

Resolution FY22-07

Resolution Appointing a Director to the Board of Directors and to Amend the Amended and Restated Bylaws of Broward Health ACO Services, Inc.

WHEREAS, the North Broward Hospital District (the “District”) is a special taxing district of the State of Florida established for the health care needs of the residents of the District and is authorized and empowered to maintain hospitals and supportive facilities for the care and treatment of the people of said District, as well as establish subsidiary and affiliate organizations which foster the administration of such services;

WHEREAS, the District is governed by the seven-member Board of Commissioners of North Broward Hospital District (the “Board”) who are all appointed by the Governor of the State of Florida;

WHEREAS, the District established Broward Health ACO Services, Inc. (“ACO”) as a Florida not-for-profit corporation duly organized pursuant to the Florida Not For Profit Corporation Act, § 617.01011, *et seq.*, Florida Statutes;

WHEREAS, the Amended and Restated Articles of Incorporation of Broward Health ACO Services, Inc. (“Articles of Incorporation”), the ACO’s corporate charter, establishes the ACO and provides that the District is the sole member of the ACO;

WHEREAS, Art. VII of the Articles of Incorporation and Art. IX of the Amended and Restated Bylaws of Broward Health ACO Services, Inc., effective as of September 25, 2019 (the “Bylaws”), as subsequently amended, reserve to the District the sole power to make any alterations or amendments to the Bylaws;

WHEREAS, the District wishes to amend certain provisions of the Bylaws as set forth herein;

WHEREAS, the ACO is governed by a Board of Directors, the appointment of which is reserved to the District pursuant to Art. V of the Articles of Incorporation and Section 3(a) of the Bylaws;

WHEREAS, the District wishes to appoint a Director to the ACO’s Board of Directors; and

WHEREAS, unless context otherwise requires, capitalized terms used but not defined herein have the meanings ascribed to such terms in the Amended and Restated Bylaws of the North Broward Hospital District and its accompanying Codified Resolutions of the Board of Commissioners of the North Broward Hospital District.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of North Broward Hospital District, that:

1. The Bylaws are hereby amended as provided below. Except with respect to section titles and certain officer titles, words ~~stricken~~ are deletions and words underlined are additions.
2. Art. III, s. 1. of the Bylaws is hereby amended to read as follows:

Section 1. Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. The Board of Directors shall have responsibility for oversight and strategic direction of the Corporation, holding Corporation management accountable for the Corporation’s activities.

Moreover, the Board of Directors shall have a fiduciary duty to the Corporation, including the duty of loyalty, and must act consistent with that fiduciary duty. Directors must be natural persons who are at least 18 years of age but need not be residents of Florida. At least one Director must be a Medicare beneficiary who (1) is served by the Corporation; (2) is not an ACO provider/supplier, as defined in 42 C.F.R. § 425.20; (3) does not have a conflict of interest with the Corporation; and (4) does not have an immediate family member who has a conflict of interest with the Corporation. At least one additional Director shall be a physician who, at all times during his or her directorship, has in force an agreement with the Corporation to participate in the Corporation's programs. Provided, however, the following actions must be approved by a majority of the Board of Directors and submitted to the Member for approval:

- (a) A merger or other combination of the Corporation with any entity;
- (b) The sale, or entering into an agreement to sell, mortgage, or grant a security interest in or otherwise dispose of assets of the Corporation in the amount of \$250,000 or more;
- (c) Adoption of a plan of liquidation and dissolution;
- (d) Incurrence of any indebtedness in the amount of \$250,000 or more;
- (e) Entering into any contract or agreement requiring payments in the amount of \$250,000 or more;
- (f) Issuance of membership interests in the Corporation.; and
- (g) Payment of compensation to the Directors of the Corporation.

3. Art. III, s. 3. of the Bylaws is hereby amended to read as follows:

Section 3. Number, Appointment & Resignation.

(a) The Board of Directors shall consist of not less than five (5) but not more than nine (9) Directors. The number of Directors of the Corporation shall be fixed from time to time, within any limits set forth in the Articles of Incorporation, by resolution of the Member. Any decrease in the number of Directors shall not shorten the term of an incumbent Director. Directors shall be appointed ~~annually~~ by the Member from time to time as the needs of the Corporation may require. Each Director appointed shall hold office until his or her successor is duly appointed and qualified or until his or her resignation or removal. In the absence of an express determination by the Member, the number of Directors, until changed by the Member, shall be the number of Directors appointed by the Member during the preceding annual period.

(b) A Director may resign at any time by delivering written notice to the Corporation. The resignation shall be effective upon receipt, unless the notice specifies a later effective date. If the resignation is effective at a later date and the Corporation accepts the future effective date, the Member may fill the pending vacancy, pursuant to Article III, Section 4 below, effective at the effective time of the resignation.

4. Subsection (a) of section 8 is modified to read as follows and subsections (c) and (d) are hereby added to the end of section 8:

Section 8. Meetings.

(a) Regular and special meetings of the Board of Directors shall be held at the principal place of business of the Corporation or at any other place and/or via any electronic means appropriate for the Board of Directors to conduct its business, within or without the State of Florida, designated by the President. Meetings of the Board of Directors may be called by any member of the Board of Directors or by the President. A majority of the Directors present, regardless of whether a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of an adjourned meeting shall be given to the Directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the Directors who were present.

(b) Members of the Board of Directors may participate in a meeting of the Board by means of a telephone conference or similar communications equipment through which all persons participating may simultaneously hear each other during the meeting, provided a quorum is established.

(c) Regular and special meetings of the Board of Directors shall be held with such frequency and on such occasions as determined appropriate by the Board of Directors.

(d) Unless otherwise determined or scheduled by the Board of Directors at a regularly scheduled meeting, the first regular meeting of each calendar year of the Board of Directors shall be the annual meeting of the Board of Directors.

5. Art. V, s. 1 of the Bylaws is hereby amended to read as follows:

Section 1. Officers. The Corporation shall have a President, a Vice President, a Secretary and a Treasurer. Unless a different individual is elected by the majority of the Board of Directors at an annual meeting of the Board of Directors, tThe President/CEO of the North Broward Hospital District shall serve as the President of the Corporation. Unless a different individual is elected by the majority of the Board of Directors at an annual meeting of the Board of Directors, tThe Sr. Vice President/Chief Financial Officer of the North Broward Hospital District shall serve as the Vice President of the Corporation. Unless a different individual is elected by the majority of the Board of Directors at an annual meeting of the Board of Directors, tThe Vice President of Financial Operations of the North Broward Hospital District shall serve as the Secretary and Treasurer of the Corporation. Such other officers, ~~and~~ assistant officers, and agents as may be deemed necessary or desirable may be appointed by the Board of Directors from time to time. Any two or more offices may be held by the same person.

6. Art. V, s. 2 of the Bylaws is hereby amended to read as follows:

Section 2. Duties. The officers of the Corporation shall have the following duties:

The President shall be the chief executive officer of the Corporation, ~~and shall preside at all meetings of the Board of Directors. He or she shall have such powers and perform all such duties as the Board of Directors shall from time to time reasonably designate, and shall be subject to the direction of the Board of Directors.~~ The President shall serve as chairman of the Board of Directors

unless he or she delegates such role to another officer. The President may delegate certain duties as the President deems appropriate.

The ~~Each Vice President, if any,~~ shall have such powers and perform such duties as the Board of Directors shall from time to time designate. In the absence or disability of the President, ~~a the Vice President specifically designated by the vote of the Board of Directors~~ shall have the powers and exercise the duties of the President of the Corporation on an interim basis, unless and until the Board of Directors designates any other officer to hold such duties on an interim basis.

The Secretary shall have such powers and perform such duties as are prescribed by the Board of Directors shall from time to time designate.

The Treasurer shall have such powers and perform such duties as are prescribed by the Board of Directors or the Chairman of the Board shall from time to time designate.

Such other officers may ~~Each Assistant Secretary and Assistant Treasurer, if any,~~ shall be appointed by the Board of Directors from time to time and shall have such powers and ~~shall perform such duties as are prescribed by the Board of Directors~~ may from time to time designate.

7. Section 4 of Art. VIII of the Bylaws is hereby created to read as follows:

Section 4. Compliance. The Corporation will have a compliance plan that satisfies 42 C.F.R. § 425.300, as it may be amended. The Corporation will have a chief compliance officer who is not legal counsel to the Corporation and who reports directly to the Corporation's Board of Directors. The Corporation's chief compliance officer will have responsibility for carrying out the compliance plan. Unless a different individual is appointed by the Board of Directors of the Corporation, the chief compliance officer of the Member shall serve as the chief compliance officer of the Corporation.

8. In accordance with Art. V of the Articles of Incorporation and Section 3(a) of the Bylaws, the Board hereby appoints Jerry Capote, M.D. to hold office and serve as a Director of the Board of Directors of the ACO.

9. This resolution is effective immediately upon its ratification by the Board

10. This resolution hereby supersedes, amends, replaces and repeals any conflicting resolution or conflicting policy previously adopted by the Board.

DULY ADOPTED this ___ day of October, 2021.

Time Adopted _____ PM