Schedule 15

**Article 28 - Additional Legal Information**

**Ownership Transfers**

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**Schedule 15 - Additional Legal Information - Ownership Transfers**

**Instructions:**

Article 28 applicants seeking full establishment approval for a change in ownership through an ownership interest transfer or by a change in active member must complete this schedule\*, depending on the applicant’s legal entity, as follows:

1. Applicants that are **general partnerships** must complete **Part I**.
2. Applicants that are **registered limited liability partnerships** must complete **Part II**.
3. Applicants that are **not-for-profit corporations** seeking approval for a change in **active member** must complete **Part III**.
4. Applicants that are **business corporations** must complete **Part IV**.
5. Applicants that are **limited liability companies** must complete **Part V**.

***N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.***

Pursuant to section PHL 2801-a(2-a), a change in an existing Article 28 legal entity to a limited liability company or a business corporation does not require CON approval but may be approved administratively, under the following circumstances:

1. the Certificate of Incorporation or Articles of Organization reflect solely a change in the form of business organization approved by the Public Health and Health Planning Council or its predecessor;
2. every stockholder, incorporator, sponsor, member, and director of the proposed entity was similarly, an owner, partner, stockholder, incorporator, sponsor, member, or director of the existing entity;
3. the distribution of ownership interests and voting rights in the proposed entity is identical to the existing entity;
4. there is no change in the operator of an Article 28 facility other than the form of business entity; and
5. the proposed entity has site control and all required assets to own and operate the Article 28 facility.

\* Refer to Department of Health Guidance regarding when a Transfer of Ownership Interest Notice may be submitted in place of this Schedule.

**I. General Partnerships**

**N.B.: Only transfers of partnership interests of ten percent or more to a new partner require CON approval.** Transfers of less than ten percent to a new partner require prior notice. See PHL 2801-a(4)(b).

A. Attach the following legal documentation:

1. A list providing the following information for each incoming partner: name, partnership interest, and percentage ownership being acquired;
2. Documentation of the transfer of partnership interest;
3. Partnership Agreement, including documentation that each incoming partner will be legally bound by the Agreement;
4. A list of the names, partnership interest and percentage ownership for all partners before and after the proposed transfer;
5. Certificate of Assumed Name, as filed; and
6. Documentation of consent of the existing partners, if necessary; and

B. Submit Schedules 2A and 2B for each incoming partner.

**II. Registered Limited Liability Partnerships**

**N.B.: Only transfers of partnership interests of ten percent or more to a new partner require CON approval.** Transfers of less than ten percent to a new partner require prior notice. See PHL 2801-a(4)(b).

A. Attach the following legal documentation:

1. A list providing the following information for each incoming partner: name, partnership interest, and percentage ownership being acquired;
2. Documentation of the transfer of partnership interest;
3. Partnership Agreement, including documentation that each incoming partner will be legally bound by the Agreement;
4. Certificate of Registration;
5. A list of the names, partnership interest and percentage ownership for all partners before and after the proposed transfer;
6. Certificate of Assumed Name, as filed;
7. Fully executed proposed Certificate of Amendment to the Certificate of Registration reflecting the change(s) in partner(s);
8. Documentation of consent of the existing partners, if necessary; and

B. Submit Schedules 2A and 2B for each incoming partner.

**III. Not-for-Profit Corporations**

Change in Active Member

**N.B.: A change in active member requires CON approval. A member is active if it has any of the following reserved powers with respect to the Article 28 corporation:**

1. Appointment or dismissal of hospital management-level employees and medical staff, except the election or removal of corporate officers.
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 by or on 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 for clinical services.
7. Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

A change in a passive member does not require CON approval. If the change in passive member results in a change in officers and/or directors of the Article 28 corporation, however, such changes must be reported in the facility’s annual report statement pursuant to 10 NYCRR 610.3.

A. Attach the following legal documentation:

With respect to the Article 28 corporation:

1. Certificate of Incorporation, as filed;
2. Fully executed proposed Certificate of Amendment reflecting the delegation of powers to the active member;
3. Bylaws;
4. Proposed amendments to Bylaws, if any; and

With respect to the proposed active member corporation:

* 1. Certificate of Incorporation, as filed;
  2. Fully executed proposed Certificate of Amendment reflecting the delegation of active powers from the Article 28 corporation;
  3. Bylaws;
  4. Proposed amendments to Bylaws, if any;
  5. Board Resolution(s); and
  6. A list of names and position held for all officers and directors; and

B. Submit Schedule 2A for each individual listed in item 5e above. Directors of a not-for profit corporation who contribute capital in support of the project must also submit Schedule 2B. Directors of a not-for-profit corporation who do not contribute capital in support of the project must also submit Schedule 2C.

**IV. Business Corporations**

**N.B.: Only transfers of ten percent or more of stock interests or voting rights to a new stockholder and transfers which result in an individual, who has not yet been established, becoming an owner of ten percent or more require CON approval.** Transfers of ten percent or more to an existing stockholder who has previously been approved by the Public Health and Health Planning Council require prior notice. See PHL 2801-a(4)(c).

A. Attach the following legal documentation:

1. A list providing the following information for each incoming stockholder: name, stock interest, and percentage ownership being acquired;
2. Documentation of the transfer of stock;
3. Certificate of Incorporation;
4. Bylaws;
5. Board Resolution;
6. A list of the names, stock interest and percentage ownership for all stockholders before and after the proposed transfer; and
7. Original of stock transfer affidavit from each incoming stockholder and each selling stockholder, including the specific information set forth in 10 NYCRR 620.3(a)(2) and (3), respectively; and

B. Submit Schedules 2A and 2B for each incoming stockholder.

**V. Limited Liability Companies**

**N.B.: Only transfers of membership interests of ten percent or more to a new member require CON approval.** Transfers of less than ten percent to a new member only require prior notice. See PHL 2801-a(4)(b).

A. Attach the following legal documentation:

1. A list providing the following information for each incoming member: name, membership interest, and percentage ownership being acquired;
2. Documentation of the transfer of membership interest;
3. Articles of Organization;
4. Operating Agreement, including documentation that each incoming member will be legally bound by it;
5. A list of the names, membership interest and percentage ownership for all members before and after the proposed transfer;
6. Documentation of consent of existing members, if necessary; and

B. Submit Schedules 2A and 2B for each incoming member.

**Checklist of Attachments to Schedule 15**

| **DOCUMENTATION** | **NA** | **Attached** | **Attachment number** | **Electronic Document file name** |
| --- | --- | --- | --- | --- |
| **I. General Partnerships** | | | | |
| List regarding each incoming partner |  |  |  |  |
| Evidence of transfer of partnership interest |  |  |  |  |
| Partnership Agreement, including documentation by incoming partner(s) |  |  |  |  |
| List regarding all partners (before and after) |  |  |  |  |
| Certificate of Doing Business as a Partnership |  |  |  |  |
| Certificate of Amendment |  |  |  |  |
| Consent of existing partners |  |  |  |  |
| **II. Registered Limited Liability Partnerships** | | | | |
| List regarding each incoming partner |  |  |  |  |
| Evidence of transfer of partnership interest |  |  |  |  |
| Partnership Agreement, including documentation by incoming partner(s) |  |  |  |  |
| Certificate of Registration |  |  |  |  |
| List regarding all partners (before and after) |  |  |  |  |
| Certificate of Doing Business as a Partnership |  |  |  |  |
| Certificate of Amendment |  |  |  |  |
| Consent of existing partners |  |  |  |  |
| **III. Not-for-Profit Corporations – *Article 28 Corporation*** | | | | |
| Corporation |  |  |  |  |
| Certificate of Incorporation |  |  |  |  |
| Certificate of Amendment |  |  |  |  |
| Bylaws |  |  |  |  |
| Board Resolution(s) |  |  |  |  |
| Amendments to Bylaws |  |  |  |  |
| **III. Not-for-Profit Corporations – *Proposed Active Member Corporation*** | | | | |
| Certificate of Incorporation |  |  |  |  |
| Certificate of Amendment |  |  |  |  |
| Bylaws |  |  |  |  |
| Board Resolution(s) |  |  |  |  |
| Amendments to Bylaws |  |  |  |  |
| List of officers and directors |  |  |  |  |
| **IV. Business Corporations** | | | | |
| List regarding each incoming stockholder |  |  |  |  |
| Evidence of transfer of stock |  |  |  |  |
| Certificate of Incorporation |  |  |  |  |
| Bylaws |  |  |  |  |
| Board Resolution |  |  |  |  |
| List of all stockholders (before and after) |  |  |  |  |
| Transfer affidavits |  |  |  |  |
| **V. Limited Liability Companies** | | | | |
| List regarding each incoming member |  |  |  |  |
| Evidence of transfer of membership interest |  |  |  |  |
| Articles of Organization |  |  |  |  |
| Operating Agreement, including documentation by incoming member(s). |  |  |  |  |
| List of all members (before and after) |  |  |  |  |
| Consent of existing members |  |  |  |  |