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HEALTH LAW NEWS

JULY 10, 2019

THINKING OF FORMING A NEW FOR-PROFIT HEALTH CARE ENTERPRISE? WHY A BENEFIT CORPORATION MAY BE RIGHT FOR YOUR ORGANIZATION

For-profit businesses are generally organized and operated to maximize shareholder value. For this reason, for-profit organizations have inherent limitations in pursuing goals or purposes that conflict with increasing the bottom line for shareholders. While for-profit companies have traditionally had these limitations, in recent years, many for-profit organizations have been presented with a new legal structure that was designed specifically to allow them to organize and carry on their business to maximize more than just profit. Introducing, the Benefit Corporation.

WHAT ARE BENEFIT CORPORATIONS?

A Benefit Corporation is a for-profit entity that is recognized by state law and specifically directs the business to operate for social, environmental and other permitted purposes. Under the Model Benefit Corporation Legislation,[1] Benefit Corporations must have a purpose of creating general public benefit and must also meet certain accountability and transparency standards.

General public benefit is defined as "a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation assessed taking into account the impacts of the benefit corporation as reported against a third-party standard."[2] In addition to a general public benefit, Benefit Corporations may also choose to pursue one or more special public benefit purposes, such as, providing low-income individuals or communities with beneficial products or services, improving human health, promoting the arts, sciences, or advancement of knowledge, etc.[3]

As for accountability, a Benefit Corporation requires its directors, in discharging their duties of their respective positions, to consider the interests of various constituencies, such as its employees, customers, community and local and global environment, rather than solely the corporation's shareholders. As such, directors are legally obligated to consider more than just the financial value of the corporation.

Lastly, a Benefit Corporation must prepare a public annual benefit report that assesses its performance in creating general public benefit against a third-party standard. The report is intended to allow shareholders to evaluate and measure the Benefit Corporation's performance of creating general or specific public benefit (similar to financial statements for a regular for-profit corporation) and to give the general public a means of judging whether the business is operating as a benefit corporation.

At the time of writing this article, 34 states, including Indiana, Wisconsin, Maryland, Texas, Colorado and Washington D.C., have passed Benefit Corporation legislation, while 6 states have legislation pending.[4]

THE CERTIFIED B CORPORATION ALTERNATIVE

In those states that have not adopted Benefit Corporation legislation, a for-profit entity looking to operate like a Benefit Corporation can become a "Certified B Corporation."[5] A Certified B Corporation is a for-profit company certified by the non-profit B Lab to "meet the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose."[6] To obtain certification, a business must obtain a minimum score on an online assessment that evaluates the company's business model and operational effect on the company's employees, customers, community and environment; integrate stakeholder consideration in the business's governance structure; and pay an annual certification fee ranging from $500 to $50,000 based on annual sales. In addition to meeting such performance standards, a Certified B Corporation must meet certain accountability and transparency standards similar to those of a Benefit Corporation. Some health care companies that are a Certified B Corporation include:

- **ResolutionCare Network; Eureka, CA**. ResolutionCare describes itself as "a people powered, technology-enabled palliative care initiative providing services in the home via a combination of telemedicine and face-to-face home visits to the seriously ill in rural, underserved counties in Northern California and beyond."[7]
- **Success Rehabilitation; Quakertown, PA**. Success Rehabilitation provides residential and outpatient programs for acquired and traumatic brain injury.[8]

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- **Workit Health, Inc.; Ann Arbor, MI**. Workit Health is an online/offline addiction care program that provides prevention, intervention and medication-assisted treatment.[9]
- **Tenfold Health; Bend, OR**. Tenfold Health is a company that designs and implements new payer and care delivery models that are designed to improve health and lower costs for health systems, insurers and other health care stakeholders.[10]

IS THE BENEFIT CORPORATION OR CERTIFIED B CORPORATION STATUS RIGHT FOR YOUR ORGANIZATION?

According to recent studies, global consumers are increasingly more likely to choose goods that come from a business that demonstrates an authentic commitment to social and environmental impact.[11] Many companies have purpose driven missions to have a positive impact on the world and want to convey that mission to investors, employees and clients. Becoming a Benefit Corporation or a Certified B Corp may give your business a competitive advantage in the marketplace and will display to the public that your company is committed to a socially conscious purpose.

If you have any questions or would like more information on benefit corporations, please contact:

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Special thanks to Spencer Hatfield, law clerk, for his assistance with the preparation of this article.

[1] The Model Benefit Corporation Legislation is a template model act for B Corporations and is available at: https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20_4_17_17.pdf.

[2] *Id*. at Section 102.

[3] *Id*.

[4] *State by State Status of Legislation*, B Lab Company, https://benefitcorp.net/policymakers/state-by-state-status (last accessed July 2019).

[5] While a Benefit Corporation may also become a Certified B Corp, there is no requirement for a Benefit Corporation to receive any certification.

[6] *What are B Corps*, Certified B Corp., https://www.bcorporation.net/what-are-b-corps (last accessed July 2019).

[7] *B Impact Report*, ResolutionCare Network, https://bcorporation.net/directory/resolutioncare-network (last accessed July 2019).

[8] *B Impact Report*, Success Rehabilitation, https://bcorporation.net/directory/success-rehabilitation (last accessed July 2019).

[9] *B Impact Report*, Workit Health, Inc., https://bcorporation.net/directory/workit-health-inc (last accessed July 2019); see also https://www.workithealth.com/.

[10] *B Impact Report*, Tenfold Health, https://bcorporation.net/directory/tenfold-health (last accessed July 2019).

[11] Richard Stammer, *It Pays to Become a B Corporation*, Harvard Business Review, December 6, 2016. https://hbr.org/2016/12/it-pays-to-become-a-b-corporation.

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