



HOUSE BILL No. 4060

January 11, 1995, Introduced by Reps. Sikkema, Hammerstrom, Horton, Oxender, DeLange, Bullard and Hill and referred to the Committee on Health Policy.

A bill to amend Act No. 368 of the Public Acts of 1978,
entitled as amended
"Public health code,"
as amended, being sections 333.1101 to 333.25211 of the Michigan
Compiled Laws, by adding part 223.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 368 of the Public Acts of 1978, as
2 amended, being sections 333.1101 to 333.25211 of the Michigan
3 Compiled Laws, is amended by adding part 223 to read as follows:

4 PART 223. HOSPITAL COOPERATIVE AGREEMENTS

5 SEC. 22301. THIS PART SHALL BE KNOWN AND MAY BE CITED AS
6 THE "HOSPITAL COOPERATION ACT".

7 SEC. 22302. (1) AS USED IN THIS PART:

8 (A) "COOPERATIVE AGREEMENT" MEANS AN AGREEMENT AMONG 2 OR
9 MORE HOSPITALS FOR THE SHARING, ACQUISITION, ALLOCATION, OR

1 REFERRAL OF PATIENTS, PERSONNEL, INSTRUCTIONAL PROGRAMS, SUPPORT
2 SERVICES AND FACILITIES OR EQUIPMENT OR MEDICAL, DIAGNOSTIC, OR
3 LABORATORY FACILITIES OR PROCEDURES, OR OTHER SERVICES CUSTOMAR-
4 ILY OFFERED BY HOSPITALS.

5 (B) "HOSPITAL" INCLUDES, BUT IS NOT LIMITED TO, A NONPROFIT
6 PARENT CORPORATION OF A HOSPITAL, A HOSPITAL SUBSIDIARY, OR A
7 HOSPITAL AFFILIATE THAT PROVIDES MEDICAL OR MEDICALLY RELATED
8 DIAGNOSTIC AND LABORATORY SERVICES OR THAT ENGAGES IN ANCILLARY
9 ACTIVITIES SUPPORTING THOSE SERVICES.

10 (2) IN ADDITION, ARTICLE I CONTAINS DEFINITIONS AND PRINCI-
11 PLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS CODE AND
12 PART 201 CONTAINS DEFINITIONS APPLICABLE TO THIS PART.

13 SEC. 22303. (1) A HOSPITAL MAY NEGOTIATE AND VOLUNTARILY
14 ENTER INTO A COOPERATIVE AGREEMENT WITH 1 OR MORE HOSPITALS IN
15 THIS STATE. THE MICHIGAN ANTITRUST REFORM ACT, ACT NO. 274 OF
16 THE PUBLIC ACTS OF 1984, BEING SECTIONS 445.771 TO 445.788 OF THE
17 MICHIGAN COMPILED LAWS, APPLIES TO THE COOPERATIVE AGREEMENT
18 UNLESS THE PARTIES TO THE COOPERATIVE AGREEMENT HOLD A CERTIFI-
19 CATE OF PUBLIC ADVANTAGE FOR THE COOPERATIVE AGREEMENT THAT IS
20 ISSUED BY THE DEPARTMENT AND IS IN EFFECT UNDER THIS PART.

21 (2) HOSPITALS THAT HAVE ENTERED INTO A COOPERATIVE AGREEMENT
22 MAY FILE AN APPLICATION WITH THE DEPARTMENT ON A FORM PRESCRIBED
23 BY THE DEPARTMENT FOR A CERTIFICATE OF PUBLIC ADVANTAGE GOVERNING
24 THE COOPERATIVE AGREEMENT. THE APPLICATION SHALL INCLUDE A
25 SIGNED, WRITTEN COPY OF THE COOPERATIVE AGREEMENT, AND SHALL
26 DESCRIBE THE NATURE AND SCOPE OF THE COOPERATION CONTEMPLATED

1 UNDER THE COOPERATIVE AGREEMENT AND ANY CONSIDERATION THAT PASSES
2 TO A PARTY UNDER THE COOPERATIVE AGREEMENT.

3 SEC. 22304. (1) UPON RECEIPT OF AN APPLICATION FOR A CER-
4 TIFICATE OF PUBLIC ADVANTAGE, THE DEPARTMENT SHALL REVIEW AND
5 APPROVE, APPROVE WITH CONDITIONS, OR DENY THE APPLICATION PURSU-
6 ANT TO SUBSECTIONS (3) TO (5) WITHIN 30 DAYS AFTER THE DATE OF
7 RECEIPT. THE DECISION TO APPROVE, APPROVE WITH CONDITIONS, OR
8 DENY THE APPLICATION SHALL BE MADE BY THE DIRECTOR. THE DECISION
9 SHALL BE IN WRITING AND SHALL INDICATE APPROVAL, APPROVAL WITH
10 CONDITIONS, OR DENIAL OF THE APPLICATION. IF AN APPLICATION IS
11 APPROVED WITH CONDITIONS, THE CONDITIONS SHALL BE EXPLICIT, SHALL
12 BE RELATED TO THE REVIEW OF THE COOPERATIVE AGREEMENT UNDER THIS
13 SECTION, AND SHALL SPECIFY A REASONABLE PERIOD OF TIME WITHIN
14 WHICH THE CONDITIONS MUST BE MET.

15 (2) IF THE DIRECTOR DENIES THE APPLICATION FOR A CERTIFICATE
16 OF PUBLIC ADVANTAGE, THE DIRECTOR SHALL INCLUDE IN THE DENIAL A
17 STATEMENT OF THE BASIS FOR THE DENIAL AND NOTICE OF THE OPPORTU-
18 NITY FOR A HEARING UNDER SECTION 22307. IF THE APPLICANTS DESIRE
19 TO CONTEST THE DENIAL, THE APPLICANTS SHALL SUBMIT A WRITTEN
20 REQUEST FOR A HEARING TO THE DEPARTMENT UNDER SECTION 22307.

21 (3) THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF PUBLIC
22 ADVANTAGE FOR A COOPERATIVE AGREEMENT IF IT DETERMINES THAT THE
23 APPLICANTS HAVE DEMONSTRATED THAT THE POTENTIAL BENEFITS RESULT-
24 ING FROM THE COOPERATIVE AGREEMENT OUTWEIGH ANY DISADVANTAGES
25 ATTRIBUTABLE TO A REDUCTION IN COMPETITION THAT MAY RESULT FROM
26 THE COOPERATIVE AGREEMENT AND THAT ANY REDUCTION IN COMPETITION
27 IS REASONABLY NECESSARY TO OBTAIN THE BENEFITS LIKELY TO RESULT.

1 IN MAKING ITS DETERMINATION UNDER THIS SUBSECTION, THE DEPARTMENT
2 MAY CONSIDER BENEFITS AND DISADVANTAGES OTHER THAN THOSE LISTED
3 IN SUBSECTIONS (4) AND (5).

4 (4) FOR PURPOSES OF SUBSECTION (3), THE DEPARTMENT MUST FIND
5 THAT 1 OR MORE OF THE FOLLOWING MAY RESULT FROM THE COOPERATIVE
6 AGREEMENT IN ORDER TO DETERMINE THAT THERE ARE POTENTIAL BENEFITS
7 TO THE COOPERATIVE AGREEMENT:

8 (A) THE QUALITY OF HEALTH CARE PROVIDED TO THE RESIDENTS OF
9 THIS STATE WILL BE ENHANCED.

10 (B) THE COOPERATIVE AGREEMENT RESULTS IN THE PRESERVATION OF
11 FACILITIES OWNED OR OPERATED BY AN APPLICANT HOSPITAL IN GEO-
12 GRAPHIC PROXIMITY TO THE COMMUNITIES TRADITIONALLY SERVED BY
13 THOSE FACILITIES.

14 (C) SERVICES PROVIDED BY THE PARTIES TO THE COOPERATIVE
15 AGREEMENT WILL GAIN COST EFFICIENCY.

16 (D) THE UTILIZATION OF HEALTH CARE RESOURCES AND EQUIPMENT
17 IN THE AREA LIKELY TO BE AFFECTED BY THE COOPERATIVE AGREEMENT
18 WILL IMPROVE.

19 (E) DUPLICATION OF HEALTH CARE RESOURCES IN THE AREA LIKELY
20 TO BE AFFECTED BY THE COOPERATIVE AGREEMENT WILL BE AVOIDED.

21 (5) FOR PURPOSES OF SUBSECTION (3), THE DEPARTMENT'S EVALU-
22 ATION OF ANY DISADVANTAGES ATTRIBUTABLE TO ANY REDUCTION IN COM-
23 PETITION LIKELY TO RESULT FROM A COOPERATIVE AGREEMENT MAY
24 INCLUDE THE FOLLOWING FACTORS:

25 (A) THE LIKELY ADVERSE IMPACT, IF ANY, ON THE ABILITY OF
26 HEALTH MAINTENANCE ORGANIZATIONS, PREFERRED PROVIDER PLANS,
27 PERSONS PERFORMING UTILIZATION REVIEW, OR OTHER HEALTH CARE

1 PAYMENT OR BENEFIT PLANS TO NEGOTIATE OPTIMAL PAYMENT AND SERVICE
2 ARRANGEMENTS WITH HOSPITALS AND OTHER HEALTH CARE PROVIDERS.

3 (B) THE EXTENT OF ANY REDUCTION IN COMPETITION AMONG PHYSI-
4 CIANS OR OTHER HEALTH CARE PROFESSIONALS LIKELY TO RESULT FROM
5 THE COOPERATIVE AGREEMENT.

6 (C) THE AVAILABILITY OF ANY ARRANGEMENTS THAT ARE LESS
7 RESTRICTIVE TO COMPETITION THAT WOULD LIKELY ACHIEVE SUBSTAN-
8 Tially THE SAME BENEFITS OR A MORE FAVORABLE BALANCE OF BENEFITS
9 OVER DISADVANTAGES THAN THAT LIKELY TO BE ACHIEVED FROM THE COOP-
10 ERATIVE AGREEMENT.

11 SEC. 22305. (1) THE DEPARTMENT SHALL PROMULGATE RULES
12 REQUIRING THE PARTIES TO ANY APPROVED COOPERATIVE AGREEMENT TO
13 SUBMIT ANNUAL REPORTS THAT PROVIDE INFORMATION REASONABLY NECES-
14 SARY TO ENABLE THE DEPARTMENT TO REAFFIRM, OR TO TERMINATE OR
15 MODIFY IN ACCORDANCE WITH SECTION 22306, A CERTIFICATE OF PUBLIC
16 ADVANTAGE. THE DEPARTMENT SHALL REVIEW THE ANNUAL REPORT IN THE
17 SAME MANNER IN WHICH AN APPLICATION FOR A CERTIFICATE OF PUBLIC
18 ADVANTAGE IS REVIEWED UNDER SECTION 22304 TO DETERMINE WHETHER
19 THE BENEFITS CONTINUE TO OUTWEIGH THE DISADVANTAGES OF THE COOP-
20 ERATIVE AGREEMENT.

21 (2) THE DEPARTMENT MAY, OR UPON THE REQUEST OF THE ATTORNEY
22 GENERAL SHALL, CONDUCT AUDITS OF THE BOOKS, RECORDS, AND OTHER
23 DOCUMENTS PERTAINING TO THE COOPERATIVE AGREEMENT AND OF THE
24 OPERATIONS CONDUCTED UNDER THE COOPERATIVE AGREEMENT AS THE
25 DEPARTMENT OR ATTORNEY GENERAL DETERMINES TO BE REASONABLY
26 NECESSARY. AN AUDIT CONDUCTED UNDER THIS SUBSECTION SHALL BE FOR
27 THE PURPOSE OF DETERMINING WHETHER GROUNDS EXIST TO INITIATE

1 PROCEEDINGS TO MODIFY OR TERMINATE THE CERTIFICATE OF PUBLIC
2 ADVANTAGE PURSUANT TO SECTION 22306.

3 SEC. 22306. (1) THE DEPARTMENT SHALL REVIEW AND MAY TERMI-
4 NATE OR MODIFY A CERTIFICATE OF PUBLIC ADVANTAGE ISSUED UNDER
5 SECTION 22304 FOR A COOPERATIVE AGREEMENT IF 1 OR MORE OF THE
6 FOLLOWING OCCUR:

7 (A) THE DEPARTMENT HAS RECEIVED A COMPLAINT UNDER SUBSECTION
8 (4) AND AFTER A PRELIMINARY INVESTIGATION HAS REASON TO BELIEVE
9 THAT THE DISADVANTAGES OF THE COOPERATIVE AGREEMENT THAT IS THE
10 SUBJECT OF THE COMPLAINT MAY OUTWEIGH THE BENEFITS OF THE COOPER-
11 ATIVE AGREEMENT.

12 (B) THE DEPARTMENT HAS RECEIVED A REQUEST FOR A REVIEW UNDER
13 SUBSECTION (5).

14 (C) THE DEPARTMENT DETERMINES PURSUANT TO A REVIEW OR AUDIT
15 CONDUCTED UNDER SECTION 22305 THAT 1 OR MORE OF THE FOLLOWING
16 CIRCUMSTANCES EXIST:

17 (i) APPROVAL OF THE AGREEMENT WAS PROCURED BY FRAUD OR MIS-
18 REPRESENTATION OF A MATERIAL FACT.

19 (ii) THE PARTIES TO THE COOPERATIVE AGREEMENT HAVE FAILED IN
20 A MATERIAL RESPECT TO COMPLY WITH THE TERMS OF THE COOPERATIVE
21 AGREEMENT AND HAVE FAILED, TO THE REASONABLE SATISFACTION OF THE
22 DEPARTMENT, TO CURE THE NONCOMPLIANCE.

23 (iii) SUBJECT TO SUBSECTION (2), THE COOPERATIVE AGREEMENT
24 NO LONGER MEETS THE STANDARDS FOR ISSUANCE OF A CERTIFICATE OF
25 PUBLIC ADVANTAGE UNDER SECTION 22304, BECAUSE OF A MATERIAL
26 CHANGE IN CIRCUMSTANCES.

1 (2) THE DEPARTMENT SHALL NOT TERMINATE A CERTIFICATE OF
2 PUBLIC ADVANTAGE PURSUANT TO SUBSECTION (1)(C)(iii) IF IT IS
3 REASONABLY POSSIBLE FOR THE PARTIES TO MODIFY THE COOPERATIVE
4 AGREEMENT TO ACCOMMODATE THE EFFECT OF THE MATERIAL CHANGE IN
5 CIRCUMSTANCES. THE TERMINATION OF A CERTIFICATE OF PUBLIC ADVAN-
6 TAGE BY THE DEPARTMENT UNDER SUBSECTION (1)(C)(iii) IS PROSPEC-
7 TIVE IN APPLICATION.

8 (3) THE DEPARTMENT SHALL MAKE A FINAL DECISION TO TERMINATE
9 OR MODIFY A CERTIFICATE OF PUBLIC ADVANTAGE UNDER SUBSECTION (1)
10 ONLY AFTER AN OPPORTUNITY FOR A HEARING HAS BEEN PROVIDED IN
11 ACCORDANCE WITH SECTION 22307 AND NOTICE OF THE PROPOSED DECISION
12 AND RIGHT TO A HEARING HAS BEEN GIVEN TO THE PARTIES TO THE COOP-
13 ERATIVE AGREEMENT.

14 (4) A CONSUMER OR A HEALTH CARE PAYMENT OR BENEFITS PLAN MAY
15 FILE A COMPLAINT IN WRITING WITH THE DEPARTMENT ALLEGING THAT A
16 COOPERATIVE AGREEMENT FOR WHICH A CERTIFICATE OF PUBLIC ADVANTAGE
17 HAS BEEN ISSUED UNDER THIS PART HAS RESULTED IN HARM TO THE CON-
18 SUMER OR HEALTH CARE PAYMENT OR BENEFITS PLAN. THE DEPARTMENT
19 SHALL INVESTIGATE EACH COMPLAINT RECEIVED UNDER THIS SUBSECTION.

20 (5) THE PARTIES TO A COOPERATIVE AGREEMENT FOR WHICH A CER-
21 TIFICATE OF PUBLIC ADVANTAGE HAS BEEN ISSUED UNDER THIS PART MAY
22 REQUEST IN WRITING THAT THE DEPARTMENT REVIEW AND MODIFY THE
23 COOPERATIVE AGREEMENT UNDER SUBSECTION (1)(C)(iii).

24 SEC. 22307. (1) WITHIN 15 DAYS AFTER THE ISSUANCE OF THE
25 DIRECTOR'S DECISION TO DENY AN APPLICATION FOR A CERTIFICATE OF
26 PUBLIC ADVANTAGE UNDER SECTION 22304, OR WITHIN 15 DAYS AFTER THE
27 DEPARTMENT'S PROPOSED DECISION TO TERMINATE OR MODIFY A

1 CERTIFICATE OF PUBLIC ADVANTAGE UNDER SECTION 22306, A PARTY TO
2 THE COOPERATIVE AGREEMENT MAY SUBMIT TO THE DEPARTMENT A WRITTEN
3 REQUEST FOR A HEARING TO CONTEST THE DECISION.

4 (2) THE DEPARTMENT SHALL APPOINT A HEARING OFFICER FOR A
5 HEARING HELD UNDER THIS SECTION. THE HEARING OFFICER SHALL CON-
6 VENE THE HEARING WITHIN 60 DAYS AFTER RECEIPT OF A REQUEST FOR A
7 HEARING UNDER SUBSECTION (1).

8 (3) A HEARING HELD UNDER THIS SECTION IS GOVERNED BY
9 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, BEING
10 SECTIONS 24.271 TO 24.287 OF THE MICHIGAN COMPILED LAWS.

11 SEC. 22308. (1) A PARTY TO A COOPERATIVE AGREEMENT FOR
12 WHICH A CERTIFICATE OF PUBLIC ADVANTAGE HAS BEEN ISSUED BY THE
13 DEPARTMENT PURSUANT TO SECTION 22304 IS IMMUNE FROM ANY CIVIL OR
14 CRIMINAL ANTITRUST ACTION, IF THE ACTION IS BASED UPON THE COOP-
15 ERATIVE AGREEMENT OR ARISES FROM CONDUCT OR ACTIVITY REASONABLY
16 NECESSARY AND REASONABLY FORESEEABLE TO IMPLEMENT THE COOPERATIVE
17 AGREEMENT OR FROM ANY DECISION OR ORDER ISSUED BY THE DEPARTMENT
18 REGARDING THE COOPERATIVE AGREEMENT.

19 (2) A PARTY TO A COOPERATIVE AGREEMENT THAT HAS BEEN FILED
20 WITH THE DEPARTMENT PURSUANT TO SECTION 22304 AS PART OF AN
21 APPLICATION FOR A CERTIFICATE OF PUBLIC ADVANTAGE IS IMMUNE FROM
22 ANY CIVIL OR CRIMINAL ANTITRUST ACTION, IF THE ACTION IS BASED
23 UPON OR ARISES FROM THE NEGOTIATION OF OR ENTERING INTO THE COOP-
24 ERATIVE AGREEMENT.

25 (3) THE SUBMISSION OF A COOPERATIVE AGREEMENT TO THE DEPART-
26 MENT PURSUANT TO SECTION 22304 AS PART OF AN APPLICATION FOR A
27 CERTIFICATE OF PUBLIC ADVANTAGE IS VOLUNTARY. FAILURE OF THE

1 PARTIES TO THE COOPERATIVE AGREEMENT TO FILE AN APPLICATION FOR A
2 CERTIFICATE OF PUBLIC ADVANTAGE IS NOT ADMISSIBLE IN ANY CIVIL OR
3 CRIMINAL ANTITRUST ACTION, IF THE ACTION IS BASED UPON THE COOP-
4 ERATIVE AGREEMENT OR ARISES FROM CONDUCT OR ACTIVITY REASONABLY
5 NECESSARY AND REASONABLY FORESEEABLE TO IMPLEMENT THAT COOPERA-
6 TIVE AGREEMENT.

7 (4) THIS PART DOES NOT LIMIT THE APPLICATION OF ANY OTHER
8 LAW CONCERNING THE LICENSURE OF HEALTH FACILITIES, HEALTH SERV-
9 ICES, OR HEALTH PROFESSIONS. ACTIVITIES UNDERTAKEN PURSUANT TO A
10 COOPERATIVE AGREEMENT ARE SUBJECT TO APPLICABLE LAW.