

# SENATE BILL NO. 671

December 04, 2019, Introduced by Senators THEIS and VANDERWALL and referred to the Committee on Health Policy and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," 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:**

**1**           Sec. 22211. (1) The certificate of need commission is created  
**2** in the department. The ~~commission consists of 11 members appointed~~

1 ~~by the governor~~ **shall appoint members to the commission** with the  
2 advice and consent of the senate. The governor shall not appoint  
3 more than 6 members from the same major political party and shall  
4 appoint 5 members from another major political party. The  
5 commission consists of the following ~~11-13~~ members:

6 (a) Two individuals representing hospitals.

7 (b) One individual representing physicians licensed under part  
8 170 to engage in the practice of medicine.

9 (c) One individual representing physicians licensed under part  
10 175 to engage in the practice of osteopathic medicine and surgery.

11 (d) One individual who is a physician licensed under part 170  
12 or 175 representing a school of medicine or osteopathic medicine.

13 (e) One individual representing nursing homes.

14 (f) One individual representing nurses.

15 (g) One individual representing a company that is self-insured  
16 for health coverage.

17 (h) One individual representing a company that is not self-  
18 insured for health coverage.

19 (i) One individual representing a nonprofit health care  
20 corporation operating pursuant to the nonprofit health care  
21 corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, or a  
22 nonprofit mutual disability insurer into which a nonprofit health  
23 care corporation has merged as provided in section 5805(1) of the  
24 insurance code of 1956, 1956 PA 218, MCL 500.5805.

25 (j) One individual representing organized labor unions in this  
26 state.

27 **(k) Two individuals representing the general public.**

28 (2) In making appointments, the governor shall, to the extent  
29 feasible, ~~assure~~**ensure** that the membership of the commission is

1 broadly representative of the interests of all of the people of  
2 this state and of the various geographic regions.

3 (3) A member of the commission shall serve for a term of 3  
4 years or until a successor is appointed. A vacancy on the  
5 commission ~~shall~~**must** be filled for the remainder of the unexpired  
6 term in the same manner as the original appointment.

7 (4) Commission members are subject to the following:

8 (a) 1968 PA 317, MCL 15.321 to 15.330.

9 (b) 1973 PA 196, MCL 15.341 to 15.348.

10 (c) 1978 PA 472, MCL 4.411 to 4.431.

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

12 (a) If determined necessary by the commission, revise, add to,  
13 or delete 1 or more of the covered clinical services listed in  
14 section 22203. If the commission proposes to add to the covered  
15 clinical services listed in section 22203, the commission shall  
16 develop proposed review standards and make the review standards  
17 available to the public not less than 30 days before conducting a  
18 hearing under subsection (3).

19 (b) Develop, approve, disapprove, or revise certificate of  
20 need review standards that establish for purposes of section 22225  
21 the need, if any, for the initiation, replacement, or expansion of  
22 covered clinical services, the acquisition or beginning the  
23 operation of a health facility, making changes in bed capacity, or  
24 making covered capital expenditures, including conditions,  
25 standards, assurances, or information that must be met,  
26 demonstrated, or provided by a person who applies for a certificate  
27 of need. A certificate of need review standard may also establish  
28 ongoing quality assurance requirements including any or all of the  
29 requirements specified in section 22225(2)(c). Except for nursing

1 home and hospital long-term care unit bed review standards, ~~by~~  
 2 ~~January 1, 2004,~~ the ~~commission shall revise all~~ certificate of  
 3 need review standards ~~to~~ **must** include a requirement that each  
 4 applicant participate in title XIX of the social security act,  
 5 ~~chapter 531, 49 Stat. 620, 1396r-6 and 1396r-8 to 1396v.~~ **42 USC 1396**  
 6 **to 1396w-5.**

7 (c) Direct the department to prepare and submit  
 8 recommendations regarding commission duties and functions that are  
 9 of interest to the commission including, but not limited to,  
 10 specific modifications of proposed actions considered under this  
 11 section.

12 (d) Approve, disapprove, or revise proposed criteria for  
 13 determining health facility viability under section 22225.

14 (e) Annually assess the operations and effectiveness of the  
 15 certificate of need program based on periodic reports from the  
 16 department and other information available to the commission.

17 (f) By January 1 ~~, 2005,~~ and ~~of~~ every ~~2 years thereafter,~~ **odd**  
 18 **year,** make recommendations to the joint committee regarding  
 19 statutory changes to improve or eliminate the certificate of need  
 20 program.

21 (g) ~~Upon~~ **On** submission by the department, approve, disapprove,  
 22 or revise standards to be used by the department in designating a  
 23 regional certificate of need review agency ~~, pursuant to~~ **under**  
 24 section 22226.

25 (h) Develop, approve, disapprove, or revise certificate of  
 26 need review standards governing the acquisition of new technology.

27 (i) In accordance with section 22255, approve, disapprove, or  
 28 revise proposed procedural rules for the certificate of need  
 29 program.

1 (j) Consider the recommendations of the department and the  
2 department of attorney general as to the administrative feasibility  
3 and legality of proposed actions under subdivisions (a), (b), and  
4 (c).

5 (k) Consider the impact of a proposed restriction on the  
6 acquisition of or availability of covered clinical services on the  
7 quality, availability, and cost of health services in this state.

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

19 (i) Experts with professional competence in the subject matter  
20 of the proposed standard, who shall constitute ~~a~~**at least** 2/3  
21 majority of the standard advisory committee.

22 (ii) ~~Representatives~~**At least 1 representative** of health care  
23 provider organizations concerned with licensed health facilities or  
24 licensed health professions.

25 (iii) ~~Representatives~~**At least 1 representative** of organizations  
26 concerned with health care consumers and the purchasers and payers  
27 of health care services.

28 (m) In addition to subdivision (b), review and, if necessary,  
29 revise each set of certificate of need review standards at least

1 every 3 years.

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

9 ~~(o) Within 6 months after the appointment and confirmation of~~  
10 ~~the 6 additional commission members under section 22211, develop,~~  
11 ~~approve, or revise certificate of need review standards governing~~  
12 ~~the increase of licensed beds in a hospital licensed under part~~  
13 ~~215, the physical relocation of hospital beds from 1 licensed site~~  
14 ~~to another geographic location, and the replacement of beds in a~~  
15 ~~hospital licensed under part 215.~~

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

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

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

25 (3) Not less than 30 days before final action is taken by the  
26 commission under subsection (1) (a), (b), (d), **or** (h), ~~or (e)~~, the  
27 commission shall conduct a public hearing on its proposed action.  
28 In addition, not less than 30 days before final action is taken by  
29 the commission under subsection (1) (a), (b), (d), **or** (h), ~~or (e)~~,

1 the commission chairperson shall submit the proposed action and a  
2 concise summary of the expected impact of the proposed action for  
3 comment to each member of the joint committee. The commission shall  
4 inform the joint committee of the date, time, and location of the  
5 next meeting regarding the proposed action. The joint committee  
6 shall promptly review the proposed action and submit its  
7 recommendations and concerns to the commission.

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

1           (5) The commission shall not develop, approve, or revise a  
2 certificate of need review standard that requires the payment of  
3 money or goods or the provision of services unrelated to the  
4 proposed project as a condition that must be satisfied by a person  
5 seeking a certificate of need for the initiation, replacement, or  
6 expansion of covered clinical services, the acquisition or  
7 beginning the operation of a health facility, making changes in bed  
8 capacity, or making covered capital expenditures. This subsection  
9 does not preclude a requirement that each applicant participate in  
10 title XIX of the social security act, ~~chapter 531, 49 Stat. 620,~~  
11 ~~1396r-6 and 1396r-8 to 1396v,~~ **42 USC 1396 to 1396w-5**, or a  
12 requirement that each applicant provide covered clinical services  
13 to all patients regardless of his or her ability to pay.

14           (6) If the reports received under section 22221(f) indicate  
15 that the certificate of need application fees collected under  
16 section 20161 have not been within 10% of 3/4 the cost to the  
17 department of implementing this part, the commission shall make  
18 recommendations regarding the revision of those fees so that the  
19 certificate of need application fees collected equal approximately  
20 3/4 of the cost to the department of implementing this part.

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