



April 8, 2021

ENGROSSED SENATE BILL No. 416

DIGEST OF SB 416 (Updated April 8, 2021 9:54 am - DI 77)

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). 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. 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. 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
(Continued next page)

Effective: July 1, 2021.

Ford Jon, Charbonneau

(HOUSE SPONSORS — MORRISON, BAIRD, HEATON)

January 25, 2021, read first time and referred to Committee on Health and Provider Services.

February 18, 2021, amended, reported favorably — Do Pass.

February 22, 2021, read second time, ordered engrossed. Engrossed.

February 23, 2021, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Public Health.

April 8, 2021, amended, reported — Do Pass.

ES 416—LS 7070/DI 104



Digest Continued

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. Requires a hospital the has been issued a certificate to file an annual report. 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.



April 8, 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.

ENGROSSED 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.

ES 416—LS 7070/DI 104



- 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 only two (2) hospitals that are both in the statewide
- 16 comprehensive trauma care system under IC 16-19-3-28 and
- 17 one (1) of the hospitals is a teaching hospital with a medical
- 18 residency program.
- 19 (3) Is a predominately rural county.
- 20 **Sec. 2. (a) Nothing in this chapter affects antitrust immunity**
- 21 **provided through any other provision of state or federal law.**
- 22 (b) A hospital that has been issued a certificate of public
- 23 advantage under this chapter may not be purchased by another
- 24 hospital or system of hospitals unless the purchase has been
- 25 approved by the Federal Trade Commission.
- 26 **Sec. 3. (a) Any hospital entering into a merger agreement with**
- 27 **another hospital may submit an application to the state department**
- 28 **for a certificate of public advantage to govern the merger**
- 29 **agreement in the manner prescribed by the state department.**
- 30 **However, a hospital may not submit an application under this**
- 31 **chapter after July 1, 2026.**
- 32 (b) The application for a certificate of public advantage must
- 33 include the following:
- 34 (1) A written copy of the merger agreement.
- 35 (2) A written description of the nature and scope of the
- 36 merger.
- 37 (c) Any documentation submitted under this section with the
- 38 application that is deemed to be proprietary information shall be
- 39 clearly identified as proprietary information and a copy of the
- 40 application with the proprietary information redacted for public
- 41 records must be submitted by the applicant.
- 42 (d) An applicant must also file a complete copy of the



1 application for a certificate of public advantage with:

- 2 (1) the office of the secretary of family and social services in
 3 a manner prescribed by the office of the secretary; and
 4 (2) the office of the attorney general in a manner prescribed
 5 by the office of the attorney general.

6 (e) The state department shall assess a filing fee for an
 7 application for a certificate of public advantage that is reasonably
 8 sufficient to fully fund the costs of the review of the application and
 9 ongoing supervision if the application is granted, including any fees
 10 for consultants and experts. The state department may not spend
 11 any money on the implementation of this chapter until the state
 12 department has received a filed application and received the filing
 13 fee.

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

- 20 (1) would benefit the population's health outcomes, health
 21 care access, and quality of health care; and
 22 (2) meets the standards described in this section.

23 (b) The state department shall consider in the review of the
 24 application and documentation the effect of the merger agreement
 25 on the following:

- 26 (1) The quality and price of hospital and health care services
 27 provided to Indiana residents, including the demonstration of
 28 population health improvement of the region serviced and the
 29 extent to which medically underserved populations have
 30 access to and are projected to use the proposed services.
 31 (2) The preservation of sufficient health care services within
 32 the geographic area to ensure public access to acute care.
 33 (3) The cost efficiency of services, resources, and equipment
 34 provided or used by the hospitals that are a party to the
 35 merger agreement, including avoidance of duplication of
 36 services to better meet the needs of the community.
 37 (4) The ability of health care payors to negotiate payments
 38 and service agreements with hospitals proposed to be merged
 39 under the merger agreement.
 40 (5) Employment.
 41 (6) Economic impact.

42 (c) The state department shall grant the certification if the state



1 department determines in the review of the application and
 2 documentation that, under the totality of the circumstances, the
 3 following:

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

7 (2) The likely benefits resulting from the proposed merger
 8 agreement outweigh any disadvantages attributable to a
 9 reduction in competition that is authorized to result from the
 10 proposed merger.

11 The holder of a certificate of public advantage issued by the state
 12 department under this chapter receives immunity from claims of
 13 state antitrust laws for the duration of the certificate.

14 (d) The state department has one hundred twenty (120) days
 15 from the filing of the application to review and make a
 16 determination on the application. The state department's
 17 determination on whether to grant the application must:

18 (1) be in writing;

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

20 (3) be provided to the applicant on the date of the
 21 determination.

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

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

29 (g) The office of the attorney general may, at any time after an
 30 application is filed under this chapter and before the state
 31 department makes a determination on the application, require by
 32 civil investigative demand the attendance of witnesses and the
 33 production of documents for purposes of investigating whether the
 34 merger agreement satisfies the requirements of this chapter. Any
 35 documents produced or testimony given under this subsection are
 36 subject to confidentiality if the information is deemed proprietary
 37 information. The attorney general may seek compliance with the
 38 issuance of a civil investigative demand with the appropriate
 39 district court of the county in which the merger is to occur.

40 Sec. 5. (a) A hospital that is a party to a merger agreement for
 41 at least five (5) years that was issued a certificate of public
 42 advantage by the state department under this chapter may



1 voluntarily terminate the certificate of public advantage by filing
2 notice of termination with the state department in a manner
3 prescribed by the state department at least thirty (30) days before
4 the hospital's requested date of termination of the certificate.

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

7 Sec. 6. (a) The state department shall annually review a
8 certificate of public advantage issued by the state department
9 under this chapter.

10 (b) The state department shall require a reasonably sufficient
11 fee for the renewal of the certification of public advantage that
12 covers the reasonable costs of the ongoing supervision of the
13 certification, including any fees for consultants and experts.

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

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

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

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

27 (c) A hospital operating under a certificate of public advantage
28 may not increase the charge for each individual service the hospital
29 offers by more than the increase in the preceding year's annual
30 average of the Consumer Price Index for Medical Care as
31 published by the federal Bureau of Labor Statistics.

32 (d) For the first five (5) years that a hospital is operating under
33 a certificate of public advantage the hospital must:

34 (1) invest the realized cost savings from the identified
35 efficiencies and improvements included in the certificate of
36 public advantage application in the areas of Indiana the
37 hospital serves for the benefit of the community; and

38 (2) summarize the realized cost savings and investments in the
39 hospital's annual report submitted under section 8 of this
40 chapter.

41 Sec. 8. (a) A hospital that is issued a certificate of public
42 advantage under this chapter shall submit a written report not



- 1 later than July 1 of each year to:
- 2 (1) the state department in the manner and time determined
- 3 by the state department;
- 4 (2) the office of the attorney general in a manner prescribed
- 5 by the office of the attorney general; and
- 6 (3) the general assembly in an electronic format under
- 7 IC 5-14-6.
- 8 (b) The report must include the following:
- 9 (1) Information about the extent of the benefits attributed to
- 10 the issuance of a certificate of public advantage.
- 11 (2) Information, if applicable, about the hospital's action:
- 12 (A) in furtherance of any commitments made by the
- 13 parties to the merger; or
- 14 (B) in complying with terms imposed by the state
- 15 department as a condition for approval of the certificate of
- 16 public advantage.
- 17 (3) A description of the activities conducted by the hospital
- 18 under the merger agreement.
- 19 (4) Information relating to the price, cost, health
- 20 improvements, quality of, and access to health care for the
- 21 community served by the hospital.
- 22 (5) Any other health information required by the state
- 23 department to ensure compliance with this chapter, including
- 24 compliance with any terms or conditions for the issuance of
- 25 the certificate of public advantage.
- 26 **Sec. 9. (a) The state department may do any of the following**
- 27 **concerning a hospital that is issued a certificate of public**
- 28 **advantage under this chapter:**
- 29 (1) Investigate the hospital's activities.
- 30 (2) Require the hospital to either take action or prohibit an
- 31 action in order to retain the hospital's certificate, including
- 32 revocation of a hospital's certificate of public advantage, if the
- 33 state department determines any of the following:
- 34 (A) The hospital is not complying with this chapter or with
- 35 a term or condition issued with the hospital's certificate.
- 36 (B) The state department's issuance of a hospital's
- 37 certificate was based on a material misrepresentation in
- 38 the application.
- 39 (C) The hospital has failed to pay a fee authorized under
- 40 this chapter.
- 41 (D) The benefits determined in the issuance of the
- 42 certificate no longer outweigh the disadvantages



1 attributable to the reduction in competition resulting from
2 the merger.

3 (b) If the state department determines that a hospital holding a
4 certificate of public advantage has a deficiency in violation of the
5 certificate, the state department shall issue a deficiency notice and
6 require the hospital to adopt a plan of correction concerning the
7 deficiency notice in order to maintain the certificate. A hospital
8 issued a deficiency notice by the state department shall adopt and
9 implement a plan of correction for each indicated deficiency.

10 (c) The office of the attorney general may issue a civil
11 investigative demand concerning the state department's review or
12 revocation of an issued certificate of public advantage and demand
13 the attendance of witnesses and the production of documents to
14 investigate whether a hospital that holds the certificate continues
15 to meet the requirements of the certificate set forth in this chapter.
16 The office of the attorney general may file an action with the
17 district court of the county in which the hospital is located for the
18 revocation of a certificate issued under this chapter. The attorney
19 general has the burden of establishing by clear and convincing
20 evidence that a change in circumstances has resulted in the public
21 disadvantage in the reduction in competition from the merger
22 outweighs the benefits resulting from the merger.

23 (d) If the attorney general brings an action under this section
24 and proves by clear and convincing evidence that a certificate of
25 public advantage was obtained through a material
26 misrepresentation to the state department, the parties to the
27 merger agreement bear the burden of establishing by clear and
28 convincing evidence that benefits of the merger are not outweighed
29 by the disadvantages attributable by a reduction in competition as
30 a result of the merger.

31 Sec. 10. (a) A person aggrieved by a decision of the state
32 department to:

33 (1) grant or deny issuing a certificate under this chapter; or
34 (2) revoke a certificate issued under this chapter;
35 may appeal the order by filing a petition for judicial review in a
36 district court of the county in which the hospital is located.

37 (b) The filing of a petition for judicial review under subsection
38 (a) stays the decision by the state department that is the subject of
39 the review.

40 (c) The state department shall submit the documentation and all
41 of the records the state department has concerning the subject of
42 the review to the court not later than forty-five (45) days after the



- 1 filing of the petition under subsection (a).
2 (d) The district court may require or permit later corrections or
3 additions to the record or extend the time frame prescribed by
4 subsection (c).
5 (e) The district court shall consider the petition under this
6 section without a jury.
7 (f) The district court may reverse a decision made by the state
8 department that is the subject of the petition if the court finds any
9 of the following:
10 (1) The decision is in violation of the Constitution of the State
11 of Indiana or the Constitution of the United States.
12 (2) The state department exceeded the state department's
13 authority under this chapter.
14 (3) The state department violated procedures specified under
15 this chapter.
16 (4) The decision by the state department was arbitrary or
17 capricious, or characterized an abuse or unwarranted
18 exercise of discretion.
19 (5) The state department's decision was unsupported by
20 substantial and material evidence based on the entire record.
21 (g) The district court shall issue a decision on the petition in
22 writing setting forth the court's findings of fact and conclusions of
23 law.
24 **Sec. 11. The state department may adopt rules under IC 4-22-2**
25 **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.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 416, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 15, delete "no more than" and insert "**only**".

Page 2, line 15, delete "acute care hospitals." and insert "**hospitals that are both in the statewide comprehensive trauma care system under IC 16-19-3-28 and one (1) of the hospitals is a teaching hospital with a medical residency program.**".

ES 416—LS 7070/DI 104



Page 2, line 17, after "2." insert "(a)".

Page 2, between lines 18 and 19, begin a new paragraph and insert:

"(b) A hospital that has been issued a certificate of public advantage under this chapter may not be purchased by another hospital or system of hospitals unless the purchase has been approved by the Federal Trade Commission."

Page 2, line 22, after "department." insert "**However, a hospital may not submit an application under this chapter after July 1, 2026.**".

Page 2, line 34, delete "with" and insert "**with:**

(1)".

Page 2, line 36, delete "secretary." and insert "**secretary; and**

(2) the office of the attorney general in a manner prescribed by the office of the attorney general."

Page 4, line 3, delete "ninety (90)" and insert "**one hundred twenty (120)**".

Page 4, line 29, after "agreement" insert "**for at least five (5) years**".

Page 5, between lines 15 and 16, begin a new paragraph and insert:

"(c) A hospital operating under a certificate of public advantage may not increase the charge for each individual service the hospital offers by more than the increase in the preceding year's annual average of the Consumer Price Index for Medical Care as published by the federal Bureau of Labor Statistics.

(d) For the first five (5) years that a hospital is operating under a certificate of public advantage the hospital must:

(1) invest the realized cost savings from the identified efficiencies and improvements included in the certificate of public advantage application in the areas of Indiana the hospital serves for the benefit of the community; and

(2) summarize the realized cost savings and investments in the hospital's annual report submitted under section 8 of this chapter."

Page 5, line 18, delete "annually to" and insert "**not later than July 1 of each year to:**

(1)".

Page 5, line 19, delete "department." and insert "**department;**

(2) the office of the attorney general in a manner prescribed by the office of the attorney general; and

(3) the general assembly in an electronic format under IC 5-14-6."



and when so amended that said bill do pass.

(Reference is to SB 416 as printed February 19, 2021.)

BARRETT

Committee Vote: yeas 11, nays 1.

