

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2083 Session of  
1993

INTRODUCED BY CAPPABIANCA, SURRA, SCRIMENTI, NYCE, BEBKO-JONES,  
MELIO, CURRY, SAURMAN, LAUGHLIN, CARONE, GEIST, TIGUE,  
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OCTOBER 4, 1993

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, OCTOBER 4, 1993

AN ACT

1 Providing for cooperative agreements among hospitals; conferring  
2 powers and duties upon the Department of Health; imposing  
3 penalties; providing for remedies; establishing the Hospital  
4 Cooperation Fund; and making an appropriation.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Hospital  
9 Cooperation Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) Technological and scientific developments in  
13 hospital care have enhanced the prospects for further  
14 improvements in the quality of care provided by hospitals in  
15 this Commonwealth.

16 (2) The cost of improved technology and improved  
17 scientific methods for the provision of hospital care is in  
18 significant part responsible for the increasing cost of

1 hospital care. Cost increases make it more difficult for  
2 hospitals in rural areas to offer care.

3 (3) Changes in Federal and State regulations governing  
4 hospital operation and reimbursement have constrained  
5 hospitals from acquiring and developing new and improved  
6 machinery and methods for the provision of hospital and  
7 hospital-related care.

8 (4) Cooperative agreements among hospitals in the  
9 provision of hospital and hospital-related services may  
10 foster further improvements in the quality of health care for  
11 the citizens of this Commonwealth, moderate increases in  
12 cost, improve access to needed services in rural areas and  
13 enhance the likelihood that smaller hospitals in this  
14 Commonwealth will remain open in service to their  
15 communities.

16 (5) Hospitals are in the best position to identify and  
17 structure voluntary cooperative arrangements that enhance  
18 quality of care, improve access and achieve cost efficiency  
19 in the provision of care.

20 (6) Because competition is important to the health care  
21 sector and because some cooperative agreements may have  
22 anticompetitive effects that would operate to the detriment  
23 of the public, regulatory and judicial oversight of  
24 cooperative agreements is necessary to ensure that the  
25 benefits of agreements outweigh any disadvantages  
26 attributable to any reduction in competition likely to result  
27 from the agreements.

### 28 Section 3. Definitions.

29 The following words and phrases when used in this act shall  
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Certificate." A certificate of public advantage for a  
3 cooperative agreement issued under section 5.

4 "Cooperative agreement." An agreement among two or more  
5 hospitals operating in this Commonwealth for the sharing,  
6 allocation or referral of patients, personnel, instructional  
7 programs, support services or medical, diagnostic or laboratory  
8 facilities, procedures or other services traditionally offered  
9 by hospitals. The term excludes a merger or consolidation.

10 "Department." The Department of Health of the Commonwealth.

11 "Fund." The Hospital Cooperation Fund established in section  
12 7.

13 "Health care facility." As defined in section 103 of the act  
14 of July 19, 1979 (P.L.130, No.48), known as the Health Care  
15 Facilities Act.

16 "Health care practitioner." As defined in section 103 of the  
17 act of July 19, 1979 (P.L.130, No.48), known as the Health Care  
18 Facilities Act.

19 "Hospital." As defined in section 802.1 of the act of July  
20 19, 1979 (P.L.130, No.48), known as the Health Care Facilities  
21 Act.

22 "Third party payor." As defined in section 103 of the act of  
23 July 19, 1979 (P.L.130, No.48), known as the Health Care  
24 Facilities Act.

25 Section 4. Cooperative agreements.

26 A cooperative agreement is permissible only if the department  
27 issues a certificate. Any other cooperative agreement is void.

28 Section 5. Certificates.

29 (a) Application.--Parties seeking to enter a cooperative  
30 agreement must apply to the department for a certificate. The

1 application must include an executed written copy of the  
2 cooperative agreement and describe the nature and scope of the  
3 cooperation in the agreement and any consideration passing to  
4 any party under the agreement.

5 (b) Standards.--The department shall issue a certificate if  
6 it determines that the applicants have demonstrated by clear and  
7 convincing evidence that the likely benefits resulting from the  
8 agreement outweigh any disadvantages attributable to a reduction  
9 in competition that may result from the agreement.

10 (1) In evaluating the potential benefits of a  
11 cooperative agreement, the department shall consider whether  
12 any of the following benefits may result:

13 (i) Enhancement of the quality of hospital and  
14 hospital-related care provided to the citizens of this  
15 Commonwealth.

16 (ii) Preservation of hospital facilities in  
17 geographical proximity to the communities traditionally  
18 served by those facilities.

19 (iii) Gains in the cost efficiency of services  
20 provided by the hospitals involved.

21 (iv) Improvements in the utilization of hospital  
22 resources and equipment.

23 (v) Avoidance of duplication of hospital resources.

24 (2) The department's evaluation of any disadvantages  
25 attributable to any reduction in competition likely to result  
26 from the agreement may include, but need not be limited to,  
27 the following:

28 (i) The extent of any likely adverse impact on the  
29 ability of third party payors to negotiate optimal  
30 payment and service arrangements with health care

1 facilities and health care practitioners.

2 (ii) The extent of any reduction in competition among  
3 health care facilities and health care practitioners.

4 (iii) The extent of any likely adverse impact on  
5 patients in the quality, availability and price of health  
6 care services.

7 (iv) The availability of arrangements that are less  
8 restrictive to competition and achieve the same benefits  
9 or a more favorable balance of benefits over  
10 disadvantages.

11 (c) Procedure.--

12 (1) The department shall review the application in  
13 accordance with the standards set forth in subsection (b) and  
14 may hold a public hearing. This paragraph is subject to 2  
15 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
16 Commonwealth agencies) and Ch. 7 Subch. A (relating to  
17 judicial review of Commonwealth agency action).

18 (2) The department shall issue a written decision  
19 stating the basis for decision within 90 days of the date of  
20 filing of the application. The decision shall be in writing  
21 and set forth the basis for the decision. Failure to act  
22 within the time specified in this subsection constitutes  
23 approval of the application. Mandamus shall lie to force the  
24 issuance of a certificate under this paragraph.

25 (d) Effect.--Upon issuance of a certificate, the hospitals  
26 may enter into a cooperative agreement.

27 (e) Revocation.--

28 (1) If the parties to a cooperative agreement modify or  
29 rescind the cooperative agreement, the certificate is  
30 invalid. An invalid certificate shall be surrendered to the

1 department within 30 days of modification or rescission of  
2 the cooperative agreement. For noncompliance with the  
3 surrender provision of this paragraph, each party to the  
4 cooperative agreement is subject to an administrative fine of  
5 \$10,000. The fine under this paragraph is subject to 2  
6 Pa.C.S. Ch. 5 Subch. A and Ch. 7 Subch A.

7 (2) The department may initiate an action in  
8 Commonwealth Court to revoke a certificate. To prevail on an  
9 action under this paragraph, the department must establish  
10 one of the following:

11 (i) The certificate was obtained because of fraud or  
12 material misrepresentation. If the department prevails in  
13 an action under this subparagraph, the department is  
14 entitled to reasonable cost of litigation and attorney  
15 fees.

16 (ii) Because of changed circumstances, the  
17 certificate is no longer justified under subsection (b).

18 Section 6. Assessment.

19 (a) Authorization.--A hospital that is a party to a  
20 cooperative agreement is subject to an annual assessment by the  
21 department.

22 (b) Amount.--The assessment shall be based upon the  
23 hospital's gross patient service revenue in relation to the cost  
24 of administering this act.

25 (c) Review.--An assessment under this section is subject to  
26 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of  
27 Commonwealth agency action).

28 (d) Disposition.--Assessments collected under this section  
29 shall be deposited in the fund.

30 Section 7. Fund.

1 (a) Establishment.--The Hospital Cooperation Fund is  
2 established as a separate fund in the State Treasury.

3 (b) Source.--The following are the sources of the fund:

4 (1) Annual appropriations.

5 (2) Penalties under section 5(d)(1).

6 (3) Costs and fees under section 5(e)(2)(i).

7 (4) Assessments under section 6.

8 (c) Administration.--The department shall administer the  
9 fund.

10 Section 8. Department.

11 The department has the following powers and duties:

12 (1) To administer this act. This paragraph includes  
13 specific powers and duties granted in this act.

14 (2) To investigate compliance with this act.

15 (3) To promulgate regulations to implement this act.

16 Section 9. Appropriation.

17 The sum of \$61,000, or as much thereof as may be necessary,  
18 is hereby appropriated to the Hospital Cooperation Fund for the  
19 fiscal year July 1, 1993, to June 30, 1994, to carry out the  
20 provisions of this act.

21 Section 10. Expiration.

22 This act shall expire June 30, 1995.

23 Section 11. Effective date.

24 This act shall take effect as follows:

25 (1) Sections 7, 8 and 9 of this act and this section  
26 shall take effect in 60 days.

27 (2) The remainder of this act shall take effect in 240  
28 days.