

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7070**

**BILL NUMBER: SB 416**

**NOTE PREPARED: Apr 14, 2021**

**BILL AMENDED: Apr 8, 2021**

**SUBJECT:** Hospitals and Certificates of Public Advantage.

**FIRST AUTHOR:** Sen. Ford Jon

**FIRST SPONSOR:** Rep. Morrison

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill establishes a certificate of public advantage (certificate) pertaining to mergers between hospitals located in counties that meet certain requirements to be issued by the State Department of Health (ISDH). The bill provides that a hospital that has been issued a certificate may not be purchased by another hospital or system of hospitals unless the purchase has been approved by the Federal Trade Commission. The bill sets forth the procedure and standards for obtaining a certificate and maintaining the certificate. The bill requires the ISDH to establish fees for the application of a certificate and the monitoring of an entity holding a certificate in an amount reasonably sufficient to fully fund the costs of the review and supervision of the application. The bill also provides that for the first five years that a hospital is operating under a certificate the hospital:

- (1) may not increase the charge for each individual service that the hospital offers by more than the increase in the Consumer Price Index for Medical Care; and
- (2) must invest the realized cost savings for the benefit of the community.

The bill requires a hospital that has been issued a certificate to file an annual report. It allows the Office of the Attorney General to issue an investigative demand concerning the issuance or maintenance of a certificate. It provides for an appeal of a determination made by the ISDH concerning the issuance or maintenance of a certificate.

**Effective Date:** July 1, 2021.

**Explanation of State Expenditures:** *State Department of Health (ISDH)* - The bill will result in an increase in workload and expenditures for the ISDH to review applications for certificates of public advantage from rural hospitals seeking to merge, as well as to conduct ongoing monitoring and enforcement measures for hospitals with active certificates. The bill requires this work to be done in consultation with the Family and

Social Services Administration (FSSA). The bill requires that these costs will be fully paid for using revenue from the certificate application, renewal, and monitoring fees charged by the ISDH from hospitals applying for and holding certificates. The ISDH may use these funds to contract with consultants or other outside experts to determine whether there is evidence that the certificate would provide a public benefit and meet the bill's standards, as well as to monitor continued compliance of certificate holders. The bill specifies that no new applications for certificates of public advantage may be submitted to the ISDH by hospitals after July 1, 2026.

*Attorney General's (AG) Office* - The AG is also authorized by the bill to take investigative action to ensure the merger agreement of hospitals seeking a certificate satisfy the requirements of the bill. The AG may also take investigative action concerning the ISDH's review or revocation of an issued certificate and file a civil action with the district court in the hospital's county if the AG finds the certificate holder has violated the bill's requirements. The total increase in workload or costs for the AG as a result of the bill will be dependent on administrative decisions on whether to pursue investigative actions relating to a certificate holder or applicant.

*State Health Care Costs* - When reviewing certificate of public advantage applications, the bill requires the ISDH to consider the effects of proposed mergers on hospital prices, cost efficiency, and health outcomes, as well as the ability of health care payors to negotiate payments with the merging hospitals. Additionally, the bill prohibits a hospital operating under a certificate from increasing charges by more than the increase in the Consumer Price Index for Medical Services from the previous year. Despite these requirements, the merger of two hospitals in a county with no other hospitals may still have an indeterminate impact on hospital prices in the county. Changes in hospital prices could potentially influence future contract negotiations between a consolidated hospital and the state employee health care plan and the state's Medicaid managed care entities. Any increases in General Fund or dedicated fund expenditures for health benefits as a result of the bill would be dependent on the number of proposed mergers that are granted certification. The total number of certificates issued by ISDH is expected to be small.

**Explanation of State Revenues:** *Certificate Fees* - The bill would require the ISDH to collect fees from hospitals seeking or holding a certificate of public advantage. The bill requires these fees to be set at a reasonable amount to fully fund the costs for the review of certificate applications and ongoing monitoring of the certificate holder. Fees paid for certificates under the bill would be deposited in the General Fund.

*Hospital License Fees* - If two hospitals merge as a result of the bill, the ISDH would only collect license fees from the consolidated hospital instead of two hospitals. Hospital license fees range between \$1,000 and \$5,000 annually, depending on the hospitals' total operating expenses, and are deposited in the General Fund.

*Hospital Assessment Fees* - If the combined capacity of a consolidated hospital differs from that of the two hospitals before their merger, there could be an indeterminable impact to the Hospital Assessment Fee (HAF) amount paid by the consolidated hospital. *[Out of the total Base HAF, 71.5% is used to leverage federal Medicaid matching funds to increase hospital Medicaid reimbursement up to specified limits. Any remainder of this 71.5% not used to increase hospital reimbursement is distributed to the Hospital Medicaid Fee Fund. In addition, 28.5% of the Base HAF revenue is distributed to the General Fund to offset Medicaid costs incurred by the state.]*

*Court Fee Revenue:* If the AG files a civil action relating to a certificate of public advantage and prevails, revenue from court fees may be collected from the defendant. A civil costs fee of \$100 would be assessed when a civil case is filed. If additional civil actions occur and court fees are collected, revenue to the state

General Fund may increase. A portion of the fee revenue is transferred to the Indiana Bar Foundation, and one fee is deposited into the State User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:** *County-Owned Hospitals* - County-owned hospitals seeking to merge with another hospital could potentially be eligible to apply for a certificate of public advantage under the bill before July 1, 2026 if they are located in a county that:

- has a population of less than 140,000;
- is not contiguous to a county with a population of more than 250,000;
- has only two hospitals that are both in the statewide comprehensive care trauma care system, with one of the hospitals being a teaching hospital with a medical residency program; and
- is predominately rural.

*Local Health Plans* - The bill potentially impacts local units of government that offer health insurance coverage for employees. Any increase to local health coverage costs may be mitigated with adjustments to other benefits or to the total employee compensation packages, or through the division of costs between the local unit and employees.

**Explanation of Local Revenues:** *Court Fee Revenue* - If additional civil actions occur and court fees are collected, local governments would receive additional revenue from both a portion of the civil costs fee and other fees that would be collected.

**State Agencies Affected:** State Department of Health; Family and Social Services Administration; Attorney General's Office; State Personnel Department.

**Local Agencies Affected:** County owned hospitals; local units offering employee health care plans; trial courts, city and town courts.

**Information Sources:** Legislative Services Agency, *Indiana Handbook of Taxes, Revenues, and Appropriations*, FY 2020.

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