

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 ENROLLED ACT No. 416

AN ACT to amend the Indiana Code concerning health.

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

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

- (1) Produce the documentary material for inspection and copying or reproduction.
- (2) Answer under oath and in writing written interrogatories.
- (3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

SECTION 2. IC 16-21-15 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE

SEA 416 — Concur



JULY 1, 2021]:

Chapter 15. Certificate of Public Advantage of Hospital Mergers

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

- (1) Has a population that is less than one hundred forty thousand (140,000) and is not contiguous to a county with a population of more than two hundred fifty thousand (250,000).
- (2) Has only two (2) 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.
- (3) Is a predominately rural county.

Sec. 2. (a) Nothing in this chapter affects antitrust immunity provided through any other provision of state or federal law.

(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.

Sec. 3. (a) Any hospital entering into a merger agreement with another hospital may submit an application to the state department for a certificate of public advantage to govern the merger agreement in the manner prescribed by the state department. However, a hospital may not submit an application under this chapter after July 1, 2026.

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

- (1) A written copy of the merger agreement.
- (2) A written description of the nature and scope of the merger.

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

(d) An applicant must also file a complete copy of the application for a certificate of public advantage with:

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



(e) The state department shall assess a filing fee for an application for a certificate of public advantage that is reasonably sufficient to fully fund the costs of the review of the application and ongoing supervision if the application is granted, including any fees for consultants and experts. 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.

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

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

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

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

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

- (1) There is clear evidence that the proposed merger would benefit the population's health outcomes, health care access,



and quality of care in the county.

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

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

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

- (1) be in writing;
- (2) specify the basis for the determination; and
- (3) be provided to the applicant on the date of the determination.

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

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

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

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

(b) The state department shall grant a properly filed notice of



termination request made by a hospital under this section.

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

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

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

(d) This section expires July 1, 2026.

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

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

(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.

Sec. 8. (a) A hospital that is issued a certificate of public advantage under this chapter shall submit a written report not later than July 1 of each year to:

- (1)** the state department in the manner and time determined by the state 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.

(b) The report must include the following:

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

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

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

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

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

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

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

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

(1) Investigate the hospital's activities.

(2) Require the hospital to either take action or prohibit an action in order to retain the hospital's certificate, including revocation of a hospital's certificate of public advantage, if the state department determines any of the following:

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

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

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

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

(b) If the state department determines that a hospital holding a certificate of public advantage has a deficiency in violation of the certificate, the state department shall issue a deficiency notice and



require the hospital to adopt a plan of correction concerning the deficiency notice in order to maintain the certificate. A hospital issued a deficiency notice by the state department shall adopt and implement a plan of correction for each indicated deficiency.

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

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

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

- (1) grant or deny issuing a certificate under this chapter; or
- (2) revoke a certificate issued under this chapter;

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

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

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

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

(e) The district court shall consider the petition under this



section without a jury.

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

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

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

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

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

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

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

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



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 416 — Concur

