

SENATE BILL No. 69

January 28, 2003, Introduced by Senators BRATER, BERNERO, JACOBS and SCHAUER and referred to the Committee on Health Policy.

A bill entering into the midwest pharmaceutical compact; and for related purposes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. The midwest pharmaceutical compact is enacted into
2 law and entered into with all jurisdictions legally joining in
3 the compact, in the form substantially as follows:

4 MIDWEST PHARMACEUTICAL COMPACT

5 ARTICLE I. PURPOSE

6 The purpose of the midwest pharmaceutical compact shall be
7 to provide an enlarged pool for the purchase of pharmaceutical
8 products and services for all medicaid recipients, publicly
9 insured or uninsured health care recipients, and any other
10 persons who the commission deems eligible who reside in the
11 compacting states that are party to this compact.
12 Pharmaceuticals purchased through the compact shall be

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1 distributed as determined by the commission to medicaid
2 recipients, publicly insured and uninsured citizens, and any
3 other persons deemed eligible who are served by health care
4 professionals, public hospitals and clinics, nonprofit hospitals
5 and clinics, organized emergency departments, or free clinics
6 within each compacting state.

7 ARTICLE II. DEFINITIONS

8 As used in this compact:

9 (a) "Commission" means the midwest pharmaceutical commission
10 established by this compact.

11 (b) "Compacting state" means any state or province that has
12 enacted the enabling legislation for this compact.

13 (c) "Compacting state's delegation" means the 5 resident
14 members of the commission from a compacting state.

15 (d) "Health care professional" means an individual licensed
16 or registered under article 15 of the public health code, 1978 PA
17 368, MCL 333.16101 to 333.18838, and engaged in the practice of
18 his or her health profession in a proprietorship, partnership,
19 professional corporation, or other business entity. However,
20 health care professional does not include a sanitarian or a
21 veterinarian.

22 (e) "Pharmaceutical" means any medicinal substance,
23 preparation, device, or service recognized by the United States
24 pharmacopoeia and national formulary, or any revision thereof,
25 any substance and preparation dispensed pursuant to a
26 prescription issued by an authorized health care practitioner and
27 intended for external and internal use in the cure, diagnosis,

1 mitigation, treatment, or prevention of disease in humans, and
2 any substance and preparation other than food intended to affect
3 the structure or any function of the human body. Pharmaceutical
4 includes any drug delivery system, testing kit, or any other
5 supplies dispensed pursuant to a prescription.

6 (f) "State" means any state of the United States, the
7 District of Columbia, and any other territory of the United
8 States.

9 ARTICLE III. THE COMMISSION

10 (1) The compacting states hereby create the midwest
11 pharmaceutical commission. The commission shall be a public body
12 corporate of each compacting state. The commission shall serve
13 as the negotiating and purchasing entity for pharmaceutical
14 products for the compacting states. The commission shall have
15 all the responsibilities, powers, and duties set forth herein,
16 including the power to sue and be sued, and any additional powers
17 that may be conferred upon it by subsequent action of the
18 respective legislatures of the compacting states in accordance
19 with the terms of this compact.

20 (2) The commission shall consist of 5 resident members of
21 each compacting state as follows:

22 (a) The governor or minister or his or her designee who
23 shall serve during the tenure of office of the governor or
24 minister.

25 (b) One legislator from each chamber who shall serve 2-year
26 terms and be appointed by the appropriate appointing authority in
27 each chamber of the legislature.

1 (c) One member at large from the health care profession who
2 shall be appointed by the governor or minister.

3 (d) One member at large who shall be a layperson appointed
4 by the governor or minister.

5 (3) One of the 2 at-large members initially appointed in
6 each state shall serve a 2-year term. The other, and any
7 regularly appointed successor to either at-large member, shall
8 serve a 4-year term unless otherwise established by law in a
9 compacting state. All vacancies shall be filled in the same
10 manner as the original appointment and in accordance with the
11 laws of the appointing state. Any member appointed to fill the
12 vacancy shall serve until the end of the incomplete term.

13 (4) The commission shall select annually, from among its
14 members, a chairperson, a vice-chairperson, and a treasurer.

15 (5) The commission shall appoint an executive director who
16 shall serve at its pleasure and who shall act as secretary to the
17 commission. The treasurer, the executive director, and other
18 personnel that the commission may determine shall be bonded in
19 any amount required by the commission.

20 (6) The commission shall meet at least once each calendar
21 year. The chairperson may call additional meetings and, upon the
22 request of a majority of the commission members of the compacting
23 states, shall call additional meetings. Public notice shall be
24 given of all meetings and meetings shall be open to the public.

25 (7) Each compacting state represented at any meeting of the
26 commission is entitled to 1 vote. Each compacting state's
27 delegation shall appoint 1 member of the delegation as its voting

1 member with the authority to vote on behalf of that compacting
2 state and represent the position of that compacting state in all
3 matters before the commission. A majority of the voting members
4 from the compacting states shall constitute a quorum for the
5 transaction of business, unless a larger quorum is required by
6 the bylaws of the commission. Within each compacting state, a
7 proxy may be assigned to another member of that compacting
8 state's delegation.

9 ARTICLE IV. POWERS AND DUTIES OF THE COMMISSION

10 (1) The commission shall adopt a seal and suitable bylaws
11 governing its management and operations.

12 (2) Irrespective of the civil service, personnel, or other
13 merit system laws of any of the compacting states, the commission
14 in its bylaws shall provide for the personnel policies and
15 programs of the compact.

16 (3) The commission shall submit a budget to the governor and
17 legislature of each compacting state as may be required by each
18 compacting state. The budget shall contain specific
19 recommendations of the amount or amounts to be appropriated by
20 each of the compacting states.

21 (4) The commission shall report annually to the governor and
22 legislature of each compacting state concerning the activities of
23 the commission during the preceding year. The reports shall
24 include any recommendations that may have been adopted by the
25 commission.

26 (5) The commission may borrow, accept, or contract for the
27 services of personnel from any state, province, the United

1 States, Canada or any subdivision or agency thereof, any
2 interstate agency, or any institution, foundation, person, firm,
3 or corporation.

4 (6) The commission may accept for any of its purposes and
5 functions under the compact any donations, grants, or both, of
6 money, equipment, supplies, materials, and services from any
7 state, province, the United States, Canada, or any subdivision or
8 agency thereof, any interstate agency, or any institution,
9 foundation, person, firm, or corporation and may receive,
10 utilize, and dispose of the same.

11 (7) The commission may establish and maintain offices that
12 are located within 1 or more of the compacting states.

13 (8) The commission may establish committees and hire staff
14 as necessary to carry out its functions.

15 (9) The commission may provide for actual and necessary
16 expenses for attendance of its members at official meetings of
17 the commission or its designated committees.

18 ARTICLE V. ACTIVITIES OF THE COMMISSION

19 (1) The commission shall determine the pharmaceutical needs
20 of each compacting state. The commission shall negotiate
21 pharmaceutical prices from each pharmaceutical company that seeks
22 to provide pharmaceuticals for the formularies for all states and
23 provinces in the compact. The prices negotiated shall be at
24 least as low to all compacting states as the lowest price to the
25 individual state or province entering the compact.

26 (2) The commission shall be empowered to establish an open
27 formulary for all of the compacting states or to designate which,

1 if any, pharmaceuticals shall be preauthorized for use within the
2 compact. The commission shall not exclude from its formulary any
3 product of any pharmaceutical company that has entered into
4 agreement with the commission.

5 (3) The commission may enter into agreements with any of the
6 compacting states to provide pharmaceutical supplies and services
7 to any of the other compacting states, provided that the price is
8 less than that negotiated by the commission.

9 (4) The commission shall, after negotiations with interested
10 parties and the compacting states, determine the costs of
11 providing pharmaceuticals for use in its agreements. The
12 compacting states shall contribute appropriated funds not
13 otherwise provided, as determined by the commission, for carrying
14 out the agreements. The commission may also serve as the
15 administrative and fiscal agent in carrying out agreements for
16 pharmaceutical services.

17 ARTICLE VI. FINANCE

18 (1) Each compacting state shall be individually responsible
19 for the purchase of the pharmaceuticals necessary to meet the
20 demand of its state.

21 (2) The monies necessary to finance the general operation of
22 the commission not otherwise provided for in carrying forth its
23 duties, responsibilities, and powers as stated herein shall be
24 appropriated to the commission by the compacting states, when
25 authorized by the respective legislatures, by equal apportionment
26 among the compacting states.

27 (3) The commission shall keep accurate accounts of all

1 receipts and disbursements. The receipts and disbursements of
2 the commission shall be subject to the audit and accounting
3 procedures established under its bylaws. The receipts and
4 disbursements of the commission shall also be subject to audit by
5 the official legislative auditor general or similar entity of any
6 compacting state. However, all receipts and disbursements of
7 funds handled by the commission shall be audited annually by a
8 certified or licensed public accountant and the report of the
9 audit shall be included in and become part of the annual report
10 of the commission.

11 (4) The accounts of the commission shall be open at any
12 reasonable time for inspection by duly authorized representatives
13 of the compacting states and persons authorized by the
14 commission.

15 ARTICLE VII. ELIGIBLE PARTIES AND ENTRY INTO COMPACT

16 (1) The states of Illinois, Indiana, Kansas, Minnesota,
17 Michigan, Missouri, Nebraska, North Dakota, Ohio, and Wisconsin
18 and the Province of Ontario, Canada, shall be eligible to become
19 party to this compact. Additional states will be eligible if
20 approved by a majority of the compacting states.

21 (2) As to any eligible state or province, this compact shall
22 become effective when its legislature shall have enacted the same
23 into law. However, the compact shall not become effective unless
24 enacted into law by 3 states prior to December 31, 2004.

25 (3) Amendments to the compact shall become effective upon
26 their enactment by the legislature of each compacting state.

27 ARTICLE VIII. WITHDRAWAL, DEFAULT, AND TERMINATION

1 (1) Any compacting state may withdraw from this compact by
2 enacting a statute repealing the compact. A withdrawing state or
3 province shall be liable for any obligations that it may have
4 incurred on account of its party status up to the effective date
5 of withdrawal, except that if the withdrawing state has
6 specifically undertaken or committed itself to any performance of
7 an obligation extending beyond the effective date of withdrawal,
8 it shall remain liable to the extent of the obligation.

9 (2) If any compacting state shall default in the performance
10 of its obligations, assumed or imposed, in accordance with the
11 provisions of this compact, all rights, privileges, and benefits
12 conferred by this compact or agreements under this compact shall
13 be suspended from the effective date of the default as fixed by
14 the commission. The commission shall stipulate the conditions
15 and maximum time for compliance under which the defaulting state
16 or province may resume its regular status. Unless the default
17 shall be remedied under the stipulations and within the time
18 period set forth by the commission, this compact may be
19 terminated with respect to the defaulting state or province by
20 affirmative vote of a majority of the other members to the
21 compact. Any defaulting state may be reinstated by performing
22 all acts and obligations as stipulated by the commission.

23 ARTICLE IX. SEVERABILITY AND CONSTRUCTION

24 The provisions of the compact entered into under this act
25 shall be severable and if any phrase, clause, sentence, or
26 provision of the compact is declared to be contrary to the
27 constitution of any compacting state or province or of the United

1 States or Canada or the applicability thereof to any government,
2 agency, person, or circumstance is held invalid, the validity of
3 the remainder of this compact and the applicability of the
4 compact to any government, agency, person, or circumstance shall
5 not be affected thereby. If this compact entered into under this
6 act shall be held contrary to the constitution of any compacting
7 state or province, the compact shall remain in full force and
8 effect as to the remaining compacting states and in full force
9 and effect as to the compacting state affected as to all
10 severable matters. The provisions of this compact shall be
11 liberally construed to effectuate the purposes of this act.