



February 19, 2021

SENATE BILL No. 416

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.

Ford Jon, Charbonneau

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

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

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.

