

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,
D. W. SNYDER, PESCI, MIHALICH, TRELLO, ROONEY, TANGRETTI,
MANDERINO, SERAFINI AND TRICH, 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

1 significant part responsible for the increasing cost of
2 hospital care. Cost increases make it more difficult for
3 hospitals in rural areas to offer care.

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

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

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

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

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

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

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

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

12 "Fund." The Hospital Cooperation Fund established in section
13 7.

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

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

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

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

26 Section 4. Cooperative agreements.

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

29 Section 5. Certificates.

30 (a) Application.--Parties seeking to enter a cooperative

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

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

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

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

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

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

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

24 (v) Avoidance of duplication of hospital resources.

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

29 (i) The extent of any likely adverse impact on the
30 ability of third party payors to negotiate optimal

1 payment and service arrangements with health care
2 facilities and health care practitioners.

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

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

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

12 (c) Procedure.--

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

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

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

28 (e) Revocation.--

29 (1) If the parties to a cooperative agreement modify or
30 rescind the cooperative agreement, the certificate is

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

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

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

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

19 Section 6. Assessment.

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

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

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

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

1 Section 7. Fund.

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

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

5 (1) Annual appropriations.

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

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

8 (4) Assessments under section 6.

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

11 Section 8. Department.

12 The department has the following powers and duties:

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

15 (2) To investigate compliance with this act.

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

17 Section 9. Appropriation.

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

22 Section 10. Expiration.

23 This act shall expire June 30, 1995.

24 Section 11. Effective date.

25 This act shall take effect as follows:

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

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