



Blind Amendment LCPR09-01A

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA Privatizations
Relevant Provisions of Law: Minnesota Statutes, Chapter 353F
General Nature of Proposal: Adds the Weiner Memorial Medical Center, Inc., to the privatization chapter.
Date of Summary: February 25, 2009

Specific Proposed Changes

- Adds the Weiner Memorial Medical Center, Inc., to the list of eligible medical facilities in Chapter 353F, permitting the employees to be provided with the treatment provided by the privatization chapter following a sale of the facility.

Policy Issues Raised by the Proposed Legislation

- Draft legislation submitted after the deadline due to uncertainty about the sale date.

Potential Amendments

- There are no Commission staff amendments.



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: Amendment LCPR09-01A: PERA Privatization; Weiner Memorial Medical Center, Inc., Compliance with Revised Privatization Procedure

DATE: February 20, 2009

Summary of Amendment LCPR09-01A

Document LCPR09-01A is a blind amendment that can be added to any suitable pension bill. The amendment adds Weiner Memorial Medical Center, Inc., to the list of eligible medical facilities in Chapter 353F, permitting the employees of that organization to be provided with the treatment provided by that chapter following a privatization.

Discussion and Analysis

Amendment LCPR09-01A represents the first effort to consider privatization legislation under the new procedure created last session by Laws 2008, Chapter 349, Article 5, Section 27. The new process removes the need for each privatization to be a separate bill for legislative consideration. Under the new procedure, the Executive Director of the Public Employees Retirement Association (PERA) forwards proposed legislation to the Commission on behalf of the privatizing entities that meet the standards the Commission has long applied to privatizations.

Under the procedure put in place in 2008, the chief clerical officer of a governmental subdivision may submit a resolution from the governing body to the PERA Executive Director requesting coverage for privatized employees following a privatization if the governing body agrees to pay for the actuarial review by the actuary retained by the retirement plan. If the actuarial review indicates that a net gain is expected to PERA due to privatization, the PERA Executive Director will forward, before January 15, a recommendation in the form of legislation that the entity be included under the PERA Privatization Chapter, Chapter 353F. If the entity fails to privatize within one year of the final enactment date of the legislation which would have added the entity to the chapter, the executive director shall include a recommendation in the next proposed legislation to remove that entity from the chapter.

The 2008 legislation was an effort to simplify the process for adding privatized entities to the PERA privatization chapter. Before that process was put in place, each entity which wished to have privatized employees added to the PERA privatization chapter had a bill introduced, and the Commission has reviewed each of these bills separately. The Commission typically reviews and approves two to three privatization bills per year requesting the treatment under the PERA privatization chapter. The criteria used by the Commission is whether the some entity other than PERA is willing to pay for the necessary actuarial review, and whether that actuarial review demonstrates that including the privatized entity in the PERA privatization chapter will not harm PERA (in other words, would provide a gain, or at least no loss). This is the same criteria or test applied under the new procedure with PERA, rather than the Commission, making that determination. Those privatizing entities which are willing to pay for the required actuarial review and which have a privatization that meets the applicable PERA gain criteria are to be included in the legislative request to the Commission and Legislature from PERA. Thus, the Commission is presented with only one privatization bill per legislative session, rather than several, and the privatizations included in that proposed legislation have been reviewed and certified by PERA as meeting the Commission's criteria.

The proposed amendment reflects the result of the new process. The actuarial work needed to make the determination has been performed, and the actuary concluded that PERA is unlikely to be harmed by the privatization (some gain to PERA is expected). PERA forwarded a request in the form of a legislative draft to add the Weiner Memorial Medical Center, Inc., to the list of eligible medical facilities in Chapter 353F. Commission staff redrafted the proposal in the form of Amendment LCPR09-01A.

Minnesota Statutes, Section 353F.025, requires that the Commission receive the notification and draft legislation from PERA by January 15 in order to be considered for that year's legislative session. The February 18, 2009, letter of transmission (attached) from PERA to the chairs of the Commission, the

Senate State and Local Government Operations and Oversight Committee, and the House Government Operations, Reform, Technology and Elections Committee indicates that PERA delayed the submission because it was uncertain of the effective date of the sale of the medical facility. On February 13, 2009, PERA received final confirmation that the sale and final transfer date will occur on or shortly after November 2, 2009, and upon receiving that confirmation, PERA forwarded the proposed legislative draft.

Background Information: Treatment Under Chapter 353F: Privatized Public Hospital, PERA Pension Benefits

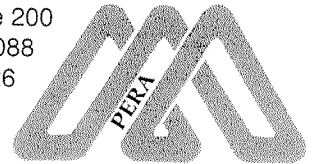
When the privatization of a PERA-covered employing unit occurs, the employees no longer qualify as public employees and no longer qualify to continue as active PERA-General members. However, if these employees are made eligible under Chapter 353F, they will have certain benefits that differ from the typical treatment of terminated employees. One justification for this different treatment is that the privatized employees did not choose to leave public service and to end public retirement plan coverage. Their employee status changed from public to nonpublic due to an action by the employer (the transfer from public employer to nonprofit corporation or other nonpublic status), rather than by an exercise of free will by the employees.

If a privatization is included under Chapter 353F, those employees who are employed at the time of the transfer to the nonprofit corporation receive the following special coverage provisions:

1. Vested Benefit With Any Service Length. The normal three-year PERA vesting period is waived, so a privatized employee with less than three years of PERA-covered service would be entitled to receive a PERA retirement annuity, notwithstanding general law.
2. Increased Deferred Annuity Augmentation Rate. For the period between the date of privatization and the date of eventual retirement, the privatized employee's deferred PERA retirement annuity will increase at the rate of 4.0 percent rather than three percent until age 55 and at the rate of 6.0 percent rather than five percent after age 54.

"Rule of 90" Eligibility with Post-Privatization Service. For privatized employees with actual or potential long service who could have retired early with an unreduced retirement annuity from PERA under the "Rule of 90" (combination of age and total service credit totals 90), the employee will be able to count future privatized service with the hospital for eligibility purposes, but not for benefit computation purposes.

Public Employees Retirement Association of Minnesota
60 Empire Drive, Suite 200
Saint Paul, Minnesota 55103-2088
Member Information Services: 651-296-7460 or 1-800-652-9026
Employer Response Lines: 651-296-3636 or 1-888-892-7372
PERA Fax Number: 651-297-2547
PERA Website: www.mnpera.org



February 18, 2009

Senator Don Betzold, Chair
Legislative Commission on Pensions & Retirement
Minnesota Senate
111 State Capitol
St. Paul, MN 55155

Senator Ann Rest, Chair
State & Local Government Operations & Oversight Committee
Minnesota Senate
205 State Capitol
St. Paul, MN 55155

Representative Gene Pelowski, Jr., Chair
Governmental Operations, Reform, Technology and Elections Committee
Minnesota House of Representatives
491 State Office Building
St. Paul, MN 55155

Re: Privatization of Weiner Memorial Medical Center, Inc., of Marshall, MN

On February 13, 2009, PERA received confirmation that the City of Marshall will sell and transfer all of the city's interest in Weiner Memorial Medical Center, Inc., (WMMC) of Marshall, Minnesota to Avera Health, a South Dakota nonprofit, tax-exempt corporation, on or shortly after November 2, 2009.

The actuarial work assessing the cost of extending the enhanced termination benefits under Chapter 353F to the PERA-covered employees of WMMC shows that the cost of the enhanced termination benefits is less than the actuarial gain that PERA would otherwise experience when these employees are no longer eligible to participate in PERA's benefit plan. The PERA Board of Trustees accepted the study results at its meeting on November 13, 2008.

We are forwarding a recommendation to the Legislative Commission on Pensions and Retirement (LCPR) to include Weiner Memorial Medical Center, Inc. in the list within Chapter 353F of former governmental entities that are now privately managed or owned. We have also provided a copy of the actuarial study results and other supporting documentation to the LCPR staff.


Senator Don Betzold
Page 2
February 18, 2009

We recognize that Minnesota Statutes, Section 353F.025 requires that you receive this notification by January 15 in order to be considered in this year's legislative session, but because we were not certain as to the effective date of the sale of the medical center, we waited for the final confirmation of the sale from the legal advisor working with Avera Health and the City. We received that confirmation on February 13 suggesting a final transfer date of November 2, 2009 or shortly thereafter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Mary Most Vanek
Executive Director

 Larry Martin, Executive Director
Legislative Commission on Pensions and Retirement

We recommend that this subdivision be amended into Senate File 578 by adding a section to read:

Section . Minnesota Statutes 2008, section 353F.02, subdivision 4 is amended to read:

Subdivision. 4. **Medical facility.** "Medical facility" means:

- (1) Bridges Medical Services;
- (2) the City of Cannon Falls Hospital;
- (3) Clearwater County Memorial Hospital doing business as Clearwater Health Services in Bagley;
- (4) the Dassel Lakeside Community Home;
- (5) the Fair Oaks Lodge, Wadena;
- (6) the Glencoe Area Health Center;
- (7) Hutchinson Area Health Care;
- (8) the Lakefield Nursing Home;
- (9) the Lakeview Nursing Home in Gaylord;
- (10) the Luverne Public Hospital;
- (11) the Oakland Park Nursing Home;
- (12) the RenVilla Nursing Home;
- (13) the Rice Memorial Hospital in Willmar, with respect to the Department of Radiology and the Department of Radiation/Oncology;
- (14) the St. Peter Community Health Care Center;
- (15) the Waconia-Ridgeview Medical Center; and
- (16) the Weiner Memorial Medical Center, Inc.; and
- (17) the Worthington Regional Hospital.

LEONARD
STREET
AND
DEINARD

150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX

DANIEL J. MCINERNEY, JR.
612-335-1782 DIRECT
DANIEL.MCINERNEY@LEONARD.COM

February 13, 2009

Via Messenger

Ms. Mary Vanek
Executive Director, PERA
Public Employees Retirement Association
60 Empire Drive, Suite 200
St. Paul, MN 55103-1855

*Re: Privatization of Weiner Memorial Medical Center, Inc., d/b/a Avera Marshall
Regional Medical Center ("WMMC")*

Dear Ms. Vanek:

As you know, I represent WMMC, which is a nonprofit corporation owned by the City of Marshall. WMMC employees participate in PERA. Enclosed, as we have discussed, please find a fully executed Membership Transfer Agreement among the City of Marshall, Weiner Memorial Medical Center and Avera Health. Under the terms of the agreement, the City of Marshall will convey its ownership interest in Weiner Memorial Medical Center to Avera Health, a South Dakota nonprofit tax-exempt corporation. Closing on the transaction will occur on or shortly after November 2, 2009.

I have not included with the agreement the various attachments and exhibits since I do not believe they are important to your assessment of whether the statutory criteria for inclusion of Weiner Memorial Medical Center in the PERA legislation are satisfied; however, if you wish to receive copies of the attachments and exhibits, please do not hesitate to ask and I will provide them to you. I am also not including a real estate transfer agreement which conveys real estate owned by the City to Weiner Memorial Medical Center just before the change of ownership. Similarly, if it is important for you to review this document, please do not hesitate to ask.

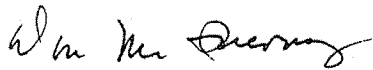
Based upon previous conversations and correspondence among you, Weiner Memorial Medical Center Chief Executive Officer Mary Maertens, and me, it is my assumption that my client has satisfied all of the requirements under the statutes to enable its inclusion in the PERA legislation this year. If that assumption is incorrect, please call me at your earliest convenience.

Mary Vanek
February 13, 2009
Page 2

Thank you very much for your assistance in this matter. It is always a pleasure working with you.

Sincerely ,

LEONARD, STREET AND DEINARD



Daniel J. McInerney, Jr.

DJM/jb

cc: Mary Maertens (via e-mail)(w/o enclosures)
Matt Michels (via e-mail)(w/o enclosures)



Marshall Regional
Medical Center

**Louis Weiner Memorial Hospital
Morningside Heights Care Center**
300 South Bruce Street
Marshall, MN 56258
(507) 532-9661

Marshall Home Health Services
1104 East College Drive
Marshall, MN 56258
(507) 537-7070

January 22, 2009

Mary Most Vanek, Executive Director
Public Employee Retirement Association of Minnesota
60 Empire Drive, Suite 200
St Paul, MN 55103-2088

Dear Mary,

I am writing in regard to the pending sale of Weiner Memorial Medical Center (dba Avera Marshall Regional Medical Center) by the City of Marshall to Avera Health. At this time, the process is moving along as we generally anticipated. The governing board completed their approval process on January 20, 2009 by adopting the enclosed resolution. This recommendation will now move to the council for action next week. We expect that the City Council will act on the recommendation by the medical center's governing board on January 27, 2009. Provided that the council approves the transaction on the 27th, a City Ordinance will be introduced and finalized on February 10, 2009 at which time the approval process for the transaction would be complete and the agreements can be signed. At that point, Dan McInerney, legal counsel, will contact you and provide to you all the necessary documents required to finalize the PERA enhanced benefits process for this legislative year.

Thank you for your ongoing assistance with this very important process. Please contact me for any questions or concerns you may have at this time.

Best regards,

Mary Maertens
President & CEO

Enclosure (1)

Cc: Dan McInerney



**RESOLUTIONS OF THE BOARD OF TRUSTEES OF
WEINER MEMORIAL MEDICAL CENTER, INC.**

**CREATION OF SOLE MEMBERSHIP INTEREST
AND TRANSFER TO CITY OF MARSHALL**

WHEREAS, Weiner Memorial Medical Center, Inc. (the "Corporation") is a Minnesota nonprofit corporation that owns certain assets used in the operation of a medical center known as Weiner Memorial Medical Center, doing business as Avera Marshall Regional Medical Center (the "Medical Center") located in the City of Marshall, Minnesota (the "City");

WHEREAS, the City owns real estate and other assets used in the operation of the Medical Center, which is organized and operated as an enterprise of the City under City Ordinance 178;

WHEREAS, together the Corporation and the City operate the Medical Center, and the Board of Trustees of the Corporation consists of the same persons who serve as the Board of Directors of the Medical Center, and the Bylaws of the Medical Center are also the Bylaws of the Corporation;

WHEREAS, the City Council and the Board of Trustees of the Corporation have determined that it is in the best interests of the City and the Corporation to affiliate with a larger nonprofit provider of hospital and health care services in the region to provide access to the best available medical care to residents of the community, through improved facilities, better access to specialty care, and assurance of the availability of a comprehensive range of health care services in the community;

WHEREAS, Avera Health is a nonprofit provider of hospital and health care services headquartered in South Dakota which provides hospital and health care services in the region, and has had an affiliation agreement with the Medical Center for the benefit of the community for several years;

WHEREAS, Avera Health is willing to acquire the Medical Center and provide hospital and health care services to serve the City and the surrounding community upon terms and conditions acceptable to the Board of Trustees of the Corporation, the Board of Directors of the Medical Center, and the City Council;

WHEREAS, the form of transaction agreed to by the Corporation, the City and Avera Health consists of a transfer by the City of a sole membership interest in the Corporation, encompassing all of the assets of the Medical Center, to Avera Health in exchange for certain consideration (the "Transaction"), to be effective on a date agreed to by the parties on or after November 2, 2009 (the "Closing Date");

WHEREAS, in anticipation of the Transaction it is necessary and desirable to transfer all assets of the Medical Center not otherwise owned by the Corporation to the Corporation, and establish the City as the sole member of the Corporation;

WHEREAS, it is necessary to amend the Corporation's Articles of Incorporation to eliminate the status of the Trustees of the Corporation as its corporate members, and amend the Bylaws of the Corporation (which at present are also the bylaws of the Medical Center) to create a sole membership interest in the Corporation, which shall be held by the City and transferred to Avera Health on the Closing Date;

WHEREAS, it is also necessary to amend the Bylaws of the Corporation to reflect the status of the Corporation as a subsidiary of Avera Health from and after the Closing Date;

NOW, THEREFORE, BE IT RESOLVED, that the acceptance of the transfer of real estate from the City upon the terms and conditions set forth in the Asset Transfer Agreement attached hereto as Exhibit A be, and hereby is, authorized and approved;

RESOLVED FURTHER, that Article III of the Articles of Incorporation of the Corporation be, and hereby is, deleted in its entirety.

RESOLVED FURTHER, that Article XI of the Articles of Incorporation of the Corporation be, and hereby is, deleted in its entirety.

RESOLVED FURTHER, that the appropriate officers of the corporation be, and hereby are, authorized and directed to make, execute and acknowledge a certificate embracing the two foregoing resolutions and to cause such certificate to be filed for record with the office of the Minnesota Secretary of State prior to the date of closing of the Transaction.

RESOLVED FURTHER, that the form of Bylaws attached hereto as Exhibit B, be, and hereby is, adopted and approved, effective on the Closing Date.

RESOLVED FURTHER, that the undertakings of the Corporation in connection with the Transaction as set forth in the Membership Transfer Agreement attached hereto as Exhibit C be, and hereby are, authorized and approved;

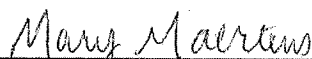
RESOLVED FURTHER, that the appropriate officers of the Corporation be, and hereby are, authorized to make and approve such non-substantive changes and clarifications to the form of Bylaws, Asset Transfer Agreement, and Membership Transfer Agreement attached hereto as they deem necessary and appropriate; and authorized and directed to execute and deliver to the City and perform the terms of the Asset Transfer Agreement and the Membership Transfer Agreement, and execute, deliver and fulfill the terms and conditions of such instruments of transfer, agreements, certificates and other documents as may be necessary or appropriate to effect the Transaction.

Passed and adopted by the Avera Marshall Regional Medical Center Board of the City of Marshall this 20th day of January 2009.

AVERA MARSHALL REGIONAL MEDICAL CENTER
BOARD OF THE CITY OF MARSHALL, MINNESOTA

By 
Michael Rich, Chairman

ATTEST:


Mary Maertens, Executive Secretary

Bonnie Wurst, ASA

MERCER

 MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

333 South 7th Street, Suite 1600
Minneapolis, MN 55402-2427
612 642 8816 Fax 612 642 8686
bonnie.wurst@mercer.com
www.mercer.com

November 5, 2008

Ms. Mary Most Vanek
Executive Director
Public Employees Ret. Assoc. of MN
60 Empire Drive, Suite 200
St. Paul, MN 55103

Subject: Louis Weiner Hospital

Dear Mary:

Eligible employees of Louis Weiner Hospital are currently members in the Public Employees Retirement Fund. If the Hospital becomes a private employer, these employees will terminate active participation in the plan. At your request, we have completed an analysis of the actuarial accrued liability of the active employees of Louis Weiner Hospital under three scenarios, as follows:

- Ongoing Active Employees
- Terminated Vested Employees
- Terminated Vested Employees with the enhancements of the PERA Privatized Plan

From the data file of 458 employees that you provided, we identified 367 active participants in PERA as of July 1, 2007. The remaining Louis Weiner employees were primarily hired after July 1, 2007.

The liabilities in this letter are determined as of July 1, 2007 and are based on the employee data provided by PERA, and the plan provisions, assumptions, and methods as summarized in the 2007 valuation report prepared by the Segal Company in November 2007. Liabilities under all three scenarios were adjusted by 0.8% to reflect the possibility of Combined Service Annuities, consistent with the adjustment applied to all active employees in the PERA valuation.

The specific Privatization enhancements reflected in our liabilities are as follows:

- All participants are 100% vested upon termination
- Augmentation rate of 4.0% annually through age 55
- Augmentation rate of 6.0% after age 55 until retirement

MERCER

 MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Page 2
November 5, 2008
Ms. Mary Most Vanek
Public Employees Ret. Assoc. of MN


The actuarial accrued liabilities under the three scenarios described above are as follows:


	Actuarial Accrued Liability as of July 1, 2007
1. Ongoing Active PERA Members	\$ 23,177,134
2. Terminated Vested Employees	17,053,327
3. Terminated Vested Employees with the enhancements of the PERA Privatized Plan	19,480,136

The actuarial accrued liability with the enhancements of the PERA Privatized Plan is less than the ongoing active actuarial accrued liability.

We are available to answer any questions on the material contained in the report, or to provide explanations or further details, as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. In addition, Mr. McElhaney meets the requirements of "approved actuary" under Minnesota Statutes, Section 356.215, Subdivision 1, Paragraph (c). We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict of interest that would impair the objectivity of our work.

Sincerely,


Bonita J. Wurst, A.S.A.


Stephen T. McElhaney, FSA

Copy:
Colin Caes, Julie Thompson, Sheri Wroblewski – Mercer

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

1.1 moves to amend as follows:

1.2 Page .., after line .., insert:

1.3 "Sec. ... Minnesota Statutes 2008, section 353F.02, subdivision 4, is amended to read:

1.4 Subd. 4. **Medical facility.** "Medical facility" means:

- 1.5 (1) Bridges Medical Services;
- 1.6 (2) the City of Cannon Falls Hospital;
- 1.7 (3) Clearwater County Memorial Hospital doing business as Clearwater Health
- 1.8 Services in Bagley;
- 1.9 (4) the Dassel Lakeside Community Home;
- 1.10 (5) the Fair Oaks Lodge, Wadena;
- 1.11 (6) the Glencoe Area Health Center;
- 1.12 (7) Hutchinson Area Health Care;
- 1.13 (8) the Lakefield Nursing Home;
- 1.14 (9) the Lakeview Nursing Home in Gaylord;
- 1.15 (10) the Luverne Public Hospital;
- 1.16 (11) the Oakland Park Nursing Home;
- 1.17 (12) the RenVilla Nursing Home;
- 1.18 (13) the Rice Memorial Hospital in Willmar, with respect to the Department of
- 1.19 Radiology and the Department of Radiation/Oncology;
- 1.20 (14) the St. Peter Community Health Care Center;
- 1.21 (15) the Waconia-Ridgeview Medical Center; ~~and~~
- 1.22 (16) the Weiner Memorial Medical Center, Inc.; and
- 1.23 (17) the Worthington Regional Hospital.

1.24 **EFFECTIVE DATE.** This section is effective upon compliance with Minnesota
1.25 Statutes, section 353F.02, subdivision 3."

1.26 Renumber the sections in sequence and correct the internal references

1.27 Amend the title accordingly