

HOUSE BILL No. 5344

December 11, 1989, Introduced by Reps. Gnodtke, Nye, Bartnik, Fitzgerald, Allen, Pridnia, Stacey, Bender, Van Singel, Alley, Middaugh, Krause, Ouwinga, Dunaskiss, Walberg, Randall, London, Crandall, Ostling, Maynard, Oxender, Emmons, DeMars, Sofio and Munsell and referred to the Committee on Public Health.

A bill to amend sections 22203, 22215, and 22217 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 22203 as added by Act No. 331 of the Public Acts of 1988 and sections 22215 and 22217 as added by Act No. 332 of the Public Acts of 1988, being sections 333.22203, 333.22215, and 333.22217 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 22203, 22215, and 22217 of Act No. 368
2 of the Public Acts of 1978, section 22203 as added by Act No. 331
3 of the Public Acts of 1988 and sections 22215 and 22217 as added
4 by Act No. 332 of the Public Acts of 1988, being sections
5 333.22203, 333.22215, and 333.22217 of the Michigan Compiled
6 Laws, are amended to read as follows:

1 Sec. 22203. (1) "Addition" means adding patient rooms,
2 beds, and ancillary service areas, including, but not limited to,
3 procedure rooms or fixed equipment, surgical operating rooms,
4 therapy rooms or fixed equipment, or other accommodations to a
5 health facility.

6 (2) "Capital expenditure" means an expenditure for a single
7 project, including cost of construction, engineering, and equip-
8 ment which under generally accepted accounting principles is not
9 properly chargeable as an expense of operation. Capital expendi-
10 ture includes a lease or comparable arrangement by or on behalf
11 of a facility by which a person obtains a health facility or
12 licensed part of a health facility or equipment for a facility,
13 the expenditure for which would have been considered a capital
14 expenditure under this part if the person had acquired it by
15 purchase. Capital expenditure includes cost of studies, surveys,
16 designs, plans, working drawings, specifications, and other
17 activities essential to the acquisition, improvement, expansion,
18 addition, conversion, modernization, new construction, or
19 replacement of physical plant and equipment.

20 (3) "Certificate of need" means a certificate issued pursu-
21 ant to this part authorizing a new health facility, a change in
22 bed capacity, the initiation of a new service, the acquisition of
23 covered medical equipment, or a covered capital expenditure that
24 is issued in accordance with this part.

25 (4) "Certificate of need review standard" means a standard
26 approved by the commission or the statewide health coordinating

1 council under section 22215 or 22217 or a document, policy, or
2 guideline listed in section 22217(1).

3 (5) "Change in bed capacity" means 1 or more of the
4 following:

5 (a) An increase in licensed hospital beds.

6 (b) An increase in licensed nursing home beds or hospital
7 beds certified for long-term care.

8 (c) An increase in licensed psychiatric beds.

9 (d) A change from 1 licensed use to a different licensed
10 use.

11 (e) The physical relocation of beds from a licensed site to
12 another geographic location.

13 (6) "Clinical" means directly pertaining to the diagnosis,
14 treatment, or rehabilitation of an individual.

15 (7) "Clinical service area" means an area of a health facil-
16 ity, including related corridors, equipment rooms, ancillary
17 service and support areas which house medical equipment, patient
18 rooms, patient beds, diagnostic, operating, therapy, or treatment
19 rooms or other accommodations related to the diagnosis, treat-
20 ment, or rehabilitation of individuals receiving services from
21 the health facility.

22 (8) "Commission" means the certificate of need commission
23 created under section 22211.

24 (9) "Council" means the state health planning council cre-
25 ated under the Michigan health planning and health policy devel-
26 opment act, Act No. 323 of the Public Acts of 1978, being
27 sections 325.2001 to 325.2031 of the Michigan Compiled Laws.

1 (10) "Covered capital expenditure" means a capital
2 expenditure by a health facility for a single project, excluding
3 the cost of nonfixed medical equipment, that is equal to, or
4 greater than, 1 of the following amounts:

5 (a) For a single project that includes or involves the
6 acquisition, improvement, expansion, addition, conversion, mod-
7 ernization, new construction, or replacement of a clinical serv-
8 ice area:

9 (i) For certificate of need applications submitted on or
10 after October 1, 1988, but before October 1, 1991, \$750,000.00.

11 (ii) For certificate of need applications submitted on or
12 after October 1, 1991, \$850,000.00.

13 (b) For a single project that involves the acquisition,
14 improvement, expansion, addition, conversion, modernization, new
15 construction, or replacement of nonclinical service areas only:

16 (i) For certificate of need applications submitted on or
17 after October 1, 1988, but before October 1, 1991,
18 \$1,500,000.00.

19 (ii) For certificate of need applications submitted on or
20 after October 1, 1991, \$1,700,000.00.

21 (c) For a single project that is limited solely to the
22 acquisition of nonfixed, nonmedical equipment and that does not
23 involve acquisition, improvement, expansion, addition, conver-
24 sion, modernization, new construction, or replacement of physical
25 plant:

1 (i) For certificate of need applications submitted on or
2 after October 1, 1988, but before October 1, 1991,
3 \$1,500,000.00.

4 (ii) For certificate of need applications submitted on or
5 after October 1, 1991, \$1,700,000.00.

6 (11) "Covered clinical service", except as otherwise modi-
7 fied by the commission pursuant to section 22215, means 1 or more
8 of the following:

9 (a) Initiation or replacement of either of the following
10 services:

11 (i) Cardiac services.

12 (ii) Extrarenal organ transplantation.

13 (b) Initiation of a specialized psychiatric program utiliz-
14 ing existing licensed psychiatric beds. Specialized psychiatric
15 programs may include services for geriatric, pediatric, adoles-
16 cent, or substance abuse patients.

17 (c) Initiation, replacement, or expansion of 1 or more of
18 the following:

19 (i) Special radiological procedure rooms used for invasive
20 procedures such as angiography, arteriography, venography, cathe-
21 terizations, and electro-physiology, but excluding procedure
22 rooms used only for general radiology and fluoroscopy
23 procedures.

24 (ii) Specialized radiation therapy services.

25 (iii) A partial day hospitalization psychiatric program.

1 (d) Initiation, replacement, or expansion of a service not
2 listed in this subsection, but designated as a covered clinical
3 service by the commission under section 22215(1)(a).

4 (e) Initiation or increase in the number of licensed hospi-
5 tal beds dedicated to neonatal intensive care services or special
6 newborn nursing services.

7 (12) "Covered medical equipment", except as otherwise modi-
8 fied by the commission pursuant to section 22215, means 1 or more
9 of the following:

10 (a) An extracorporeal shock wave lithotripter.

11 (b) A magnetic resonance unit.

12 ~~(c) A mobile computerized tomography scanner.~~

13 ~~(d) A fixed computerized tomography scanner.~~

14 (C) ~~(e)~~ Surgical facilities.

15 (D) ~~(f)~~ An air ambulance.

16 (E) ~~(g)~~ A positron emission tomography scanner.

17 (F) ~~(h)~~ Other equipment not listed in this subsection, but
18 designated by the commission as covered medical equipment under
19 section 22215(1)(a).

20 (13) "Fixed equipment" means equipment that is affixed to
21 and constitutes a structural component of a health facility,
22 including, but not limited to, mechanical or electrical systems,
23 elevators, generators, pumps, boilers, and refrigeration
24 equipment.

25 Sec. 22215. (1) Pursuant to the requirements of this part,
26 the commission shall do all of the following:

1 (a) ~~Upon~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,
2 UPON submission by the department and the office, approve,
3 disapprove, or revise the designation of covered clinical serv-
4 ices and covered medical equipment in addition to the covered
5 clinical services and covered medical equipment listed in
6 section 22203. Also, upon submission by the department and the
7 office, the commission shall approve, disapprove, or revise the
8 deletion or revision of covered clinical services and covered
9 medical equipment listed in section 22203. Before final action
10 is taken by the commission under this subdivision, the commission
11 shall seek the advice and counsel of the department and the
12 office. THE COMMISSION SHALL NOT APPROVE THE DESIGNATION OF A
13 MOBILE OR FIXED COMPUTERIZED TOMOGRAPHY SCANNER AS COVERED MEDI-
14 CAL EQUIPMENT UNDER THIS PART.

15 (b) Upon submission by the department and the office,
16 approve, disapprove, or revise certificate of need review stan-
17 dards that establish, for purposes of section 22225, the need, if
18 any, for the initiation of new services, acquisition of covered
19 medical equipment, acquisition or initiation of new health facil-
20 ities, making changes in bed capacity, or making covered capital
21 expenditures, including conditions, standards, assurances, or
22 information that must be met, demonstrated, or provided by a
23 person who applies for a certificate of need. A certificate of
24 need review standard may also establish ongoing quality assurance
25 requirements including any or all of the requirements specified
26 in section 22225(2)(c). The statewide health coordinating
27 council may perform the duties of the commission under this

1 subdivision, only until all members of the commission are
2 appointed and confirmed, or ~~5 months after the effective date of~~
3 ~~this part~~ UNTIL MARCH 1, 1989, whichever is sooner. Before
4 final action is taken by the commission or the statewide health
5 coordinating council under this subdivision, the commission or
6 the statewide health coordinating council shall seek the advice
7 and counsel of the department and the office.

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

13 (d) Upon submission by the department and the office,
14 approve, disapprove, or revise proposed data reporting require-
15 ments under section 22209(2) and criteria for determining health
16 facility viability under section 22225. Before final action is
17 taken by the commission under this subdivision, the commission
18 shall seek the advice and counsel of the department and the
19 office.

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

23 (f) ~~Four years following the effective date of this part,~~
24 BY OCTOBER 1, 1993 and every 5 years after ~~that fourth year~~
25 OCTOBER 1, 1993, make recommendations to the standing committees
26 in the senate and the house that have jurisdiction over matters
27 pertaining to public health regarding statutory changes to

1 improve the certificate of need program, including, but not
2 limited to, threshold levels for capital expenditures, the role
3 of the commission, certificate of need review standards, and the
4 need for the certificate of need program.

5 (g) Upon submission by the department and the office,
6 approve, disapprove, or revise standards to be used by the
7 department in designating a regional certificate of need review
8 agency, pursuant to section 22226. Before final action is taken
9 by the commission under this subdivision, the commission shall
10 seek the advice and counsel of the department and the office.

11 (h) Upon submission by the department and the office,
12 approve, disapprove, or revise certificate of need review stan-
13 dards governing the acquisition of new technology. Before final
14 action is taken by the commission under this subdivision, the
15 commission shall seek the advice and counsel of the department
16 and the office.

17 (i) In accordance with section 22255, approve, disapprove,
18 or revise proposed procedural rules for the certificate of need
19 program. Before final action is taken by the commission under
20 this subdivision, the commission shall seek the advice and coun-
21 sel of the department and the office.

22 (j) If determined by the commission to be consistent with
23 the purposes of this part, modify the 100 licensed bed limitation
24 set forth in section 22210. Before final action is taken by the
25 commission under this subdivision, the commission shall seek the
26 advice and counsel of the department and the office.

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

5 (l) Consider the impact of a proposed restriction on the
6 acquisition of equipment or availability of services on the qual-
7 ity, availability, and cost of health services in this state.

8 (2) The commission shall exercise its duties under this part
9 to promote both of the following:

10 (a) The availability of quality health services at reason-
11 able cost.

12 (b) The general health objectives in the state health plan.

13 (3) Before final action is taken by the commission under
14 subsection (1)(a), (b), (d), (g), (h), or (j), the commission
15 shall conduct a public hearing on the matter. In addition, not
16 less than 30 days before final action is taken by the commission
17 under subsection (1)(a), (b), (d), (g), (h), or (j), the commis-
18 sion shall submit the proposed final action for comment to the
19 standing committees in the senate and house of representatives
20 with jurisdiction over public health matters. Before a final
21 commission approval under subsection (1)(a), (b), (d), (g), (h),
22 or (j) is effective, the commission shall submit the proposed
23 action to the governor and the standing committee of each house
24 of the legislature having jurisdiction over public health
25 matters. The governor or the legislature may disapprove the pro-
26 posed action within 45 days after the date of submission. If the
27 legislature is not in session at the time of submission of the

1 proposed action, or is in recess, the 45 days shall commence on
2 the first day the legislature reconvenes. The 45 days shall
3 include not less than 9 legislative session days. Legislative
4 disapproval shall be expressed by concurrent resolution which
5 shall be adopted by each house of the legislature. The concur-
6 rent resolution shall state specific objections to the proposed
7 action. A proposed commission action under subsection (1)(a),
8 (b), (d), (g), (h), or (j) shall not become effective if it has
9 been disapproved under this subsection. If the proposed action
10 is not disapproved under this subsection, it shall be effective
11 and binding on all persons affected by this part upon the expira-
12 tion of the 45-day period or on a later date specified in the
13 proposed action. As used in this subsection, "legislative ses-
14 sion day" means each day in which a quorum of either the house of
15 representatives or the senate, following a call to order, offi-
16 cially convenes in Lansing to conduct legislative business.

17 (4) ~~Every~~ BY OCTOBER 1, 1993 AND EVERY 5 years ~~following~~
18 ~~the effective date of this part~~ AFTER OCTOBER 1, 1993, the
19 standing committees of the senate and the house of representa-
20 tives having jurisdiction over public health matters shall make
21 findings and recommendations regarding any changes in, or the
22 continuation of, the certificate of need program established
23 under this part considered appropriate by those committees after
24 consideration of the recommendations submitted by the commission
25 pursuant to subsection (1)(f).

26 (5) If the reports received under section 22221(1)(e)
27 indicate that the certificate of need application fees collected

1 under section 20161(2) have not been within 10% of 1/2 the cost
2 to the department of implementing this part, the commission shall
3 make recommendations under subsection (1)(f) regarding the revi-
4 sion of those fees so that the certificate of need application
5 fees collected equal approximately 1/2 of the cost to the depart-
6 ment of implementing this part.

7 Sec. 22217. (1) Until other certificate of need review
8 standards are approved pursuant to this section or
9 section 22215(1)(b), the following documents, policies, and
10 guidelines shall be used by the department as certificate of need
11 review standards for purposes of this part, but are not incorpo-
12 rated by reference into this part:

13 (a) For general acute care beds, the subareas described on
14 page 67 and the bed need methodology set forth on pages 72 and 73
15 and the policies pertaining to general hospitals set forth on
16 pages 26 and 27 of the document entitled "Michigan department of
17 public health administrative guidelines for the certificate of
18 need program", adopted by the department on February 1, 1982.

19 (b) For long-term care services, the policies in the docu-
20 ment entitled "planning policies pertaining to long-term nursing
21 care bed need", approved by the statewide health coordinating
22 council on May 16, 1985, and amended on March 19, 1987, except
23 that the limitation on the number of beds that may be set aside
24 to better meet the needs of special population groups within the
25 long-term care and nursing home populations, as described on page
26 5 of "planning policies pertaining to long-term nursing care bed
27 need", is changed from 0.5% to 2.0%. Subject to the provisions

1 of this subdivision, the commission shall set aside the
2 additional beds in a statewide pool that shall be used for pro-
3 posed projects that better meet the religious or health needs for
4 specialized services within the long-term care and nursing home
5 populations including, but not limited to, acquired immunodefi-
6 ciency syndrome and Alzheimer's disease. Not more than 6 months
7 after the initial appointment and confirmation of all members of
8 the commission, the commission shall define and determine those
9 needs and the pool of additional beds by approving or modifying
10 the recommendations of the office and the department. After a
11 public hearing, but not later than ~~3 months after the effective~~
12 ~~date of this part~~ JANUARY 1, 1989, the office and the department
13 shall submit recommendations to the commission regarding those
14 needs and the pool of additional beds.

15 (c) For cardiac services, the policies in the document enti-
16 tled "planning policies pertaining to cardiac services" approved
17 by the statewide health coordinating council on January 16,
18 1986.

19 (d) For extrarenal organ transplantation services, the poli-
20 cies in the document entitled "planning policies pertaining to
21 extrarenal organ transplantation" approved by the statewide
22 health coordinating council on January 16, 1986.

23 (e) For special radiological procedures rooms, but excluding
24 procedure rooms used only for general radiology and fluoroscopy
25 procedures, the policies in the document entitled "planning poli-
26 cies pertaining to diagnostic radiology services" approved by the
27 statewide health coordinating council on January 16, 1986.

1 (f) For specialized radiation therapy services, including,
2 but not limited to, linear accelerators and cobalt units, the
3 policies in the document entitled "planning policies pertaining
4 to specialized radiation therapy services" approved by the state-
5 wide health coordinating council on January 16, 1986..

6 (g) For neonatal intensive care services, including special
7 newborn nursery services, item number 5 on page 29 of the admin-
8 istrative guidelines for certificate of need adopted by the
9 department on February 1, 1982.

10 (h) For extracorporeal shock wave lithotripsy, policies in
11 the document entitled "planning policies pertaining to extracor-
12 poreal shock wave lithotripsy" approved by the statewide health
13 coordinating council on November 21, 1985.

14 (i) For magnetic resonance units, the policies in the docu-
15 ment entitled "planning policies pertaining to magnetic
16 resonance" as amended and approved by the statewide health coor-
17 dinating council on March 19, 1987.

18 ~~(j) For mobile computed tomography scanners, the policies~~
19 ~~in the document entitled "planning policies pertaining to mobile~~
20 ~~computed tomography scanner services" approved by the statewide~~
21 ~~health coordinating council on May 15, 1986.~~

22 ~~(k) For fixed computed tomography scanner services, pages 61~~
23 ~~to 66 of the administrative guidelines for certificate of need~~
24 ~~adopted by the department on February 1, 1982.~~

25 (J) ~~(l)~~ For psychiatric hospitals and units, the document
26 entitled "psychiatric hospitals and units" on pages 18 to 24 of
27 chapter 2 of volume II of the Michigan state health plan,

1 1983-87, except that, for purposes of this subdivision only, the
2 term "public patient" means an individual approved for inpatient
3 services by a community mental health service board or an indi-
4 vidual who is admitted as a patient under section 423, 429, or
5 438 of the mental health code, Act No. 258 of the Public Acts of
6 1974, being sections 330.1423, 330.1429, and 330.1438 of the
7 Michigan Compiled Laws.

8 (K) ~~(m)~~ For surgical facilities, including surgical facil-
9 ities in hospital or outpatient settings, the policies entitled
10 "policies pertaining to outpatient and inpatient surgical
11 facilities" on pages 41 and 42 of the administrative guidelines
12 for the certificate of need program adopted by the department on
13 February 1, 1982.

14 (2) Not later than ~~3 months after the effective date of~~
15 ~~this part~~ JANUARY 1, 1989, the office and the department shall
16 hold a public hearing on the documents, policies, and guidelines
17 set forth in subsection (1). The hearing shall provide inter-
18 ested persons an opportunity to submit information and testimony
19 on the appropriateness of the documents, policies, and guidelines
20 and the need, if any, to revise the documents, policies, and
21 guidelines to promote efficient, accessible, and quality health
22 services. ~~Within 5 months after the effective date of this~~
23 ~~part~~ BY MARCH 1, 1989, based on the public hearing and other
24 available information, the office and the department shall recom-
25 mend to the commission 1 of the following in regard to each of
26 the documents, policies, and guidelines set forth in
27 subsection (1):

1 (a) Approval as certificate of need review standards.

2 (b) Approval with specific modifications as certificate of
3 need review standards.

4 (c) Deletion, because the applicable clinical services and
5 medical equipment should no longer be governed under this part,
6 as determined by the commission pursuant to section 22215(1)(a).

7 (d) Review and revision.

8 (3) Before or during its third meeting, and after considera-
9 tion of the recommendations of the department and the office
10 under subsection (2), the commission shall assign each document,
11 policy, and guideline set forth in subsection (1) to 1 of the
12 categories set forth in subsection (2)(a) to (d). The
13 commission's approval, or approval with specific modifications,
14 of certificate of need review standards shall be considered
15 approval under section 22215(1)(b), and such standards shall be
16 binding on all persons affected by this part. The procedures of
17 sections 22215(3) and 22221(2) do not apply to standards
18 approved, or approved with specific modifications, under this
19 subsection, except that a final commission action under this sub-
20 section shall be submitted to the governor and legislature as
21 provided by section 22215(3) before it becomes effective.

22 However, the governor and the legislature shall have 30 days,
23 including not less than 6 session days, in which to disapprove
24 the action of the commission. For a document, policy, or guide-
25 line considered appropriate for review and revision, the commis-
26 sion shall, after considering the recommendations of the
27 department and the office, establish a schedule for expeditious

1 review and revision by the commission and shall direct the
2 department and office to adhere to the schedule in the develop-
3 ment of proposed or revised certificate of need review standards
4 under this part.

5 (4) An application submitted on or after ~~the effective date~~
6 ~~of this part~~ OCTOBER 1, 1988 BUT BEFORE JANUARY 1, 1989 for a
7 proposed project subject to a document, policy, or guideline
8 listed in this section shall be considered submitted as of
9 January 1, 1989, except for applications meeting the requirements
10 of section 22235.

11 (5) Until all members of the commission are appointed and
12 confirmed, or until ~~5 months after the effective date of this~~
13 ~~part~~ MARCH 1, 1989, whichever is sooner, the statewide health
14 coordinating council may perform the duties of the commission
15 under this section. During the period described in this subsec-
16 tion, the statewide health coordinating council may approve, dis-
17 approve, or revise, as a certificate of need review standard, a
18 policy described in subsection (1)(c), (e), and (i). Action by
19 the statewide health coordinating council under this subsection
20 shall be submitted to the legislature and the governor as pro-
21 vided in subsection (3) before it becomes effective and the stan-
22 dards shall be binding on all parties affected by this part.

23 (6) The documents, policies, and guidelines set forth in
24 subsection (1) are public information. Upon receipt of a written
25 request, the department shall provide a copy of a document,
26 policy, or guideline to the person making the request.