

INTRODUCED BY Anderson W. Seman Simpkins
Editor

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MERGERS AND CONSOLIDATIONS OF HEALTH
5 CARE FACILITIES; AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS, MERGERS, AND
6 CONSOLIDATIONS OF HEALTH CARE PROVIDERS; PROVIDING FOR ENFORCEMENT OF THE TERMS AND
7 CONDITIONS OF CERTIFICATES OF PUBLIC ADVANTAGE AUTHORIZING COOPERATIVE, MERGER, OR
8 CONSOLIDATION AGREEMENTS AMONG HEALTH CARE FACILITIES AND PROVIDERS; AMENDING
9 SECTIONS 50-4-601, 50-4-602, 50-4-603, AND 50-4-611, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 50-4-601, MCA, is amended to read:

15 "50-4-601. **Finding and purpose.** The legislature finds that the goals of controlling health care costs
16 and improving the quality of and access to health care will be significantly enhanced in some cases by
17 cooperative agreements and by mergers and consolidations among health care facilities and health care
18 providers. The purpose of this part is to provide the state, through the authority, with direct supervision
19 and control over the implementation of cooperative agreements, mergers, and consolidations among health
20 care facilities and health care providers for which certificates of public advantage are granted. It is the
21 intent of the legislature that supervision and control over the implementation of these agreements, mergers,
22 and consolidations substitute state regulation of facilities and providers for competition between facilities
23 and providers and that this regulation have the effect of granting the parties to the agreements, mergers,
24 or consolidations state action immunity for actions that might otherwise be considered to be in violation
25 of state or federal, or both, antitrust laws."

28 "50-4-602. Cooperative agreements, mergers, and consolidations allowed. (1) A health care
29 facility may enter into a cooperative agreement with one or more health care facilities. A health care facility
30 may also merge or consolidate in whole or in part with one or more other health care facilities.

1 (2) A health care provider may enter into a cooperative agreement with one or more health care
2 providers. A health care provider may also merge or consolidate with one or more other health care
3 providers."

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5 **Section 3.** Section 50-4-603, MCA, is amended to read:

6 **"50-4-603. Certificate of public advantage -- standards for certification -- time for action by**
7 **authority.** (1) Parties to a cooperative agreement, merger, or consolidation may apply to the authority for
8 a certificate of public advantage. The application for a certificate must include a copy of the proposed or
9 executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation,
10 merger, or consolidation contemplated by the agreement, and the amount, nature, source, and recipient
11 of any consideration passing to any person under the terms of the agreement.

12 (2) The authority shall hold a public hearing on the application for a certificate before acting upon
13 the application. The authority may not issue a certificate unless the authority finds that the agreement is
14 likely to result in lower health care costs or in greater access to or quality of health care than would occur
15 without the agreement. If the authority denies an application for a certificate for an executed agreement,
16 the agreement is void upon the decision of the authority not to issue the certificate. Parties to a void
17 agreement may not implement or carry out the agreement.

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23 **Section 4.** Section 50-4-611, MCA, is amended to read:

24 **"50-4-611. Record of agreements to be kept.** The authority shall keep a copy of cooperative
25 agreements for which a certificate is in effect pursuant to this part. A party to a cooperative an agreement
26 who terminates the agreement shall notify the authority in writing of the termination within 30 days after
27 the termination."

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29 **NEW SECTION. Section 5. Enforcement by attorney general.** Upon request by the authority, the
30 attorney general may bring an action in the name of the state against a person or persons to whom a

1 certificate has been issued in order to enforce any terms or conditions imposed by the authority upon the
2 issuance of the certificate or to enjoin the violation of the terms or conditions. The action may be brought
3 in the district court of any judicial district in which a person or persons to whom a certificate has been
4 issued reside or maintain a principal place of business or, with the consent of the parties, in the district
5 court of the first judicial district, Lewis and Clark County.

6

7 **NEW SECTION. Section 6. Codification instruction.** [Section 5] is intended to be codified as an
8 integral part of Title 50, chapter 4, part 6, and the provisions of Title 50, chapter 4, part 6, apply to
9 [section 5].

10

11 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0509, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing mergers and consolidations of health care facilities.

ASSUMPTIONS:

1. The Attorney General is an ex-officio member of the Montana Health Care Authority for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage.
2. The health care authority would rely on the Attorney General's staff for analysis of mergers or consolidations between health care facilities and for analysis of cooperative agreements among health care providers. The same staff would be involved in any enforcement actions brought under Section 5 of the bill.
3. In order for collaborative activity among health care providers to be immune from federal antitrust restrictions, there must be a clearly articulated state policy to replace competition with regulation and the state must actively supervise the regulated conduct. Sections 50-4-601 through -612 clearly articulate the state's policy for regulation, but active supervision will require thorough review of any proposed cooperative agreement or merger and its impacts on the relevant markets, periodic review and monitoring of the effects of the cooperative agreement or merger, and the ability to revoke the agreement if the anticipated benefits do not outweigh the effects of the anticompetitive conduct.
4. It is anticipated that 1 or 2 cooperative agreements, mergers or consolidations will occur each year, with each requiring at least three months of full time work by one attorney and a paralegal and the need for contracted economist services. In addition, review of monthly reporting will be necessary to satisfy the antitrust elements of assumption #3.
5. To perform the legal analysis and review along with the ongoing duties, the Department of Justice will need 2.50 FTE (grade 19 - attorney; grade 10 - admin. support; .50 FTE grade 14 - paralegal). The personal services cost will be \$86,300 in FY96 and \$86,600 in FY97. Operating costs are estimated at \$10,400 in FY96 and FY97. These costs cover additional rent (assume in state building), supplies, phone, etc. One-time-only equipment costs of \$7,500 (2.50 FTE x \$3,000 each) would be incurred in FY96 for normal office equipment.
6. Assuming that the Attorney General's staff will perform all the duties enumerated above, it is generally believed that it is cost efficient to the state to have a continuous staff rather than contract out services when they occur.

(continued)

Dave Lewis 2-15-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

SHIELL ANDERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0509, as introduced

HB 509

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.50	2.50
Personal services	86,300	86,600
Operating expenses	10,400	10,400
Equipment	7,500	0
Total	104,200	97,000

Funding:

General fund (01)	104,200	97,000
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If litigation is required in the next biennium, additional legal assistance may be required in the form of FTEs or contracted services.

INFORMATIONAL NOTE:

The sponsor intended to have language in the bill allowing the state to charge a fee for services provided. Amendments may be introduced to accommodate this action. If amendments are introduced and approved, the cost reimbursement fees coming from health care facilities will serve to reduce (or offset) some or all of the expenditure impact of this bill, as introduced.

REREFERRED AND APPROVED BY COM ON APPROPRIATIONS

1

HOUSE BILL NO. 509

2

INTRODUCED BY ANDERSON, WISEMAN, SIMPKINS, FORBES

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MERGERS AND CONSOLIDATIONS OF HEALTH
5 CARE FACILITIES; ~~AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS, MERGERS, AND~~
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9 ~~FEES FOR APPLICATIONS FOR CERTIFICATES OF PUBLIC ADVANTAGE AND FOR REPORTS; PROVIDING~~
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11 50-4-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation,
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12 of any consideration passing to any person under the terms of the agreement.

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17 QUALITY HEALTH CARE WITHOUT ANY UNDUE INCREASE IN HEALTH CARE COSTS. If the authority
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19 of the authority not to issue the certificate. Parties to a void agreement may not implement or carry out the
20 agreement. THE PARTIES TO A VOID AGREEMENT MAY SUBMIT A NEW APPLICATION FOR A
21 CERTIFICATE BASED UPON A COOPERATIVE AGREEMENT, MERGER, OR CONSOLIDATION DIFFERENT
22 FROM THE ORIGINAL APPLICATION.

23 (3) The authority shall deny the application for a certificate or issue a certificate within 90 days
24 of receipt of a completed application OR WITHIN ONE 90-DAY EXTENSION, WHICH MAY BE GRANTED
25 BY THE AUTHORITY UPON A SHOWING OF GOOD CAUSE BY THE APPLICANTS. IF THE AUTHORITY
26 DOES NOT ISSUE A CERTIFICATE WITHIN THAT TIME, THE APPLICATION IS CONSIDERED TO HAVE
27 BEEN DENIED. A certificate may be issued subject to terms and conditions, as the authority may determine
28 are appropriate, in order to best achieve lower health care costs or greater access to or quality of health
29 care.

30 (4) ANY AMENDMENT TO A COOPERATIVE, MERGER, OR CONSOLIDATION AGREEMENT AND

1 ANY MATERIAL CHANGE IN THE OPERATIONS OR CONDUCT OF ANY PARTY TO A COOPERATIVE,
2 MERGER, OR CONSOLIDATION AGREEMENT IS CONSIDERED TO BE A NEW AGREEMENT AND MAY NOT
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4 ADVANTAGE APPROVING THE AMENDMENT OR CHANGE."

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7 "50-4-611. **Record of agreements to be kept.** The authority shall keep a copy of ~~cooperative~~
8 agreements for which a certificate is in effect pursuant to this part. A party to ~~a cooperative~~ an agreement
9 who terminates the agreement shall notify the authority in writing of the termination within 30 days after
10 the termination."

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13 THE attorney general may bring an action in the name of the state against a person or persons to whom
14 a certificate has been issued in order to enforce any terms or conditions imposed by the authority upon the
15 issuance of the certificate ~~or,~~ to enjoin the violation of the terms or conditions, OR TO ENJOIN ANY
16 MATERIAL VIOLATION OF OR DEVIATION FROM THE TERMS OF THE COOPERATIVE, MERGER, OR
17 CONSOLIDATION AGREEMENT SUBMITTED TO AND APPROVED BY THE AUTHORITY. The action may
18 be brought in the district court of any judicial district in which a person or persons to whom a certificate
19 has been issued reside or maintain a principal place of business or, with the consent of the parties, in the
20 district court of the first judicial district, Lewis and Clark County.

21

22 **NEW SECTION. SECTION 6. REPORTS.** IF THE AUTHORITY ISSUES A CERTIFICATE OF PUBLIC
23 ADVANTAGE, THE FACILITIES TO WHOM THE CERTIFICATE HAS BEEN ISSUED SHALL SUBMIT A
24 REPORT TO THE AUTHORITY EVALUATING WHETHER THE COOPERATIVE, MERGER, OR
25 CONSOLIDATION AGREEMENT SUBMITTED TO AND APPROVED BY THE AUTHORITY HAS BEEN
26 COMPLIED WITH DURING THE PRECEDING YEAR AND, IF APPLICABLE, EVALUATING WHETHER ANY
27 TERMS AND CONDITIONS IMPOSED BY THE AUTHORITY WHEN IT ISSUED THE CERTIFICATE HAVE
28 BEEN MET OR OTHERWISE SATISFIED DURING THE PRECEDING YEAR. THE REPORT MUST BE
29 SUBMITTED ANNUALLY OR MORE FREQUENTLY IF REQUIRED BY THE AUTHORITY. THE AUTHORITY
30 SHALL IN TURN ISSUE FINDINGS AS TO WHETHER THE TERMS AND CONDITIONS ARE BEING MET OR

1 OTHERWISE SATISFIED. THE AUTHORITY SHALL KEEP COPIES OF ALL REPORTS AND FINDINGS BASED
2 ON THE REPORTS.

3

4 NEW SECTION. SECTION 7. FEES -- STATUTORY APPROPRIATION. (1) THE AUTHORITY SHALL
5 ESTABLISH BY RULE FEES TO ACCOMPANY THE FILING OF AN APPLICATION FOR A CERTIFICATE OF
6 PUBLIC ADVANTAGE AND FOR A REPORT REQUIRED BY [SECTION 6]. THE FEES MUST BE
7 REASONABLY RELATED TO THE COSTS OF THE AUTHORITY IN CONSIDERING APPLICATIONS,
8 EVALUATING REPORTS, AND PERFORMING OTHER DUTIES NECESSARY TO ADMINISTER THIS PART.
9 THE COSTS MAY INCLUDE THE RETENTION OF ACCOUNTING, TECHNICAL, AND LEGAL ASSISTANCE
10 THAT THE AUTHORITY CONSIDERS NECESSARY TO PROCESS APPLICATIONS AND REPORTS. THE
11 AUTHORITY SHALL MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEES CHARGED UNDER THIS
12 SECTION.

13 (2) THE FEES MUST BE DEPOSITED IN AN ACCOUNT IN THE SPECIAL REVENUE FUND. THE
14 ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, TO THE AUTHORITY.

15

16 SECTION 8. SECTION 17-7-502, MCA, IS AMENDED TO READ:

17 "17-7-502. **Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
18 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
19 without the need for a biennial legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
21 with both of the following provisions:

22 (a) The law containing the statutory authority must be listed in subsection (3).

23 (b) The law or portion of the law making a statutory appropriation must specifically state that a
24 statutory appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
26 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
27 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
28 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
29 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
30 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;

1 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
2 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
3 44-12-206; 44-13-102; [section 7]; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
4 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
5 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
6 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

7 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
8 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
9 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
10 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
11 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
12 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
13 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
14 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
15 July 1, 1995.)"

16

17 **NEW SECTION. Section 9. Codification instruction.** ~~{Section 5} is [SECTIONS 5 THROUGH 7] ARE~~
18 intended to be codified as an integral part of Title 50, chapter 4, part 6, and the provisions of Title 50,
19 chapter 4, part 6, apply to ~~{section 5}~~ [SECTIONS 5 THROUGH 7].

20

21 **NEW SECTION. SECTION 10. COORDINATION INSTRUCTION.** ~~IF HOUSE BILL NO. 511 IS~~
22 ~~PASSED AND APPROVED AND IF IT AMENDS 50-4-601, 50-4-603, 50-4-604, 50-4-609, 50-4-610, AND~~
23 ~~50-4-611 TO TRANSFER THE RESPONSIBILITY FOR THE CERTIFICATES OF PUBLIC ADVANTAGE TO THE~~
24 ~~DEPARTMENT OF JUSTICE, THEN ANY REFERENCES TO THE MONTANA HEALTH CARE AUTHORITY IN~~
25 ~~THIS BILL AND IN ANY NEW SECTIONS CODIFIED INTO TITLE 50, CHAPTER 4, PART 6, MUST BE~~
26 ~~CHANGED TO A REFERENCE TO THE DEPARTMENT OF JUSTICE.~~

27

28 **NEW SECTION. Section 11. Effective date.** ~~[This act] is effective on passage and approval.~~

29

-END-

1 HOUSE BILL NO. 509

2 INTRODUCED BY ANDERSON, WISEMAN, SIMPKINS, FORBES

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THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



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20 district court of the first judicial district, Lewis and Clark County.

21

22 **NEW SECTION. SECTION 6. REPORTS.** If the authority issues a certificate of public
23 advantage, the facilities to whom the certificate has been issued shall submit a
24 report to the authority evaluating whether the cooperative, merger, or
25 consolidation agreement submitted to and approved by the authority has been
26 complied with during the preceding year and, if applicable, evaluating whether any
27 terms and conditions imposed by the authority when it issued the certificate have
28 been met or otherwise satisfied during the preceding year. The report must be
29 submitted annually or more frequently if required by the authority. The authority
30 shall in turn issue findings as to whether the terms and conditions are being met or

1 OTHERWISE SATISFIED, THE AUTHORITY SHALL KEEP COPIES OF ALL REPORTS AND FINDINGS BASED
2 ON THE REPORTS.

3

4 NEW SECTION. SECTION 7. FEES -- STATUTORY APPROPRIATION. (1) THE AUTHORITY SHALL
5 ESTABLISH BY RULE FEES TO ACCOMPANY THE FILING OF AN APPLICATION FOR A CERTIFICATE OF
6 PUBLIC ADVANTAGE AND FOR A REPORT REQUIRED BY [SECTION 6]. THE FEES MUST BE
7 REASONABLY RELATED TO THE COSTS OF THE AUTHORITY IN CONSIDERING APPLICATIONS,
8 EVALUATING REPORTS, AND PERFORMING OTHER DUTIES NECESSARY TO ADMINISTER THIS PART.
9 THE COSTS MAY INCLUDE THE RETENTION OF ACCOUNTING, TECHNICAL, AND LEGAL ASSISTANCE
10 THAT THE AUTHORITY CONSIDERS NECESSARY TO PROCESS APPLICATIONS AND REPORTS. THE
11 AUTHORITY SHALL MAINTAIN RECORDS SUFFICIENT TO SUPPORT THE FEES CHARGED UNDER THIS
12 SECTION.

13 (2) THE FEES MUST BE DEPOSITED IN AN ACCOUNT IN THE SPECIAL REVENUE FUND. THE
14 ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, TO THE AUTHORITY.

15

16 SECTION 8. SECTION 17-7-502, MCA, IS AMENDED TO READ:

17 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
18 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
19 without the need for a biennial legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
21 with both of the following provisions:

22 (a) The law containing the statutory authority must be listed in subsection (3).

23 (b) The law or portion of the law making a statutory appropriation must specifically state that a
24 statutory appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
26 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
27 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
28 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
29 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
30 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;

1 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
2 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
3 44-12-206; 44-13-102; [section 7]; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
4 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
5 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
6 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

7 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
8 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
9 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
10 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
11 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
12 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
13 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
14 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
15 July 1, 1995.)"

16

17 **NEW SECTION. Section 9. Codification instruction.** ~~{Section 5} is [SECTIONS 5 THROUGH 7] ARE~~
18 intended to be codified as an integral part of Title 50, chapter 4, part 6, and the provisions of Title 50,
19 chapter 4, part 6, apply to ~~{Section 5}~~ **[SECTIONS 5 THROUGH 7]**.

20

21 **NEW SECTION. SECTION 10. COORDINATION INSTRUCTION.** ~~IF HOUSE BILL NO. 511 IS~~
22 ~~PASSED AND APPROVED AND IF IT AMENDS 50-4-601, 50-4-603, 50-4-604, 50-4-609, 50-4-610, AND~~
23 ~~50-4-611 TO TRANSFER THE RESPONSIBILITY FOR THE CERTIFICATES OF PUBLIC ADVANTAGE TO THE~~
24 ~~DEPARTMENT OF JUSTICE, THEN ANY REFERENCES TO THE MONTANA HEALTH CARE AUTHORITY IN~~
25 ~~THIS BILL AND IN ANY NEW SECTIONS CODIFIED INTO TITLE 50, CHAPTER 4, PART 6, MUST BE~~
26 ~~CHANGED TO A REFERENCE TO THE DEPARTMENT OF JUSTICE.~~

27

28 **NEW SECTION. Section 11. Effective date.** ~~[This act] is effective on passage and approval.~~

29

-END-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL NO. 509
(REFERENCE COPY)
April 7, 1995

1. Title, line 6.

Following: "~~PROVIDERS~~,"

Insert: "AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS,
MERGERS, AND CONSOLIDATIONS OF PHYSICIANS;

2. Title, line 8.

Following: "~~PROVIDERS~~"

Insert: "AND PHYSICIANS"

3. Page 1, lines 19, 21, 23, and 24.

Following: "~~providers~~"

Insert: "and physicians licensed to practice medicine under Title
37, chapter 3.

4. Page 1, line 29.

Following: "~~(1)~~"

Insert: "(1)"

5. Page 2, line 4.

Following: "~~providers~~."

Insert: "(2) A physician licensed to practice medicine under Title
37, chapter 3 may enter into a cooperative agreement with one or
more physicians licensed to practice medicine under Title 37,
chapter 3.

6. Page 3, line 23.

Following: "FACILITIES"

Insert: "OR PHYSICIANS"

HB 509

1 HOUSE BILL NO. 509

2 INTRODUCED BY ANDERSON, WISEMAN, SIMPKINS, FORBES

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MERGERS AND CONSOLIDATIONS OF HEALTH
5 CARE FACILITIES; AUTHORIZING IMPLEMENTATION OF COOPERATIVE AGREEMENTS, MERGERS, AND
6 CONSOLIDATIONS OF HEALTH CARE PROVIDERS; AUTHORIZING IMPLEMENTATION OF COOPERATIVE
7 AGREEMENTS, MERGERS, AND CONSOLIDATIONS OF PHYSICIANS; PROVIDING FOR ENFORCEMENT OF
8 THE TERMS AND CONDITIONS OF CERTIFICATES OF PUBLIC ADVANTAGE AUTHORIZING COOPERATIVE,
9 MERGER, OR CONSOLIDATION AGREEMENTS AMONG HEALTH CARE FACILITIES AND PROVIDERS AND
10 PHYSICIANS; ESTABLISHING FEES FOR APPLICATIONS FOR CERTIFICATES OF PUBLIC ADVANTAGE AND
11 FOR REPORTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-4-601,
12 50-4-602, 50-4-603, AND 50-4-611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 50-4-601, MCA, is amended to read:

17 "50-4-601. **Finding and purpose.** The legislature finds that the goals of controlling health care costs
18 and improving the quality of and access to health care will be significantly enhanced in some cases by
19 cooperative agreements and by mergers and consolidations among health care facilities and health care
20 providers AND PHYSICIANS LICENSED TO PRACTICE MEDICINE UNDER TITLE 37, CHAPTER 3. The
21 purpose of this part is to provide the state, through the authority, with direct supervision and control over
22 the implementation of cooperative agreements, mergers, and consolidations among health care facilities and
23 health care providers AND PHYSICIANS LICENSED TO PRACTICE MEDICINE UNDER TITLE 37, CHAPTER
24 3, for which certificates of public advantage are granted. It is the intent of the legislature that supervision
25 and control over the implementation of these agreements, mergers, and consolidations substitute state
26 regulation of facilities and providers AND PHYSICIANS LICENSED TO PRACTICE MEDICINE UNDER TITLE
27 37, CHAPTER 3, for competition between facilities and providers AND PHYSICIANS LICENSED TO
28 PRACTICE MEDICINE UNDER TITLE 37, CHAPTER 3, and that this regulation have the effect of granting
29 the parties to the agreements, mergers, or consolidations state action immunity for actions that might
30 otherwise be considered to be in violation of state or federal, or both, antitrust laws."

1 **Section 2.** Section 50-4-602, MCA, is amended to read:

2 **"50-4-602. Cooperative agreements, mergers, and consolidations allowed.** ~~(1)~~**(1)** A health care

3 facility may enter into a cooperative agreement with one or more health care facilities. A health care facility

4 may also merge or consolidate in whole or in part with one or more other health care facilities.

5 ~~(2) A health care provider may enter into a cooperative agreement with one or more health care~~

6 ~~providers. A health care provider may also merge or consolidate with one or more other health care~~

7 ~~providers.~~

8 **(2) A PHYSICIAN LICENSED TO PRACTICE MEDICINE UNDER TITLE 37, CHAPTER 3, MAY ENTER**

9 **INTO A COOPERATIVE AGREEMENT WITH ONE OR MORE PHYSICIANS LICENSED TO PRACTICE**

10 **MEDICINE UNDER TITLE 37, CHAPTER 3."**

11 **Section 3.** Section 50-4-603, MCA, is amended to read:

12 **"50-4-603. Certificate of public advantage -- standards for certification -- time for action by**

13 **authority.** **(1)** Parties to a cooperative agreement, merger, or consolidation may apply to the authority for

14 a certificate of public advantage. The application for a certificate must include a copy of the proposed or

15 executed cooperative, merger, or consolidation agreement, a description of the scope of the cooperation,

16 merger, or consolidation contemplated by the agreement, and the amount, nature, source, and recipient

17 of any consideration passing to any person under the terms of the agreement.

18 **(2)** The authority shall hold a public hearing on the application for a certificate before acting upon

19 the application. The authority may not issue a certificate unless the authority finds that the agreement is

20 likely to result in lower health care costs or ~~in greater access to or quality of health care than would occur~~

21 ~~without the agreement~~ IS LIKELY TO RESULT IN IMPROVED ACCESS TO HEALTH CARE OR HIGHER

22 QUALITY HEALTH CARE WITHOUT ANY UNDUE INCREASE IN HEALTH CARE COSTS. If the authority

23 denies an application for a certificate for an executed agreement, the agreement is void upon the decision

24 of the authority not to issue the certificate. Parties to a void agreement may not implement or carry out the

25 agreement. THE PARTIES TO A VOID AGREEMENT MAY SUBMIT A NEW APPLICATION FOR A

26 CERTIFICATE BASED UPON A COOPERATIVE AGREEMENT, MERGER, OR CONSOLIDATION DIFFERENT

27 FROM THE ORIGINAL APPLICATION.

28 **(3)** The authority shall deny the application for a certificate or issue a certificate within 90 days

29 of receipt of a completed application OR WITHIN ONE 90-DAY EXTENSION, WHICH MAY BE GRANTED

1 BY THE AUTHORITY UPON A SHOWING OF GOOD CAUSE BY THE APPLICANTS. IF THE AUTHORITY
2 DOES NOT ISSUE A CERTIFICATE WITHIN THAT TIME, THE APPLICATION IS CONSIDERED TO HAVE
3 BEEN DENIED. A certificate may be issued subject to terms and conditions, as the authority may determine
4 are appropriate, in order to best achieve lower health care costs or greater access to or quality of health
5 care.

6 (4) ANY AMENDMENT TO A COOPERATIVE, MERGER, OR CONSOLIDATION AGREEMENT AND
7 ANY MATERIAL CHANGE IN THE OPERATIONS OR CONDUCT OF ANY PARTY TO A COOPERATIVE,
8 MERGER, OR CONSOLIDATION AGREEMENT IS CONSIDERED TO BE A NEW AGREEMENT AND MAY NOT
9 TAKE EFFECT OR OCCUR UNTIL THE AUTHORITY HAS ISSUED A NEW CERTIFICATE OF PUBLIC
10 ADVANTAGE APPROVING THE AMENDMENT OR CHANGE."

11

12 **Section 4.** Section 50-4-611, MCA, is amended to read:

13 **"50-4-611. Record of agreements to be kept.** The authority shall keep a copy of ~~cooperative~~
14 agreements for which a certificate is in effect pursuant to this part. A party to ~~a cooperative~~ an agreement
15 who terminates the agreement shall notify the authority in writing of the termination within 30 days after
16 the termination."

17

18 **NEW SECTION. Section 5. Enforcement by attorney general.** ~~Upon request by the authority, the~~
19 THE attorney general may bring an action in the name of the state against a person or persons to whom
20 a certificate has been issued in order to enforce any terms or conditions imposed by the authority upon the
21 issuance of the certificate ~~or,~~ to enjoin the violation of the terms or conditions, OR TO ENJOIN ANY
22 MATERIAL VIOLATION OF OR DEVIATION FROM THE TERMS OF THE COOPERATIVE, MERGER, OR
23 CONSOLIDATION AGREEMENT SUBMITTED TO AND APPROVED BY THE AUTHORITY. The action may
24 be brought in the district court of any judicial district in which a person or persons to whom a certificate
25 has been issued reside or maintain a principal place of business or, with the consent of the parties, in the
26 district court of the first judicial district, Lewis and Clark County.

27

28 **NEW SECTION. SECTION 6. REPORTS.** IF THE AUTHORITY ISSUES A CERTIFICATE OF PUBLIC
29 ADVANTAGE, THE FACILITIES OR PHYSICIANS TO WHOM THE CERTIFICATE HAS BEEN ISSUED SHALL
30 SUBMIT A REPORT TO THE AUTHORITY EVALUATING WHETHER THE COOPERATIVE, MERGER, OR

1 CONSOLIDATION AGREEMENT SUBMITTED TO AND APPROVED BY THE AUTHORITY HAS BEEN
2 COMPLIED WITH DURING THE PRECEDING YEAR AND, IF APPLICABLE, EVALUATING WHETHER ANY
3 TERMS AND CONDITIONS IMPOSED BY THE AUTHORITY WHEN IT ISSUED THE CERTIFICATE HAVE
4 BEEN MET OR OTHERWISE SATISFIED DURING THE PRECEDING YEAR. THE REPORT MUST BE
5 SUBMITTED ANNUALLY OR MORE FREQUENTLY IF REQUIRED BY THE AUTHORITY. THE AUTHORITY
6 SHALL IN TURN ISSUE FINDINGS AS TO WHETHER THE TERMS AND CONDITIONS ARE BEING MET OR
7 OTHERWISE SATISFIED. THE AUTHORITY SHALL KEEP COPIES OF ALL REPORTS AND FINDINGS BASED
8 ON THE REPORTS.

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18 SECTION.

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