 real or personal property of every kind, including a health care facility or facilities or an
15 interest therein for its corporate purposes;

16 (h) Operate, manage, superintend, maintain, repair, equip, and control a health
17 care facility or facilities under its jurisdiction, seek all licenses, certifications, and other
18 permits associated therewith, and establish and collect fees, rentals, or other charges,
19 including reimbursement allowances for the sale, lease, or sublease of any such health
20 care facility or facilities;

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

23 (j) Establish:

1 (1) Policies governing admissions and health and medical services; and

2 (2) Fees and other charges including reimbursement allowances for
3 providing health and medical services;

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

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

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

15 (n) Subject to the requirements of section 115 of the District of Columbia
16 Appropriations Act, 2003 (Pub. L. 108-7, 117 Stat. 11; D.C. Official Code § 1-329.01)
17 and section 446b of the District of Columbia Home Rule Act (D.C. Official Code § 1-
18 204.46b), apply for and receive donations, gifts or grants of money, real and personal
19 property, services or other aid;

20 (o) Maintain or purchase insurance, including errors and omissions insurance for
21 the Board and Officers of the Corporation, or obtain indemnification, against losses or
22 liabilities of the Corporation;

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

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

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

8 (s) Subject to District law, engage in joint ventures and participate in networks,
9 alliances, consortia, pools, and other cooperative arrangements with a public or private
10 entity; and

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

12 Sec. 107. Transfer of Assets under Deed of Trust.

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

18 Sec. 108. Personnel Administration.

19 (a) The District of Columbia Government Comprehensive Merit Personnel Act of
20 1978, effective March 3, 1978 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*)
21 shall not apply to employees of the Corporation.

22 (b) Within 6 months of the first meeting of the Board, the Corporation shall
23 promulgate policies, practices, and procedures relating to terms and conditions of

1 employment for personnel employed by the Corporation. Until the Corporation
2 establishes a personnel system subject to applicable laws, the personnel system of United
3 Medical Center existing the day before the effective date of this act shall continue to
4 apply to the Corporation and its employees.

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

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

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

11 (f) The Corporation shall have independent personnel authority, including the
12 authority to establish its own personnel system, and shall not be subject to the District of
13 Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979
14 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*) and its implementing
15 regulations. Personnel practices of United Medical Center existing on the day before the
16 effective date of this act shall continue in force until the Corporation establishes new
17 personnel policies.

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

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

4 Sec. 109. Budget.

5 The Board shall submit the proposed Fiscal Year 2011 operating budget and each
6 subsequent operating budget for the Corporation to the Mayor on the date that District
7 departments and agencies are required to submit proposed budgets to the Mayor.

8 Sec. 110. Transfer of Employees and Conflict of Interest.

9 (a) The employees of United Medical Center shall continue as employees of the
10 Corporation with the same rights and obligations they enjoyed as employees of United
11 Medical Center.

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

19 Sec. 111. Procurement Law Inapplicable.

20 (a) The District of Columbia Procurement Practices Act of 1985, effective
21 February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and its
22 implementing regulations shall not apply to the Corporation, except that the Corporation
23 shall be required to comply with the requirements regarding multi-year contracts and

1 contracts in excess of \$1,000,000 during a 12-month period pursuant to section 105a of
2 the District of Columbia Procurement Practices Act of 1985, effective March 8, 1991
3 (D.C. Law 8-257; D.C. Official Code § 2-301.05a).

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

7 Sec. 112. Exemption from taxation.

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

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

11 Within 90 days after the end of each fiscal year, the Corporation shall submit to
12 the Mayor and the Council a report that sets forth its operations and accomplishments
13 during the fiscal year, revenues and expenses for the fiscal year, assets and liabilities at
14 the end of the fiscal year, and the status of reserves, depreciation, and special, sinking, or
15 other funds.

16 Sec. 114. Representation and Indemnification.

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

1 (b) The District of Columbia may, upon request by the Corporation and at the
2 discretion of the Attorney General, provide representation through the Office of the
3 Attorney General to the Corporation and its officers and employees for legal matters
4 related to their official duties.

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

10 (d) The General Counsel of the Corporation authorized by section 115 of this act,
11 with the consent of the Chief Executive Officer of the Corporation, may employ staff
12 attorneys and other personnel.

13 (e) An action may not be maintained against the Corporation for unliquidated
14 damages to persons or property unless, within 6 months after the injury or damage was
15 sustained, the claimant, his agent, or attorney has given notice in writing to the Chief
16 Executive Officer of the Corporation of the approximate time, place, cause, and
17 circumstances of the injury or damage.

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

21 Sec. 115. General Counsel.

22 The Corporation may have a General Counsel who shall:

- 23 (1) Be appointed by the CEO;

1 (2) Be an attorney admitted in good-standing to the practice of law in the
2 District of Columbia;

3 (3) Be qualified by experience and training to advise the Corporation with
4 respect to legal issues related to its powers and duties;

5 (4) Have an attorney-client relationship with the Corporation; and

6 (5) Advocate vigorously for the positions of the Corporation on legal
7 issues.

8 Sec. 116. Debts and Borrowing.

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

1 (b) Any debt created pursuant to this section shall not be considered general
2 obligation debt of the District for any purpose, including the limitation on the annual
3 aggregate limit on debt of the District of Columbia under section 603(b) of the District of
4 Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official
5 Code § 1-206.03(b)), constitute a lending of the public credit for private undertakings for
6 purposes of section 602(a)(2) of the District of Columbia Home Rule Act, approved
7 December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.02(a)(2)), be a pledge of or
8 involve the full faith and credit of the District of Columbia (other than with respect to any
9 dedicated taxes), or constitute a debt of the District.

10 Sec. 117. Continuation of Privileges to Practice.

11 (a) A health care professional who has the privilege of practicing at United
12 Medical Center as of the effective date of this act shall retain practice privileges with the
13 Corporation until the privilege expires, the Board alters or amends the privilege, or the
14 Board revokes the privilege.

15 (b) The Board shall retain the policies regarding determining the qualifications for
16 health care professionals to receive the privilege of practicing that existed at United
17 Medical Center on the day before the effective date of this act until the Corporation
18 replaces the policies pursuant to § 105(j).

19 TITLE II. MISCELLANEOUS PROVISIONS.

20 Sec. 201. Certificate of Need.

21 Section 8(b) of the Health Services Planning Program Re-establishment Act of
22 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-407(b)), is
23 amended by adding a new paragraph (15) to read as follows:

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

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

7 “(B) Allowing the owner of record, a subsequent owner, or caretaker, regardless
8 of whether the transfer is voluntary or involuntary, to close or terminate a health service
9 outside of United Medical Center within 30 days after the effective date of this act
10 notwithstanding any other provision of District law; or

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

15 Sec. 202. Fiscal impact.

16 The Council adopts the fiscal impact statement of the Chief Financial Officer as
17 the fiscal impact statement required by section 602(c)(3) of the District of Columbia
18 Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
19 206(c)(3)).

20 Sec. 203. Applicability Date.

21 Title I of this act shall not apply until there is a foreclosure under the Deed of
22 Trust, Security Agreement, Fixture Filing, and Restrictive Covenants signed by CMC
23 Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or there is any other

1 voluntary transfer of assets covered by the Deed of Trust, Security Agreement, Fixture
2 Filing, and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical
3 Center, LLC on November 7, 2007.

4 Sec. 204. Effective date.

5 This act shall take effect following approval by the Mayor (or in the event of veto
6 by the Mayor, action by the Council to override the veto), and a 30-day period of
7 Congressional review as provided in section 602(c) of the District of Columbia Home
8 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)).