

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senators Theis and VanderWall

ENROLLED SENATE BILL No. 671

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 22211 and 22215 (MCL 333.22211 and 333.22215), section 22211 as amended by 2014 PA 107 and section 22215 as amended by 2002 PA 619.

The People of the State of Michigan enact:

Sec. 22211. (1) The certificate of need commission is created in the department. The governor shall appoint members to the commission with the advice and consent of the senate. The governor shall not appoint more than 6 members from the same major political party and shall appoint 5 members from another major political party. The commission consists of the following 13 members:

- (a) Two individuals representing hospitals.
- (b) One individual representing physicians licensed under part 170 to engage in the practice of medicine.
- (c) One individual representing physicians licensed under part 175 to engage in the practice of osteopathic medicine and surgery.
- (d) One individual who is a physician licensed under part 170 or 175 representing a school of medicine or osteopathic medicine.
- (e) One individual representing nursing homes.
- (f) One individual representing nurses.

- (g) One individual representing a company that is self-insured for health coverage.
 - (h) One individual representing a company that is not self-insured for health coverage.
 - (i) One individual representing a nonprofit health care corporation operating pursuant to the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, or a nonprofit mutual disability insurer into which a nonprofit health care corporation has merged as provided in section 5805(1) of the insurance code of 1956, 1956 PA 218, MCL 500.5805.
 - (j) One individual representing organized labor unions in this state.
 - (k) Two individuals representing the general public, 1 of whom is from a county with a population of less than 40,000.
- (2) In making appointments, the governor shall, to the extent feasible, ensure that the membership of the commission is broadly representative of the interests of all of the people of this state and of the various geographic regions.
- (3) A member of the commission shall serve for a term of 3 years or until a successor is appointed. A vacancy on the commission must be filled for the remainder of the unexpired term in the same manner as the original appointment.
- (4) Commission members are subject to the following:
- (a) 1968 PA 317, MCL 15.321 to 15.330.
 - (b) 1973 PA 196, MCL 15.341 to 15.348.
 - (c) 1978 PA 472, MCL 4.411 to 4.431.

Sec. 22215. (1) The commission shall do all of the following:

- (a) If determined necessary by the commission, revise, add to, or delete 1 or more of the covered clinical services listed in section 22203. If the commission proposes to add to the covered clinical services listed in section 22203, the commission shall develop proposed review standards and make the review standards available to the public not less than 30 days before conducting a hearing under subsection (3).
- (b) Develop, approve, disapprove, or revise certificate of need review standards that establish for purposes of section 22225 the need, if any, for the initiation, replacement, or expansion of covered clinical services, the acquisition or beginning the operation of a health facility, making changes in bed capacity, or making covered capital expenditures, including conditions, standards, assurances, or information that must be met, demonstrated, or provided by a person who applies for a certificate of need. A certificate of need review standard may also establish ongoing quality assurance requirements including any or all of the requirements specified in section 22225(2)(c). Except for nursing home and hospital long-term care unit bed review standards, the certificate of need review standards must include a requirement that each applicant participate in title XIX.
- (c) Direct the department to prepare and submit recommendations regarding commission duties and functions that are of interest to the commission including, but not limited to, specific modifications of proposed actions considered under this section.
- (d) Approve, disapprove, or revise proposed criteria for determining health facility viability under section 22225.
- (e) Annually assess the operations and effectiveness of the certificate of need program based on periodic reports from the department and other information available to the commission.
- (f) By January 1 of every odd year, make recommendations to the joint committee regarding statutory changes to improve or eliminate the certificate of need program.
- (g) On submission by the department, approve, disapprove, or revise standards to be used by the department in designating a regional certificate of need review agency under section 22226.
- (h) Develop, approve, disapprove, or revise certificate of need review standards governing the acquisition of new technology.
- (i) In accordance with section 22255, approve, disapprove, or revise proposed procedural rules for the certificate of need program.
- (j) Consider the recommendations of the department and the department of attorney general as to the administrative feasibility and legality of proposed actions under subdivisions (a), (b), and (c).
- (k) Consider the impact of a proposed restriction on the acquisition of or availability of covered clinical services on the quality, availability, and cost of health services in this state. By January 1, 2026, direct the department to prepare and submit a report to the commission on access to inpatient psychiatric beds in counties with a population of 40,000 or less based on the most recent federal decennial census. The report must identify key factors impacting access to inpatient psychiatric beds. Within 30 days after receiving the report, the commission shall provide a copy of the report to the standing committees in the senate and house of representatives that consider issues pertaining to health policy.

(l) If the commission determines it necessary, appoint standard advisory committees to assist in the development of proposed certificate of need review standards. A standard advisory committee shall complete its duties under this subdivision and submit its recommendations to the commission within 6 months unless a shorter period of time is specified by the commission when the standard advisory committee is appointed. An individual shall serve on no more than 2 standard advisory committees in any 2-year period. The composition of a standard advisory committee must not include a lobbyist registered under 1978 PA 472, MCL 4.411 to 4.431, but must include the following:

(i) Experts with professional competence in the subject matter of the proposed standard, who must constitute at least 2/3 majority of the standard advisory committee.

(ii) At least 1 representative of health care provider organizations concerned with licensed health facilities or licensed health professions.

(iii) At least 1 representative of organizations concerned with health care consumers, or the purchasers or payers of health care services.

(m) In addition to subdivision (b), review and, if necessary, revise each set of certificate of need review standards at least every 3 years.

(n) If a standard advisory committee is not appointed by the commission and the commission determines it necessary, submit a request to the department to engage the services of private consultants or request the department to contract with any private organization for professional and technical assistance and advice or other services to assist the commission in carrying out its duties and functions under this part.

(2) The commission shall exercise its duties under this part to promote and ensure all of the following:

(a) The availability and accessibility of quality health services at a reasonable cost and within a reasonable geographic proximity for all people in this state.

(b) Appropriate differential consideration of the health care needs of residents in rural counties in ways that do not compromise the quality and affordability of health care services for those residents.

(3) Not less than 30 days before final action is taken by the commission under subsection (1)(a), (b), (d), or (h), the commission shall conduct a public hearing on its proposed action. In addition, not less than 30 days before final action is taken by the commission under subsection (1)(a), (b), (d), or (h), the commission chairperson shall submit the proposed action and a concise summary of the expected impact of the proposed action for comment to each member of the joint committee. The commission shall inform the joint committee of the date, time, and location of the next meeting regarding the proposed action. The joint committee shall promptly review the proposed action and submit its recommendations and concerns to the commission.

(4) The commission chairperson shall submit the proposed final action including a concise summary of the expected impact of the proposed final action to the governor and each member of the joint committee. The governor or the legislature may disapprove the proposed final action within 45 days after the date of submission. If the proposed final action is not submitted on a legislative session day, the 45 days commence on the first legislative session day after the proposed final action is submitted. The 45 days must include not less than 9 legislative session days. Legislative disapproval must be expressed by concurrent resolution which must be adopted by each house of the legislature. The concurrent resolution must state specific objections to the proposed final action. A proposed final action by the commission under subsection (1)(a), (b), (d), or (h) is not effective if it has been disapproved under this subsection. If the proposed final action is not disapproved under this subsection, it is effective and binding on all persons affected by this part upon the expiration of the 45-day period or on a later date specified in the proposed final action. As used in this subsection, "legislative session day" means each day in which a quorum of either the house of representatives or the senate, following a call to order, officially convenes in Lansing to conduct legislative business.

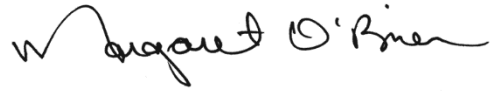
(5) The commission shall not develop, approve, or revise a certificate of need review standard that requires the payment of money or goods or the provision of services unrelated to the proposed project as a condition that must be satisfied by a person seeking a certificate of need for the initiation, replacement, or expansion of covered clinical services, the acquisition or beginning the operation of a health facility, making changes in bed capacity, or making covered capital expenditures. This subsection does not preclude a requirement that each applicant participate in title XIX, or a requirement that each applicant provide covered clinical services to all patients regardless of his or her ability to pay.

(6) If the reports received under section 22221(f) indicate that the certificate of need application fees collected under section 20161 have not been within 10% of 3/4 the cost to the department of implementing this part, the commission shall make recommendations regarding the revision of those fees so that the certificate of need application fees collected equal approximately 3/4 of the cost to the department of implementing this part.

(7) As used in this section, "joint committee" means the joint committee created under section 22219.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

- (a) Senate Bill No. 669.
- (b) Senate Bill No. 672.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor