

Title 22: HEALTH AND WELFARE
Chapter 405-A: HOSPITAL AND HEALTH
CARE PROVIDER COOPERATION ACT

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 405-A: HOSPITAL AND HEALTH
CARE PROVIDER COOPERATION ACT

§1841. SHORT TITLE

This chapter may be known and cited as "the Hospital and Health Care Provider Cooperation Act." [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1842. LEGISLATIVE FINDINGS AND INTENT

The Legislature finds that it is necessary and appropriate to encourage hospitals and other health care providers to cooperate and enter into agreements that will facilitate cost containment, improve quality of care and increase access to health care services. This Act provides processes for state review of overall public benefit, for approval through certificates of public advantage and for continuing supervision. It is the intent of the Legislature that a certificate of public advantage approved under this chapter provide state action immunity under applicable federal antitrust laws. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1843. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

1. Cooperative agreement. "Cooperative agreement" means an agreement that names the parties to the agreement and describes the nature and scope of the cooperation for:

A. The sharing, allocation or referral of patients, personnel, instructional programs, medical or mental health services, support services or facilities or medical, diagnostic or laboratory facilities, procedures or other services traditionally offered by hospitals or health care providers; [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The coordinated negotiation and contracting with payors or employers; or [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. The merger of 2 or more hospitals or 2 or more health care providers. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

A cooperative agreement under this chapter is an agreement between 2 or more hospitals or an agreement between 2 or more health care providers. An agreement between one or more hospitals and one or more health care providers is not a cooperative agreement for the purposes of this chapter.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. Covered entity. "Covered entity" means a hospital or health care provider.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. Health care provider. "Health care provider" means a licensed community mental health services provider, a physician licensed under Title 32, chapter 36 or 48 and operating in this State or a corporation or business entity engaged primarily in the provision of physician health care services.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Hospital. "Hospital" means:

A. An acute care institution licensed and operating in this State as a hospital under section 1811 or the parent of such an institution; or [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

B. A hospital subsidiary or hospital affiliate in the State that provides medical services or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. Merger. "Merger" means a transaction by which ownership or control over substantially all of the stock, assets or activities of one or more covered entities is placed under the control of another covered entity. A merger between one or more hospitals and one or more health care providers is not a merger for the purposes of this chapter.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1844. CERTIFICATE OF PUBLIC ADVANTAGE

1. Authority. A covered entity may negotiate and enter into a cooperative agreement with another covered entity and may file an application for a certificate of public advantage pursuant to this section. The approval of an application for a certificate of public advantage is governed by the standards of subsection 5.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. Application for certificate. The application process for a certificate of public advantage is as follows.

A. At least 45 days prior to filing an application for a certificate of public advantage for a merger, the parties to a merger agreement shall file a letter of intent with the department describing the proposed merger. Copies of the letter of intent and all accompanying materials must be submitted to the Attorney General at the time the letter of intent is filed with the department. [2011, c. 90, Pt. J, §11 (AMD) .]

B. The parties to a cooperative agreement shall file with the department an application for a certificate of public advantage with regard to the cooperative agreement and pay the application fee established under section 1851. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

C. The application must include a signed copy of the original cooperative agreement and must state all consideration passing to any party under the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

D. The parties to a cooperative agreement shall submit copies of the application and all the accompanying materials to the Attorney General at the time they file the application with the department. [2011, c. 90, Pt. J, §12 (AMD) .]

Copies of the application and all accompanying materials filed by the applicant, public comments, records of the department maintained with regard to the application and copies of the letter of intent filed for a merger may be examined at an office of the department.

[2011, c. 90, Pt. J, §§11, 12 (AMD) .]

3. Public notice. Within 10 business days of the filing of an application under this section, the department shall give public notice of the filing as follows.

A. The department shall publish notice in a newspaper of general circulation in Kennebec County and in a newspaper published within the service area in which the proposed cooperative agreement would be effective. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department shall provide notice by mailing copies of the application and letter of intent, if any, to all persons who request notification from the department. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. Notice under this subsection must include:

(1) A brief description of the proposal;

(2) A description of the review process and schedule; and

(3) A statement of the availability of the application and records pertaining to it and letter of intent as provided in subsection 2. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Procedure for department review. The following procedures apply to review by the department of an application filed under this section.

A. The department shall review and evaluate the application in accordance with the standards set forth in subsection 5. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. Any person may provide the department with written comments concerning the application within 30 days after the public notice in subsection 3, paragraph A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. The department shall provide the Attorney General with copies of all comments from persons submitted under paragraph B. [2011, c. 90, Pt. J, §13 (AMD) .]

D. This paragraph applies with regard to a public hearing.

(1) The department may hold a public hearing when it determines a public hearing is appropriate.

(2) The department shall hold a public hearing if 5 or more persons who are residents of the State and who are from the health service area to be served by the applicant request, in writing, that a hearing be held. A request under this subparagraph must be received by the department no later than 30 days after publication of the notice under subsection 3.

(3) If a public hearing is held, an electronic or stenographic record of the public hearing must be kept as part of the record of the application by the department. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

E. The parties to a cooperative agreement may withdraw their application and thereby terminate all proceedings under this chapter as follows:

(1) Without the approval of the department, any party or the Superior Court at any time prior to the filing of an answer or responsive pleading in a court action under section 1848, subsection 2 or prior to entry of a consent decree under section 1848, subsection 9; or

(2) Without the approval of the department or any party at any time prior to the issuance of a final decision under paragraph G if a court action has not been filed under section 1848, subsection 2. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

F. The department shall issue a final decision to grant or deny an application for a certificate of public advantage under this section no less than 40 days and no more than 90 days after the filing of the application. The department shall issue a preliminary decision at least 5 days prior to issuing the final decision. The preliminary and final decisions must be in writing and set forth the basis for the decisions. The department shall provide copies of the preliminary and final decisions to the applicants, the Office of the Attorney General and all persons who requested notification from the department under subsection 3, paragraph B. [2011, c. 90, Pt. J, §14 (AMD).]

[2011, c. 90, Pt. J, §§13, 14 (AMD) .]

5. Standards for approval of a certificate of public advantage. The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by a preponderance of the evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition likely to result from the agreement. The department may not issue to health care providers a certificate of public advantage for a cooperative agreement that allows coordinated negotiation and contracting with payors or employers unless such negotiation and contracting are ancillary to clinical or financial integration. In issuing a decision on an application for a certificate of public advantage under this section, the department shall make specific findings as to the nature and extent of any likely benefits and disadvantages found under this subsection.

A. In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits are likely to result from the cooperative agreement:

- (1) Enhancement of the quality of care provided to citizens of the State;
- (2) Preservation of hospitals or health care providers and related facilities in geographical proximity to the communities traditionally served by those facilities;
- (3) Gains in the cost efficiency of services provided by the hospitals or others;
- (4) Improvements in the utilization of hospital or other health care resources and equipment;
- (5) Avoidance of duplication of hospital or other health care resources; and
- (6) Continuation or establishment of needed educational programs for health care providers. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department's evaluation of any disadvantages attributable to a reduction in competition likely to result from a cooperative agreement may include, but is not limited to, the following factors:

- (1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payors to negotiate optimal payment and service arrangements with hospitals or health care providers;
- (2) The extent of any disadvantages attributable to reduction in competition among covered entities or other persons furnishing goods or services to, or in competition with, covered entities that is likely to result directly or indirectly from the cooperative agreement;
- (3) The extent of any likely adverse impact on patients or clients in the quality, availability and price of health care services;
- (4) The extent of any likely adverse impact on the access of persons enrolled in in-state educational programs for health professions to existing or future clinical training programs; and
- (5) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. In evaluating a cooperative agreement under the standards in paragraphs A and B, the department shall consider the extent to which any likely disadvantages may be ameliorated by any reasonably enforceable conditions under subparagraph (1) and the extent to which the likely benefits or favorable balance of benefits over disadvantages may be enhanced by any reasonably enforceable conditions under subparagraph (2). Reasonably enforceable conditions are those conditions that the department determines are subject to future measurement or evaluation in order to assess compliance with those conditions.

(1) In a certificate issued under this subsection, the department may include conditions reasonably necessary to ameliorate any likely disadvantages of the type specified in paragraph B.

(2) In a certificate issued under this subsection, the department may include additional conditions, if proposed by the applicants, designed to achieve public benefits, which may include but are not limited to the benefits listed in paragraph A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

D. In a certificate of public advantage issued under this subsection, the department may include a condition requiring the certificate holders to submit fees sufficient to fund expenses for consultants or experts necessary for the continuing supervision required under section 1845. These fees must be paid at the time of any review conducted under section 1845. The total amount charged to the certificate holders for continuing supervision may not exceed \$5,000 for mergers involving hospitals with 50 or more beds and \$2,500 for all other cooperative agreements. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. Intervention. The Attorney General may intervene as a right in any proceeding under this chapter before the department. Except as provided in this subsection, intervention is governed by the provisions of Title 5, section 9054.

[2011, c. 90, Pt. J, §15 (AMD) .]

7. Attorney General enforcement. The Attorney General may file an action in Superior Court to enforce any final action taken by the department under this section. In the event that the Attorney General files an action pursuant to its separate authority outlined in section 1848, pending department proceedings in accordance with this section are stayed pursuant to section 1848, subsection 2.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §§11-15 (AMD).

§1845. CONTINUING SUPERVISION

Continuing supervision of holders of certificates of public advantage under this chapter may consist of periodic reports, supervisory reviews and additional supervisory activities. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

1. Periodic report and supervisory review. With regard to a certificate of public advantage approved under this chapter, the certificate holder shall report periodically to the department on the extent of the benefits realized and compliance with other terms and conditions of the certificate. The certificate holder shall submit copies of the report to the Attorney General at the time the report is filed with the department. The Attorney General may submit to the department comments on the report filed under this subsection. The department shall consider any comments on the report from the Attorney General in the course of its evaluation of the certificate holder's report. Within 60 days of receipt of the certificate holder's report, the

department shall make findings regarding the report, including responses to any comments from the Attorney General, determine whether to institute additional supervisory activities under this section and notify the certificate holder.

[2011, c. 90, Pt. J, §16 (AMD) .]

2. Additional supervisory activities. The provisions of this subsection apply to additional supervisory activities determined necessary under subsection 1.

A. The department shall conduct additional supervisory activities whenever requested by the Attorney General or whenever the department, in its discretion, determines those activities appropriate, and:

- (1) For certificates of public advantage not involving mergers, at least once in the first 18 months after the transaction described in the cooperative agreement has closed; and
- (2) For certificates of public advantage involving mergers, at least once between 12 and 30 months after the transaction described in the cooperative agreement has closed. [2011, c. 90, Pt. J, §17 (AMD).]

B. In its discretion, the department may conduct additional supervisory activities by:

- (1) Soliciting and reviewing written submissions from the certificate holders, the Attorney General or the public;
- (2) Conducting a hearing in accordance with Title 5, chapter 375, subchapter 4 and the department's administrative hearings rules; or
- (3) Using any alternative procedures appropriate under the circumstances. [2011, c. 90, Pt. J, §17 (AMD).]

C. The department shall notify the certificate holders if it intends to consider the imposition of any additional conditions or measures authorized under subsection 3. If the department notifies certificate holders under this paragraph, the certificate holders may request and are entitled to a hearing in accordance with Title 5, chapter 375, subchapter 4. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

D. A decision of the department regarding additional supervisory activities is governed by the standards set forth in subsection 3. The burden of proof is on the parties seeking any remedial order. A remedial order may not issue unless the basis for it is established by a preponderance of the evidence. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2011, c. 90, Pt. J, §17 (AMD) .]

3. Standards governing additional supervisory activities. The provisions of this subsection govern the standards of any additional supervisory activities conducted under subsection 2.

A. If the department determines in any additional supervisory activities conducted under subsection 2 that the certificate holders are not in substantial compliance with any conditions included in the certificate under section 1844, subsection 5 or in a consent decree entered into by the department, the department may at its discretion:

- (1) Impose additional conditions to secure compliance with any conditions included in the certificate or consent decree; or
- (2) Issue notice to the certificate holders compelling compliance with any conditions included in the certificate or consent decree. If after 30 days the department determines that the notice was not effective in securing compliance with the conditions, the department may impose any additional measures authorized by law to compel compliance with the conditions, or seek a court order revoking the certificate in accordance with subsection 4. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. The department may impose additional conditions to ameliorate any disadvantages attributable to any reduction in competition, or seek a court order revoking the certificate in accordance with subsection 4, if the department determines in any additional supervisory activities conducted under subsection 2 that, as a result of changed or unanticipated circumstances, the benefits resulting from the activities authorized under the certificate and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the activities authorized under the certificate. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Action to revoke certificate. The department is authorized to seek a court order revoking a certificate of public advantage under the circumstances specified in subsection 3, paragraph A, subparagraph (2) or subsection 3, paragraph B. In any such action the standards for adjudication to be applied by the court are the same as in section 1848, subsections 5 and 6. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102. The department's burden of proof is the same as that for the Attorney General in an action under section 1848, subsections 5 and 6.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. Attorney General enforcement. The Attorney General may file an action in Superior Court to enforce any final action taken by the department as a result of additional supervisory proceedings under this section. In the event that the Attorney General files an action pursuant to its separate authority outlined in section 1848, any pending department proceedings are stayed pursuant to section 1848, subsection 7.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. Fees and costs. If the department prevails in an action under this section, the department and the Attorney General are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the action and reasonable attorney's fees, expert witness fees and court costs incurred in the action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §§16, 17 (AMD).

§1846. RECORD KEEPING

The department shall maintain records of all applications for a certificate of public advantage, together with the records of all submissions, comments, reports and department proceedings with respect to those applications, certificates approved by the department, continuing supervision and any other proceedings under this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1847. JUDICIAL REVIEW OF DEPARTMENT ACTION

An applicant, certificate holder or intervenor aggrieved by a final decision of the department in granting or denying an application for a certificate of public advantage, refusing to act on an application or imposing additional conditions or measures with regard to a certificate of public advantage is entitled to judicial review of the final decision in accordance with the Maine Administrative Procedure Act. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1848. ATTORNEY GENERAL AUTHORITY

1. Investigative powers. The Attorney General, at any time after an application or letter of intent is filed under section 1844, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County, or the county in which the applicants are located, for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1844, subsection 5. All documents produced and testimony given to the Attorney General are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. Court action; time limits. The Attorney General may seek to enjoin the operation of a cooperative agreement for which an application for a certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in Superior Court. The Attorney General may file an action before or after the department acts on the application for a certificate; however, the action must be brought no later than 40 days following the department's approval of an application for a certificate of public advantage. After the filing of a court action under this subsection, the department may not take any further action under this chapter and the time periods specified for departmental action under section 1844, subsection 4 are tolled until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. Automatic stay. Upon the filing of a complaint in an action under subsection 2, the department's approval of a certificate of public advantage, if previously issued, must be stayed unless the court orders otherwise or until the action is concluded. The applicant for a certificate may apply to the Superior Court for relief from that stay. Relief may be granted only upon showing of compelling justification. The Attorney General may apply to the court for any temporary or preliminary relief to enjoin the implementation of the cooperative agreement pending final disposition of the case.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Standard for adjudication. In an action brought under subsection 2, the applicants for a certificate of public advantage bear the burden of establishing by a preponderance of the evidence that, in accordance with section 1844, subsection 5, the likely benefits resulting from the cooperative agreement and any conditions proposed by the applicants outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. Ongoing evaluation of benefits. If, at any time following the 40-day period specified in subsection 2, the Attorney General determines that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from a certified cooperative agreement or a consent decree entered under subsection 9 do not outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the Attorney General may file suit in the Superior Court seeking to revoke the certificate of public advantage. The standard for adjudication for an action to revoke brought under this subsection is as follows.

A. Except as provided in paragraph B, in an action brought under this subsection, the Attorney General has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from the cooperative agreement and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. In an action brought under this subsection, if the Attorney General first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the Attorney General or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of revoking the agreement outweigh the disadvantages attributable to any reduction in competition resulting from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. Enforcement of conditions. Conditions and measures included in a certificate of public advantage may be enforced according to this subsection.

A. If the certificate holders in a cooperative agreement not involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures or other appropriate equitable remedies. If the Superior Court grants such relief and that relief is not effective in securing compliance with the conditions or measures, the Superior Court may impose additional equitable remedies, including the exercise of civil contempt powers, or may revoke the certificate upon a determination that advantages to be gained by revoking the certificate outweigh the unavoidable costs resulting from a revocation of the certificate. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. If the certificate holders in a cooperative agreement involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures. If the certificate holders to the merger fail to comply with any court order compelling compliance with such conditions or measures, the Superior Court may impose additional equitable remedies to secure compliance with its orders, including the exercise of civil contempt powers or appointment of a receiver. If these additional measures are not effective in securing compliance with the conditions or measures and the Superior Court determines that the advantages to be gained by divestiture outweigh the unavoidable costs of requiring divestiture, the Superior Court may revoke the certificate and order divestiture of assets. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. In an action brought under this subsection, the Attorney General has the burden of proving by a preponderance of the evidence the basis for any equitable remedies requested by the Attorney General and adopted by the Superior Court. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

[2005, c. 2, §16 (COR) .]

7. Effect of court action. After the filing of a court action under subsection 5 or 6, the department may not take any further action under this chapter until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

8. Fees and costs. If the Attorney General prevails in an action under this section, the Attorney General and the department are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

9. Resolution by consent decree. The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order with the consent of the parties. The consent decree may contain any conditions authorized by section 1844, subsection 5, paragraph C or conditions or measures authorized under section 1845, subsection 3. A consent decree under this subsection may not be filed with the Superior Court until 30 days after the filing of the application under section 1844, subsection 2. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 1849 and the cooperative agreement has the effectiveness specified in section 1849.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

RR 2005, c. 2, §16 (COR). 2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF) .

§1849. EFFECT OF FILING AN APPLICATION UNDER THIS CHAPTER; APPLICABILITY

1. Validity of certified cooperative agreements. Notwithstanding Title 5, chapter 10; Title 10, chapter 201; or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Title 5, chapter 10; Title 10, chapter 201; or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. This subsection does not provide immunity to any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. Validity of cooperative agreements determined not in public interest. In an action by the Attorney General under section 1848, subsection 2, if the Superior Court determines that the applicants have not established by a preponderance of the evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from

the agreement, the cooperative agreement is invalid and has no further force or effect when the judgment becomes final after the time for appeal has expired or the judgment of the Superior Court is affirmed on appeal.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. Other laws, rules and regulations. This chapter does not exempt covered entities from compliance with laws governing certificates of need or other applicable laws, rules and regulations.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Contract disputes. A dispute between parties to a cooperative agreement concerning its meaning or terms is governed by normal principles of contract law.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. Termination; surrender. This chapter does not prohibit certificate holders from terminating their cooperative agreement by mutual agreement, consent decree or court determination or by surrendering their certificate of public advantage to the department. Any certificate holder that terminates the agreement shall file a notice of termination with the department within 30 days after termination, surrender the certificate of public advantage and submit copies to the Attorney General at the time the notice of termination is submitted to the department.

[2011, c. 90, Pt. J, §18 (AMD) .]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §18 (AMD).

§1850. ASSESSMENT

Except for state-operated mental health hospitals, any hospital licensed by the department is subject to an annual assessment under this chapter. The department shall determine and collect the assessment. The amount of the assessment must be based upon each hospital's gross patient service revenue. For any fiscal year, the aggregate amount raised by assessment may not exceed \$200,000. The department shall deposit funds collected under this section into a dedicated revenue account. Funds remaining in the account at the end of each fiscal year do not lapse but carry forward into subsequent years. Funds deposited into the account must be allocated to carry out the purposes of this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1851. APPLICATION FEE

The application fee for a certificate of public advantage is governed by this section. The application fee for a certificate of public advantage that involves a merger of 2 or more hospitals, each of which has 50 or more beds, is \$10,000. The application fee is \$2500 for a certificate of public advantage filed by health care providers or hospitals that are not subject to the \$10,000 fee pursuant to this section. The department shall deposit all funds received under this section and section 1844, subsection 5 into a nonlapsing dedicated revenue account to be used only by the Attorney General for the payment of the cost of experts and consultants in connection with reviews conducted under this chapter. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

§1852. RULEMAKING

The department shall adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF).

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