

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

---

Legislative Document

No. 2110

S.P. 852

In Senate, April 13, 2006

### **An Act To Establish the Hospital and Health Care Provider Cooperation Act**

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Reported by Senator MAYO of Sagadahoc for the Joint Standing Committee on Health and Human Services pursuant to Public Law 2005, chapter 394, section 8.

Reference to the Committee on Health and Human Services suggested and ordered printed under Joint Rule 218.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA c. 405-A is enacted to read:

**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."

**§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.

**§1843. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

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;

B. The coordinated negotiation and contracting with payors or employers; or

C. The merger of 2 or more hospitals or 2 or more health care providers.

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

2 hospitals and one or more health care providers is not a  
3 cooperative agreement for the purposes of this chapter.

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

6  
7 3. Health care provider. "Health care provider" means a  
8 physician licensed under Title 32, chapter 36 or 48 and operating  
9 in this State and a corporation or business entity engaged  
10 primarily in the provision of physician health care services.

11 4. Hospital. "Hospital" means:

12  
13 A. An acute care institution licensed and operating in this  
14 State as a hospital under section 1811 or the parent of such  
15 an institution; or

16  
17 B. A hospital subsidiary or hospital affiliate in the State  
18 that provides medical services or medically related  
19 diagnostic and laboratory services or engages in ancillary  
20 activities supporting those services.

21  
22 5. Merger. "Merger" means a transaction by which ownership  
23 or control over substantially all of the stock, assets or  
24 activities of one or more covered entities is placed under the  
25 control of another covered entity. A merger between one or more  
26 hospitals and one or more health care providers is not a merger  
27 for the purposes of this chapter.

28  
29 **§1844. Certificate of public advantage**

30  
31 1. Authority. A covered entity may negotiate and enter  
32 into a cooperative agreement with another covered entity and may  
33 file an application for a certificate of public advantage  
34 pursuant to this section. The approval of an application for a  
35 certificate of public advantage is governed by the standards of  
36 subsection 5.

37  
38 2. Application for certificate. The application process  
39 for a certificate of public advantage is as follows.

40  
41 A. At least 45 days prior to filing an application for a  
42 certificate of public advantage for a merger, the parties to  
43 a merger agreement shall file a letter of intent with the  
44 department describing the proposed merger. Copies of the  
45 letter of intent and all accompanying materials must be  
46 submitted to the Attorney General and to the Governor's  
47 Office of Health Policy and Finance at the time the letter  
48 of intent is filed with the department.

2       B. The parties to a cooperative agreement shall file with  
4       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.

6       C. The application must include a signed copy of the  
8       original cooperative agreement and must state all  
      consideration passing to any party under the agreement.

10       D. The parties to a cooperative agreement shall submit  
12       copies of the application and all the accompanying materials  
14       to the Attorney General and the Governor's Office of Health  
      Policy and Finance at the time they file the application  
      with the department.

16       Copies of the application and all accompanying materials filed by  
18       the applicant, public comments, records of the department  
20       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.

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

26       A. The department shall publish notice in a newspaper of  
28       general circulation in Kennebec County and in a newspaper  
30       published within the service area in which the proposed  
      cooperative agreement would be effective.

32       B. The department shall provide notice by mailing copies of  
34       the application and letter of intent, if any, to all persons  
      who request notification from the department.

36       C. Notice under this subsection must include:

38           (1) A brief description of the proposal;

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

42           (3) A statement of the availability of the application  
44           and records pertaining to it and letter of intent as  
      provided in subsection 2.

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

2       A. The department shall review and evaluate the application  
3       in accordance with the standards set forth in subsection 5.

4       B. Any person may provide the department with written  
5       comments concerning the application within 30 days after the  
6       public notice in subsection 3, paragraph A.

8       C. The department shall provide the Attorney General and  
9       the Governor's Office of Health Policy and Finance with  
10       copies of all comments from persons submitted under  
11       paragraph B.

12       D. The department may hold a public hearing regarding an  
13       application in accordance with rules adopted by the  
14       department.

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

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

23               (2) Without the approval of the department or any party  
24               at any time prior to the issuance of a final decision  
25               under paragraph G if a court action has not been filed  
26               under section 1848, subsection 2.

27       F. The department shall issue a final decision to grant or  
28       deny an application for a certificate of public advantage  
29       under this section no less than 40 days and no more than 90  
30       days after the filing of the application. The department  
31       shall issue a preliminary decision at least 5 days prior to  
32       issuing the final decision. The preliminary and final  
33       decisions must be in writing and set forth the basis for the  
34       decisions. The department shall provide copies of the  
35       preliminary and final decisions to the applicants, the  
36       Office of the Attorney General, the Governor's Office of  
37       Health Policy and Finance and all persons who requested  
38       notification from the department under subsection 3,  
39       paragraph B.

40       5. Standards for approval of a certificate of public  
41       advantage. The department shall issue a certificate of public  
42       advantage for a cooperative agreement if it determines that the  
43       applicants have demonstrated by a preponderance of the evidence  
44       that the likely benefits resulting from the agreement outweigh  
45       any disadvantages attributable to a reduction in competition

likely to result from the agreement. 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 may 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 use 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.

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;

2           (3) The extent of any likely adverse impact on patients  
4           or clients in the quality, availability and price of  
          health care services;

6           (4) The extent of any likely adverse impact on the  
8           access of persons enrolled in in-state educational  
          programs for health professions to existing or future  
          clinical training programs; and

10          (5) The availability of arrangements that are less  
12          restrictive to competition and achieve the same  
14          benefits or a more favorable balance of benefits over  
          disadvantages attributable to any reduction in  
          competition likely to result from the agreement.

16          C. In evaluating a cooperative agreement under the standards  
18          in paragraphs A and B, the department shall consider the  
20          extent to which any likely disadvantages may be ameliorated  
22          by any reasonably enforceable conditions under subparagraph  
24          (1) and the extent to which the likely benefits or favorable  
26          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.

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

32               (2) In a certificate issued under this subsection, the  
34               department may include additional conditions, if  
36               proposed by the applicants, designed to achieve public  
          benefits, which may include but are not limited to the  
          benefits listed in paragraph A.

38          D. In a certificate of public advantage issued under this  
40          subsection, the department may include a condition requiring  
42          the certificate holders to submit fees sufficient to fund  
44          expenses for consultants or experts necessary for the  
46          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  
48          mergers involving hospitals with 50 or more beds and \$2,500  
          for all other cooperative agreements.



2 6. Intervention. The Attorney General and the Governor's  
4 Office of Health Policy and Finance 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.

6  
8 7. Attorney General enforcement. The Attorney General may  
10 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.

14 §1845. Continuing supervision

16  
18 Continuing supervision of holders of certificates of public  
advantage under this chapter may consist of periodic reports,  
supervisory reviews and additional supervisory activities.

20  
22 1. Periodic report and supervisory review. With regard to  
24 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 and to the Governor's Office of Health Policy  
and Finance at the time the report is filed with the department.  
The Attorney General and the Governor's Office of Health Policy  
and Finance 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 and the  
Governor's Office of Health Policy and Finance 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 and the  
Governor's Office of Health Policy and Finance, determine whether  
to institute additional supervisory activities under this section  
and notify the certificate holder.

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

46 A. The department shall conduct additional supervisory  
48 activities whenever requested by the Attorney General or the  
Governor's Office of Health Policy and Finance, or whenever  
the department, in its discretion, determines those  
50 activities appropriate, and:

2           (1) For certificates of public advantage not involving  
4           mergers, at least once in the first 18 months after the  
            transaction described in the cooperative agreement has  
            closed; and

6           (2) For certificates of public advantage involving  
8           mergers, at least once between 12 and 30 months after  
10          the transaction described in the cooperative agreement  
            has closed.

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

14           (1) Soliciting and reviewing written submissions from  
16           the certificate holders, the Attorney General, the  
18           Governor's Office of Health Policy and Finance or the  
            public;

20           (2) Conducting a hearing in accordance with Title 5,  
22           chapter 375, subchapter 4 and the department's  
            administrative hearings rules; or

24           (3) Using any alternative procedures appropriate under  
26           the circumstances.

C. The department shall notify the certificate holders if  
28           it intends to consider the imposition of any additional  
30           conditions or measures authorized under subsection 3. If  
32           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.

34           D. A decision of the department regarding additional  
36           supervisory activities is governed by the standards set  
38           forth in subsection 3. The burden of proof is on the  
40           parties seeking any remedial order. A remedial order may  
            not issue unless the basis for it is established by a  
            preponderance of the evidence.

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

46           A. If the department determines in any additional  
48           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.

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.

**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.

**5. Attorney General enforcement.** The Attorney General may file an action in Superior Court to enforce any final action

2 taken by the department as a result of additional supervisory  
3 proceedings under this section. In the event that the Attorney  
4 General files an action pursuant to its separate authority  
5 outlined in section 1848, any pending department proceedings are  
6 stayed pursuant to section 1848, subsection 7.

7  
8 6. Fees and costs. If the department prevails in an action  
9 under this section, the department and the Attorney General are  
10 entitled to an award of the reasonable costs of deposition  
11 transcripts incurred in the course of the action and reasonable  
12 attorney's fees, expert witness fees and court costs incurred in  
13 the action.

14 **§1846. Record keeping**

15 The department shall maintain records of all applications  
16 for a certificate of public advantage, together with the records  
17 of all submissions, comments, reports and department proceedings  
18 with respect to those applications, certificates approved by the  
19 department, continuing supervision and any other proceedings  
20 under this chapter.

21  
22 **§1847. Judicial review of department action**

23  
24  
25 An applicant, certificate holder or intervenor aggrieved by  
26 a final decision of the department in granting or denying an  
27 application for a certificate of public advantage, refusing to  
28 act on an application or imposing additional conditions or  
29 measures with regard to a certificate of public advantage is  
30 entitled to judicial review of the final decision in accordance  
31 with the Maine Administrative Procedure Act.

32  
33 **§1848. Attorney General authority**

34  
35 1. Investigative powers. The Attorney General, at any time  
36 after an application or letter of intent is filed under section  
37 1844, subsection 2, may require by subpoena the attendance and  
38 testimony of witnesses and the production of documents in  
39 Kennebec County, or the county in which the applicants are  
40 located, for the purpose of investigating whether the cooperative  
41 agreement satisfies the standards set forth in section 1844,  
42 subsection 5. All documents produced and testimony given to the  
43 Attorney General are confidential. The Attorney General may seek  
44 an order from the Superior Court compelling compliance with a  
45 subpoena issued under this section.

46  
47 2. Court action; time limits. The Attorney General may  
48 seek to enjoin the operation of a cooperative agreement for which  
49 an application for a certificate of public advantage has been  
50 filed by filing suit against the parties to the cooperative  
agreement in Superior Court. The Attorney General may file an

2 action before or after the department acts on the application for  
3 a certificate; however, the action must be brought no later than  
4 40 days following the department's approval of an application for  
5 a certificate of public advantage. After the filing of a court  
6 action under this subsection, the department may not take any  
7 further action under this chapter and the time periods specified  
8 for departmental action under section 1844, subsection 4 are  
9 tolled until the court action is dismissed by the Attorney  
10 General or the Superior Court orders the department to take  
11 further action.

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

22 4. Standard for adjudication. In an action brought under  
23 subsection 2, the applicant for a certificate of public advantage  
24 bears the burden of establishing by a preponderance of the  
25 evidence that, in accordance with section 1844, subsection 5, the  
26 likely benefits resulting from the cooperative agreement and any  
27 conditions proposed by the applicants outweigh any disadvantages  
28 attributable to a reduction in competition that may result from  
29 the agreement. In assessing disadvantages attributable to a  
30 reduction in competition likely to result from the agreement, the  
31 court may draw upon the determinations of federal and Maine  
32 courts concerning unreasonable restraint of trade under 15 United  
33 States Code, Sections 1 and 2 and Title 10, sections 1101 and  
34 1102.

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

46 A. Except as provided in paragraph B, in an action brought  
47 under this subsection, the Attorney General has the burden  
48

2       of establishing by a preponderance of the evidence that, as  
3       a result of changed circumstances or unanticipated  
4       circumstances, the benefits resulting from the cooperative  
5       agreement and the unavoidable costs of revoking the  
6       certificate are outweighed by disadvantages attributable to  
7       a reduction in competition resulting from the agreement. For  
8       purposes of this paragraph, "unanticipated circumstances"  
9       includes the failure to realize anticipated benefits of the  
10       agreement or the realization of unanticipated  
11       anticompetitive effects from the agreement.

12       B. In an action brought under this subsection, if the  
13       Attorney General first establishes by a preponderance of the  
14       evidence that the department's certification was obtained as  
15       a result of material misrepresentation to the department or  
16       the Attorney General or as the result of coercion, threats  
17       or intimidation toward any party to the cooperative  
18       agreement, then the parties to the agreement bear the burden  
19       of establishing by clear and convincing evidence that the  
20       benefits resulting from the agreement and the unavoidable  
21       costs of revoking the agreement outweigh the disadvantages  
22       attributable to any reduction in competition resulting from  
23       the agreement.

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

27       A. If the certificate holders in a cooperative agreement not  
28       involving a merger are not in substantial compliance with  
29       the conditions included in the certificate of public  
30       advantage under section 1844, subsection 5 or a consent  
31       decree entered under subsection 9 or with the conditions or  
32       measures added pursuant to additional supervisory activities  
33       under section 1845, subsection 3, the Attorney General may  
34       seek an order from the Superior Court compelling compliance  
35       with such conditions or measures or other appropriate  
36       equitable remedies. If the Superior Court grants such relief  
37       and that relief is not effective in securing compliance with  
38       the conditions or measures, the Superior Court may impose  
39       additional equitable remedies, including the exercise of  
40       civil contempt powers, or may revoke the certificate upon a  
41       determination that advantages to be gained by revoking the  
42       certificate outweigh the unavoidable costs resulting from a  
43       revocation of the certificate.

44       B. If the certificate holders in a cooperative agreement  
45       involving a merger are not in substantial compliance with  
46       the conditions included in the certificate of public  
47       advantage under section 1844, subsection 5 or a consent  
48       decree entered under subsection 9 or with the conditions or  
49       measures added pursuant to additional supervisory activities  
50       under section 1845, subsection 3, the Attorney General may

2 decree entered under subsection 9 or with the conditions or  
3 measures added pursuant to additional supervisory activities  
4 under section 1845, subsection 3, the Attorney General may  
5 seek an order from the Superior Court compelling compliance  
6 with such conditions or measures. If the certificate holders  
7 to the merger fail to comply with any court order compelling  
8 compliance with such conditions or measures, the Superior  
9 Court may impose additional equitable remedies to secure  
10 compliance with its orders, including the exercise of civil  
11 contempt powers or appointment of a receiver. If these  
12 additional measures are not effective in securing compliance  
13 with the conditions or measures and the Superior Court  
14 determines that the advantages to be gained by divestiture  
15 outweigh the unavoidable costs of requiring divestiture, the  
16 Superior Court may revoke the certificate and order  
17 divestiture of assets.

18 C. In an action brought under this subsection, the Attorney  
19 General has the burden of proving by a preponderance of the  
20 evidence the basis for any equitable remedies requested by  
21 the Attorney General and adopted by the Superior Court.

22  
23 7. Effect of court action. After the filing of a court  
24 action under subsection 5 or 6, the department may not take any  
25 further action under this chapter until the court action is  
26 dismissed by the Attorney General or the Superior Court orders  
27 the department to take further action.

28  
29 8. Fees and costs. If the Attorney General prevails in an  
30 action under this section, the Attorney General and the  
31 department are entitled to an award of the reasonable costs of  
32 deposition transcripts incurred in the course of the  
33 investigation or litigation and reasonable attorney's fees,  
34 expert witness fees and court costs incurred in litigation.

35  
36 9. Resolution by consent decree. The Superior Court may  
37 resolve any action brought by the Attorney General under this  
38 chapter by entering an order with the consent of the parties. The  
39 consent decree may contain any conditions authorized by section  
40 1844, subsection 5, paragraph C or conditions or measures  
41 authorized under section 1845, subsection 3. A consent decree  
42 under this subsection may not be filed with the Superior Court  
43 until 30 days after the filing of the application under section  
44 1844, subsection 2. Upon the entry of such an order, the parties  
45 to the cooperative agreement have the protection specified in  
46 section 1849 and the cooperative agreement has the effectiveness  
47 specified in section 1849.

48  
49 §1849. Effect of filing an application under this chapter;  
50 applicability

2        **1. Validity of certified cooperative agreements.**  
3        Notwithstanding Title 5, chapter 10; Title 10, chapter 201; or  
4        any other provision of law, a cooperative agreement for which a  
5        certificate of public advantage has been issued is a lawful  
6        agreement. Notwithstanding Title 5, chapter 10; Title 10, chapter  
7        201; or any other provision of law, if the parties to a  
8        cooperative agreement file an application for a certificate of  
9        public advantage governing the agreement with the department, the  
10       conduct of the parties in negotiating and entering into a  
11       cooperative agreement is lawful conduct. This subsection does not  
12       provide immunity to any person for conduct in negotiating and  
13       entering into a cooperative agreement for which an application  
14       for a certificate of public advantage is not filed.

15       **2. Validity of cooperative agreements determined not in**  
16       **public interest.** In an action by the Attorney General under  
17       section 1848, subsection 2, if the Superior Court determines that  
18       the applicants have not established by a preponderance of the  
19       evidence that the likely benefits resulting from a cooperative  
20       agreement outweigh any disadvantages attributable to any  
21       potential reduction in competition resulting from the agreement,  
22       the cooperative agreement is invalid and has no further force or  
23       effect when the judgment becomes final after the time for appeal  
24       has expired or the judgment of the Superior Court is affirmed on  
25       appeal.

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

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

33       **5. Termination; surrender.** This chapter does not prohibit  
34       certificate holders from terminating their cooperative agreement  
35       by mutual agreement, consent decree or court determination or by  
36       surrendering their certificate of public advantage to the  
37       department. Any certificate holder that terminates the agreement  
38       shall file a notice of termination with the department within 30  
39       days after termination, surrender the certificate of public  
40       advantage and submit copies to the Attorney General and the  
41       Governor's Office of Health Policy and Finance at the time the  
42       notice of termination is submitted to the department.

43       **§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.

**\$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 for a certificate of public advantage for all other cooperative agreements is \$2,500. 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.

## **§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.

**Sec. 2. 22 MRSA c. 405-D.** as amended, is repealed.

**Sec. 3. Effective date.** This Act takes effect January 1, 2007.

## SUMMARY

This bill repeals the Hospital Cooperation Act of 1992. It enacts the Hospital and Health Care Provider Cooperation Act to provide a mechanism that hospitals and health care providers may use to provide state action immunity under federal antitrust laws when hospitals enter into cooperative agreements with other hospitals and health care providers enter into cooperative agreements with other health care providers. The bill sets the application fees for hospital and health care provider

2 applications for certificates of public advantage. The bill  
maintains the same assessments as are in the current Hospital  
4 Cooperation Act of 1992. The bill contains an effective date of  
January 1, 2007.