



February 19, 2021

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## SENATE BILL No. 416

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DIGEST OF SB 416 (Updated February 17, 2021 1:15 pm - DI 104)

**Citations Affected:** IC 4-6; IC 16-21.

**Synopsis:** Hospitals and certificates of public advantage. 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 (state department). Sets forth the procedure and standards for obtaining a certificate and maintaining the certificate. Requires the state department 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. Allows the office of the attorney general to issue an investigative demand concerning the issuance or maintenance of a certificate. Provides for an appeal of a determination made by the state department concerning the issuance or maintenance of a certificate.

**Effective:** July 1, 2021.

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### Ford Jon, Charbonneau

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January 25, 2021, read first time and referred to Committee on Health and Provider Services.  
February 18, 2021, amended, reported favorably — Do Pass.

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SB 416—LS 7070/DI 104





February 19, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## SENATE BILL No. 416

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-6-3-3, AS AMENDED BY P.L.137-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2021]: Sec. 3. If the attorney general has reasonable cause to  
4 believe that a person may be in possession, custody, or control of  
5 documentary material, or may have knowledge of a fact that is relevant  
6 to an investigation conducted to determine if a person is or has been  
7 engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10,  
8 IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-8,  
9 **IC 16-21-15**, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8,  
10 IC 24-9, IC 25-1-7, IC 32-34-1, or any other statute enforced by the  
11 attorney general or is or has been engaged in a criminal violation of  
12 IC 13, only the attorney general may issue in writing, and cause to be  
13 served upon the person or the person's representative or agent, an  
14 investigative demand that requires that the person served do any  
15 combination of the following:  
16 (1) Produce the documentary material for inspection and copying  
17 or reproduction.

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1 (2) Answer under oath and in writing written interrogatories.

2 (3) Appear and testify under oath before the attorney general or  
3 the attorney general's duly authorized representative.

4 SECTION 2. IC 16-21-15 IS ADDED TO THE INDIANA CODE  
5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2021]:

7 **Chapter 15. Certificate of Public Advantage of Hospital**  
8 **Mergers**

9 **Sec. 1. This chapter applies to a merger agreement between**  
10 **hospitals located in a county that meets the following criteria:**

11 (1) Has a population that is less than one hundred forty  
12 thousand (140,000) and is not contiguous to a county with a  
13 population of more than two hundred fifty thousand  
14 (250,000).

15 (2) Has no more than two (2) acute care hospitals.

16 (3) Is a predominately rural county.

17 **Sec. 2. Nothing in this chapter affects antitrust immunity**  
18 **provided through any other provision of state or federal law.**

19 **Sec. 3. (a) Any hospital entering into a merger agreement with**  
20 **another hospital may submit an application to the state department**  
21 **for a certificate of public advantage to govern the merger**  
22 **agreement in the manner prescribed by the state department.**

23 (b) The application for a certificate of public advantage must  
24 include the following:

25 (1) A written copy of the merger agreement.

26 (2) A written description of the nature and scope of the  
27 merger.

28 (c) Any documentation submitted under this section with the  
29 application that is deemed to be proprietary information shall be  
30 clearly identified as proprietary information and a copy of the  
31 application with the proprietary information redacted for public  
32 records must be submitted by the applicant.

33 (d) An applicant must also file a complete copy of the  
34 application for a certificate of public advantage with the office of  
35 the secretary of family and social services in a manner prescribed  
36 by the office of the secretary.

37 (e) The state department shall assess a filing fee for an  
38 application for a certificate of public advantage that is reasonably  
39 sufficient to fully fund the costs of the review of the application and  
40 ongoing supervision if the application is granted, including any fees  
41 for consultants and experts. The state department may not spend  
42 any money on the implementation of this chapter until the state



1 department has received a filed application and received the filing  
2 fee.

3 Sec. 4. (a) The state department, in consultation with the office  
4 of the secretary of family and social services, shall review an  
5 application for a certificate of public advantage and the  
6 documentation filed under section 3 of this chapter to determine  
7 whether there is clear evidence that the proposed merger  
8 agreement:

9 (1) would benefit the population's health outcomes, health  
10 care access, and quality of health care; and

11 (2) meets the standards described in this section.

12 (b) The state department shall consider in the review of the  
13 application and documentation the effect of the merger agreement  
14 on the following:

15 (1) The quality and price of hospital and health care services  
16 provided to Indiana residents, including the demonstration of  
17 population health improvement of the region serviced and the  
18 extent to which medically underserved populations have  
19 access to and are projected to use the proposed services.

20 (2) The preservation of sufficient health care services within  
21 the geographic area to ensure public access to acute care.

22 (3) The cost efficiency of services, resources, and equipment  
23 provided or used by the hospitals that are a party to the  
24 merger agreement, including avoidance of duplication of  
25 services to better meet the needs of the community.

26 (4) The ability of health care payors to negotiate payments  
27 and service agreements with hospitals proposed to be merged  
28 under the merger agreement.

29 (5) Employment.

30 (6) Economic impact.

31 (c) The state department shall grant the certification if the state  
32 department determines in the review of the application and  
33 documentation that, under the totality of the circumstances, the  
34 following:

35 (1) There is clear evidence that the proposed merger would  
36 benefit the population's health outcomes, health care access,  
37 and quality of care in the county.

38 (2) The likely benefits resulting from the proposed merger  
39 agreement outweigh any disadvantages attributable to a  
40 reduction in competition that is authorized to result from the  
41 proposed merger.

42 The holder of a certificate of public advantage issued by the state



1 department under this chapter receives immunity from claims of  
2 state antitrust laws for the duration of the certificate.

3 (d) The state department has ninety (90) days from the filing of  
4 the application to review and make a determination on the  
5 application. The state department's determination on whether to  
6 grant the application must:

7 (1) be in writing;

8 (2) specify the basis for the determination; and

9 (3) be provided to the applicant on the date of the  
10 determination.

11 (e) The state department may include terms or conditions of  
12 compliance with the issuance of a certificate of public advantage  
13 under this chapter.

14 (f) The state department shall maintain records of all of the  
15 applications filed under this chapter, including records of any  
16 terms or conditions of issuing a certificate of public advantage that  
17 are imposed by the state department.

18 (g) The office of the attorney general may, at any time after an  
19 application is filed under this chapter and before the state  
20 department makes a determination on the application, require by  
21 civil investigative demand the attendance of witnesses and the  
22 production of documents for purposes of investigating whether the  
23 merger agreement satisfies the requirements of this chapter. Any  
24 documents produced or testimony given under this subsection are  
25 subject to confidentiality if the information is deemed proprietary  
26 information. The attorney general may seek compliance with the  
27 issuance of a civil investigative demand with the appropriate  
28 district court of the county in which the merger is to occur.

29 Sec. 5. (a) A hospital that is a party to a merger agreement that  
30 was issued a certificate of public advantage by the state  
31 department under this chapter may voluntarily terminate the  
32 certificate of public advantage by filing notice of termination with  
33 the state department in a manner prescribed by the state  
34 department at least thirty (30) days before the hospital's requested  
35 date of termination of the certificate.

36 (b) The state department shall grant a properly filed notice of  
37 termination request made by a hospital under this section.

38 Sec. 6. (a) The state department shall annually review a  
39 certificate of public advantage issued by the state department  
40 under this chapter.

41 (b) The state department shall require a reasonably sufficient  
42 fee for the renewal of the certification of public advantage that



1 covers the reasonable costs of the ongoing supervision of the  
2 certification, including any fees for consultants and experts.

3 (c) In conducting the review the state department shall consider  
4 whether the hospital continues to meet the standards required for  
5 the issuance of a certificate under this chapter.

6 (d) This section expires July 1, 2026.

7 Sec. 7. (a) The state department shall monitor a hospital  
8 operating under a certificate of public advantage issued under this  
9 chapter to ensure that the conduct of the hospital furthers the  
10 purposes of this chapter.

11 (b) The state department shall assess an annual monitoring fee  
12 to a hospital issued a certificate of public advantage under this  
13 chapter that covers the reasonable costs of the ongoing monitoring  
14 and supervision of the certification, including any fees for  
15 consultants and experts.

16 Sec. 8. (a) A hospital that is issued a certificate of public  
17 advantage under this chapter shall submit a written report  
18 annually to the state department in the manner and time  
19 determined by the state department.

20 (b) The report must include the following:

21 (1) Information about the extent of the benefits attributed to  
22 the issuance of a certificate of public advantage.

23 (2) Information, if applicable, about the hospital's action:

24 (A) in furtherance of any commitments made by the  
25 parties to the merger; or

26 (B) in complying with terms imposed by the state  
27 department as a condition for approval of the certificate of  
28 public advantage.

29 (3) A description of the activities conducted by the hospital  
30 under the merger agreement.

31 (4) Information relating to the price, cost, health  
32 improvements, quality of, and access to health care for the  
33 community served by the hospital.

34 (5) Any other health information required by the state  
35 department to ensure compliance with this chapter, including  
36 compliance with any terms or conditions for the issuance of  
37 the certificate of public advantage.

38 Sec. 9. (a) The state department may do any of the following  
39 concerning a hospital that is issued a certificate of public  
40 advantage under this chapter:

41 (1) Investigate the hospital's activities.

42 (2) Require the hospital to either take action or prohibit an



1           action in order to retain the hospital's certificate, including  
2           revocation of a hospital's certificate of public advantage, if the  
3           state department determines any of the following:

4           (A) The hospital is not complying with this chapter or with  
5           a term or condition issued with the hospital's certificate.

6           (B) The state department's issuance of a hospital's  
7           certificate was based on a material misrepresentation in  
8           the application.

9           (C) The hospital has failed to pay a fee authorized under  
10          this chapter.

11          (D) The benefits determined in the issuance of the  
12          certificate no longer outweigh the disadvantages  
13          attributable to the reduction in competition resulting from  
14          the merger.

15          (b) If the state department determines that a hospital holding a  
16          certificate of public advantage has a deficiency in violation of the  
17          certificate, the state department shall issue a deficiency notice and  
18          require the hospital to adopt a plan of correction concerning the  
19          deficiency notice in order to maintain the certificate. A hospital  
20          issued a deficiency notice by the state department shall adopt and  
21          implement a plan of correction for each indicated deficiency.

22          (c) The office of the attorney general may issue a civil  
23          investigative demand concerning the state department's review or  
24          revocation of an issued certificate of public advantage and demand  
25          the attendance of witnesses and the production of documents to  
26          investigate whether a hospital that holds the certificate continues  
27          to meet the requirements of the certificate set forth in this chapter.  
28          The office of the attorney general may file an action with the  
29          district court of the county in which the hospital is located for the  
30          revocation of a certificate issued under this chapter. The attorney  
31          general has the burden of establishing by clear and convincing  
32          evidence that a change in circumstances has resulted in the public  
33          disadvantage in the reduction in competition from the merger  
34          outweighs the benefits resulting from the merger.

35          (d) If the attorney general brings an action under this section  
36          and proves by clear and convincing evidence that a certificate of  
37          public advantage was obtained through a material  
38          misrepresentation to the state department, the parties to the  
39          merger agreement bear the burden of establishing by clear and  
40          convincing evidence that benefits of the merger are not outweighed  
41          by the disadvantages attributable by a reduction in competition as  
42          a result of the merger.





1           **Sec. 10. (a) A person aggrieved by a decision of the state**  
 2 **department to:**

3           **(1) grant or deny issuing a certificate under this chapter; or**

4           **(2) revoke a certificate issued under this chapter;**

5 **may appeal the order by filing a petition for judicial review in a**  
 6 **district court of the county in which the hospital is located.**

7           **(b) The filing of a petition for judicial review under subsection**  
 8 **(a) stays the decision by the state department that is the subject of**  
 9 **the review.**

10           **(c) The state department shall submit the documentation and all**  
 11 **of the records the state department has concerning the subject of**  
 12 **the review to the court not later than forty-five (45) days after the**  
 13 **filing of the petition under subsection (a).**

14           **(d) The district court may require or permit later corrections or**  
 15 **additions to the record or extend the time frame prescribed by**  
 16 **subsection (c).**

17           **(e) The district court shall consider the petition under this**  
 18 **section without a jury.**

19           **(f) The district court may reverse a decision made by the state**  
 20 **department that is the subject of the petition if the court finds any**  
 21 **of the following:**

22           **(1) The decision is in violation of the Constitution of the State**  
 23 **of Indiana or the Constitution of the United States.**

24           **(2) The state department exceeded the state department's**  
 25 **authority under this chapter.**

26           **(3) The state department violated procedures specified under**  
 27 **this chapter.**

28           **(4) The decision by the state department was arbitrary or**  
 29 **capricious, or characterized an abuse or unwarranted**  
 30 **exercise of discretion.**

31           **(5) The state department's decision was unsupported by**  
 32 **substantial and material evidence based on the entire record.**

33           **(g) The district court shall issue a decision on the petition in**  
 34 **writing setting forth the court's findings of fact and conclusions of**  
 35 **law.**

36           **Sec. 11. The state department may adopt rules under IC 4-22-2**  
 37 **for the implementation and administration of this chapter.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 416, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 15, after "two (2)" insert "**acute care**".

Page 2, line 29, delete "the applicant believes" and insert "**is deemed**".

Page 2, line 37, delete "may" and insert "**shall**".

Page 2, line 38, delete "reasonable" and insert "**reasonably sufficient to fully fund**".

Page 2, line 39, delete "for".

Page 2, line 41, after "." insert "**The state department may not spend any money on the implementation of this chapter until the state department has received a filed application and received the filing fee.**".

Page 4, line 38, delete "may" and insert "**shall**".

Page 4, line 38, delete "reasonable" and insert "**reasonably sufficient**".

Page 5, line 8, delete "may" and insert "**shall**".

and when so amended that said bill do pass.

(Reference is to SB 416 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 11, Nays 0.

