

CHAPTER 317

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**GOVERNMENT - STATE**

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**SENATE BILL 93-120**

BY SENATORS Blickensderfer, Casey, Hopper, Mares, Peterson, Tebedo, and Traylor;  
also REPRESENTATIVES Adkins, Agler, Blue, Coffman, Jerke, and Lawrence.

**AN ACT**

**CONCERNING A VOLUNTARY PROCESS FOR APPROVING COOPERATIVE HEALTH CARE AGREEMENTS  
INVOLVING HOSPITALS, AND MAKING AN APPROPRIATION THEREFOR.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 32 of title 24, Colorado Revised Statutes, 1988 Repl. Vol.,  
as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 27  
COOPERATIVE HEALTH CARE AGREEMENTS  
INVOLVING HOSPITALS

**24-32-2701. Short title.** THIS PART 27 SHALL BE KNOWN AS AND MAY BE CITED AS  
THE "HOSPITAL EFFICIENCY AND COOPERATION ACT".

**24-32-2702. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY  
FINDS, DETERMINES, AND DECLARES THAT WHILE THE TECHNOLOGICAL AND  
SCIENTIFIC DEVELOPMENTS IN HEALTH CARE HAVE ENHANCED THE PROSPECTS FOR  
FURTHER IMPROVEMENT IN THE QUALITY OF CARE PROVIDED TO COLORADO CITIZENS,  
THE COST OF SUCH IMPROVEMENTS HAS IN SIGNIFICANT PART BEEN RESPONSIBLE FOR  
INCREASING THE COST OF HEALTH CARE AND HAS MADE IT INCREASINGLY DIFFICULT  
FOR HOSPITALS TO OFFER AFFORDABLE CARE. THE NORMAL FORCES OF COMPETITION  
HAVE NOT BEEN EFFECTIVE IN CONTROLLING INCREASES IN THE COST OF HEALTH  
CARE, OR THE INEFFICIENT DUPLICATION OF FACILITIES AND SERVICES, AND OTHER  
INEFFICIENCIES. IN ADDITION, FEDERAL AND STATE REGULATIONS GOVERNING  
HEALTH CARE AND REIMBURSEMENT HAVE CONSTRAINED THE ABILITY OF HOSPITALS  
TO ACQUIRE AND DEVELOP NEW AND IMPROVED EQUIPMENT AND METHODOLOGIES

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing  
statutes and such material not part of act.*

FOR THE PROVISION OF HEALTH CARE.

(2) FEDERAL AND STATE ANTITRUST LAWS HAVE INHIBITED THE FORMATION OF COOPERATIVE HEALTH CARE AGREEMENTS INVOLVING HOSPITALS. HOWEVER, SUCH COOPERATIVE AGREEMENTS ARE LIKELY TO FOSTER IMPROVEMENTS IN THE DELIVERY, QUALITY, OR COST EFFECTIVENESS OF HEALTH CARE, IMPROVE ACCESS TO NEEDED SERVICES, ENHANCE THE LIKELIHOOD THAT RURAL HOSPITALS IN COLORADO WILL REMAIN OPEN TO SERVE THEIR COMMUNITIES, AND PROVIDE FLEXIBILITY FOR LOCAL COMMUNITIES TO DESIGN, FOSTER, AND DEVELOP PROGRAMS TO MEET THEIR SPECIFIC HEALTH CARE NEEDS. SUCH COOPERATIVE AGREEMENTS WOULD ALSO FACILITATE THE FORMATION OF TREATMENT FACILITIES AND THE ACQUISITION OF NEEDED EQUIPMENT, PROMOTE ECONOMIES OF SCALE, AND PREVENT THE INEFFICIENT DUPLICATION OF SERVICES. THE GENERAL ASSEMBLY HEREBY DETERMINES THAT A LIMITED EXEMPTION AND IMMUNITY FROM THE ANTITRUST LAWS WOULD ENCOURAGE THE DEVELOPMENT OF SUCH COOPERATIVE HEALTH CARE AGREEMENTS, TO THE BENEFIT OF THE CITIZENS OF THE STATE OF COLORADO.

(3) THE GENERAL ASSEMBLY HEREBY FINDS THAT MOST AGREEMENTS TO WHICH HOSPITALS ARE A PARTY DO NOT REQUIRE STATE SUPERVISION. THEREFORE, IN AN EFFORT TO AVOID UNNECESSARY REGULATION, THIS PART 27 LIMITS REGULATION TO COOPERATIVE HEALTH CARE AGREEMENTS THAT HAVE BEEN SUBMITTED VOLUNTARILY FOR APPROVAL TO THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD.

(4) IT IS THE FURTHER INTENT OF THE GENERAL ASSEMBLY THAT THIS PART 27 REGULATE COOPERATIVE HEALTH CARE AGREEMENTS THAT HAVE BEEN FILED WITH THE BOARD AND THE CONDUCT OF PARTIES UNDER BOARD APPROVED AGREEMENTS, AND DISPLACE ANY COMPETITION THAT MIGHT OTHERWISE EXIST IN THE ABSENCE OF SUCH REGULATION.

(5) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ANY IMMUNITY FROM SCRUTINY UNDER FEDERAL OR STATE ANTITRUST STATUTES OFFERED UNDER THIS PART 27 SHALL BE LIMITED TO SUCH SPECIFIC AGREEMENTS AS ARE APPROVED BY THE BOARD, AND SHALL NOT BE EXTENDED OR APPLIED TO UNFORESEEN CIRCUMSTANCES, PARTIES, ACTS, OR OTHER AGREEMENTS WHICH WERE NOT PART OF OR CONTEMPLATED BY THE APPROVED AGREEMENT.

(6) THE GENERAL ASSEMBLY FURTHER INTENDS TO TRANSFER FROM THE DEPARTMENT OF LOCAL AFFAIRS TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, EFFECTIVE JULY 1, 1994, RESPONSIBILITY FOR THE FUNCTIONS AND DUTIES OF THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD. THIS TRANSFER SHALL TAKE EFFECT ONLY IF HOUSE BILL 93-1317 IS ENACTED BY THE GENERAL ASSEMBLY DURING THE 1993 REGULAR SESSION AND APPROVED BY THE GOVERNOR.

**24-32-2703. Definitions.** AS USED IN THIS PART 27, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BOARD" MEANS THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD CREATED BY SECTION 24-32-2704.

(2) "COOPERATIVE AGREEMENT" MEANS ANY JOINT VENTURE OR OTHER

AGREEMENT TO WHICH ONE OR MORE HOSPITALS ARE A PARTY FOR THE PURPOSE OF SHARING, ALLOCATING, CONSOLIDATING, OR REFERRING:

(a) PATIENTS, PERSONNEL, INSTRUCTIONAL PROGRAMS, SUPPORT SERVICES, AND FACILITIES;

(b) MEDICAL, DIAGNOSTIC, OR THERAPEUTIC FACILITIES, SERVICES, OR PROCEDURES; OR

(c) OTHER SERVICES TRADITIONALLY OFFERED BY HEALTH CARE PROVIDERS.

(3) "HOSPITAL" MEANS ANY HOSPITAL LICENSED OR CERTIFIED PURSUANT TO SECTION 25-1-107 (1) (I) (I) OR (1) (I) (II), C.R.S., OR ANY ENTITY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH A LICENSED OR CERTIFIED HOSPITAL.

**24-32-2704. Cooperative health care agreements board - creation - members - repeal.** (1) THERE IS HEREBY CREATED IN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD, WHICH SHALL CONSIST OF ELEVEN MEMBERS APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE. THE BOARD SHALL INCLUDE AT LEAST ONE MEMBER FROM EACH CONGRESSIONAL DISTRICT, NO MORE THAN SIX MEMBERS SHALL BE AFFILIATED WITH THE SAME POLITICAL PARTY, AND AT LEAST ONE MEMBER SHALL RESIDE WEST OF THE CONTINENTAL DIVIDE. THE BOARD SHALL BE MADE UP OF MEMBERS FROM THE GROUPS AND INDUSTRIES LISTED IN THIS SUBSECTION (1) AS FOLLOWS:

(a) TWO PRACTICING HOSPITAL ADMINISTRATORS, ONE FROM A HOSPITAL WITH FEWER THAN FIFTY BEDS;

(b) ONE CURRENTLY SERVING HOSPITAL BOARD MEMBER;

(c) ONE PRACTICING LICENSED PHYSICIAN;

(d) TWO CONSUMERS;

(e) ONE HEALTH CARE PAYOR;

(f) TWO REPRESENTATIVES FROM BUSINESS AND INDUSTRY, ONE OF WHOM SHALL BE AN INDEPENDENT SMALL BUSINESS OWNER;

(g) ONE PRACTICING ATTORNEY WHO HAS PARTICULAR KNOWLEDGE OR EXPERTISE IN ANTITRUST LAW; AND

(h) ONE HEALTH CARE ECONOMIST.

(2) THE INITIAL BOARD SHALL BE DIVIDED INTO ONE GROUP OF FOUR MEMBERS, ONE GROUP OF THREE MEMBERS, AND TWO GROUPS OF TWO MEMBERS, ALL AS DESIGNATED BY THE GOVERNOR. THE TERM OF THE FIRST GROUP SHALL EXPIRE ON JUNE 30, 1994, THE TERM OF THE SECOND GROUP SHALL EXPIRE ON JUNE 30, 1995, THE TERM OF THE THIRD GROUP SHALL EXPIRE ON JUNE 30, 1996, AND THE TERM OF

THE FOURTH GROUP SHALL EXPIRE ON JUNE 30, 1997. THEREAFTER, WHEN THE TERM OF ANY MEMBER EXPIRES THE SUCCESSOR SHALL BE APPOINTED FOR A TERM OF FOUR YEARS. EACH MEMBER SHALL SERVE UNTIL THE MEMBER'S RESIGNATION, DEATH, OR REMOVAL DURING SUCH MEMBER'S TERM OR, IN THE CASE OF A MEMBER WHOSE TERM HAS EXPIRED, UNTIL A SUCCESSOR HAS BEEN APPOINTED AND QUALIFIED. THE GOVERNOR, WITH THE CONSENT OF THE SENATE, SHALL FILL ANY VACANCY FOR THE REMAINDER OF THE UNEXPIRED TERM. ALL MEMBERS SHALL BE ELIGIBLE FOR REAPPOINTMENT; EXCEPT THAT THEY SHALL SERVE NO MORE THAN TWO FOUR-YEAR TERMS. INITIAL APPOINTEES SHALL BE ALLOWED TO SERVE TWO FOUR-YEAR TERMS IN ADDITION TO THEIR INITIAL TERM. ANY MEMBER APPOINTED BY THE GOVERNOR WHEN THE GENERAL ASSEMBLY IS NOT IN REGULAR SESSION SHALL BE DEEMED TO HAVE BEEN APPOINTED AND QUALIFIED UNTIL SUCH APPOINTMENT IS APPROVED OR REJECTED BY THE SENATE. SUCH APPOINTMENT SHALL BE SUBMITTED TO THE SENATE FOR ITS APPROVAL OR REJECTION DURING THE SESSION OF THE GENERAL ASSEMBLY THAT IMMEDIATELY FOLLOWS THE APPOINTMENT.

(3) THE NOMINEES TO MEMBERSHIP ON THE BOARD SHALL DISCLOSE ANY POTENTIAL CONFLICTS OF INTEREST TO THE GOVERNOR AND THE PRESIDENT OF THE SENATE PRIOR TO CONFIRMATION. MEMBERS OF THE BOARD SHALL BE SUBJECT TO THE STANDARDS OF CONDUCT DESCRIBED IN ARTICLE 18 OF THIS TITLE. THE BOARD SHALL, AS ONE OF ITS FIRST ACTIONS, ADOPT RULES TO GOVERN EX PARTE CONTACTS AND COMMUNICATIONS BETWEEN ITS MEMBERS AND APPLICANTS, AND SHALL ESTABLISH POLICIES TO REQUIRE ANY MEMBER WHO HAS A CONFLICT OF INTEREST TO IMMEDIATELY DISCLOSE SUCH CONFLICT AND RECUSE HIMSELF OR HERSELF FROM VOTING IN ANY PROCEEDING ASSOCIATED WITH THE CONFLICT OF INTEREST.

(4) ONE BOARD MEMBER, DESIGNATED BY THE GOVERNOR, SHALL CALL AND CONVENE THE INITIAL ORGANIZATIONAL MEETING OF THE BOARD AND SHALL SERVE AS ITS CHAIRPERSON PRO TEMPORE. AT SUCH MEETING AND ANNUALLY THEREAFTER THE BOARD SHALL ELECT FROM ITS MEMBERSHIP A CHAIRPERSON, A VICE-CHAIRPERSON, AND A SECRETARY. ALL BOARD OFFICERS SHALL HOLD OFFICE AT THE PLEASURE OF THE BOARD. THE SECRETARY, WITH SUCH ASSISTANCE AS THE BOARD MAY PRESCRIBE, SHALL KEEP A RECORD OF THE PROCEEDINGS OF THE BOARD AND SHALL BE CUSTODIAN OF THE MINUTE BOOKS, THE BOARD'S OFFICIAL SEAL, AND ALL BOOKS, DOCUMENTS, AND PAPERS FILED WITH THE BOARD. REGULAR MEETINGS SHALL BE HELD AT LEAST ONCE EVERY THREE MONTHS, AT SUCH TIMES AS MAY BE FIXED BY RESOLUTION OF THE BOARD. SPECIAL MEETINGS MAY BE HELD IN ACCORDANCE WITH THE BYLAWS. ALL MEETINGS OF THE BOARD SHALL BE OPEN TO THE PUBLIC, AS PROVIDED IN SECTION 24-6-402. A MAJORITY OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ITS BUSINESS. MEMBERS SHALL RECEIVE THE SAME PER DIEM COMPENSATION AND REIMBURSEMENT OF EXPENSES AS THOSE PROVIDED IN SECTION 24-34-102 (13) FOR MEMBERS OF BOARDS AND COMMISSIONS IN THE DIVISION OF REGISTRATIONS. ALL BOARD MEETINGS SHALL BE DEEMED TO HAVE BEEN DULY CALLED AND REGULARLY HELD AND ALL ORDERS AND PROCEEDINGS OF THE BOARD SHALL BE DEEMED TO HAVE BEEN AUTHORIZED, UNLESS PROVED TO THE CONTRARY.

(5) ALL BOARD MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR; EXCEPT THAT ANY MEMBER SHALL BE REMOVED BY THE GOVERNOR IF SUCH MEMBER FAILS FOR ANY REASON TO ATTEND THREE REGULAR MEETINGS DURING ANY TWELVE-MONTH PERIOD, AND THE BOARD HAS NOT ENTERED ITS APPROVAL OF ANY

SUCH ABSENCE IN ITS MINUTES. DURING THEIR TERMS OF OFFICE ALL BOARD MEMBERS ARE PROHIBITED FROM BEING A PARTY TO A CONTRACT FOR PROFIT WITH THE BOARD.

(6) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS SHALL PROVIDE SUCH CLERICAL AND PROFESSIONAL STAFF AND MEETING FACILITIES AS ARE NECESSARY FOR THE BOARD TO CARRY OUT ITS FUNCTIONS PURSUANT TO THIS PART 27.

**24-32-2705. Powers of the board - approval of cooperative agreement - repeal of section.** (1) THE PARTIES TO A COOPERATIVE AGREEMENT MAY APPLY TO THE BOARD FOR APPROVAL OF THE AGREEMENT. A COPY OF THE APPLICATION SHALL BE SERVED ON THE ATTORNEY GENERAL. THE APPLICATION SHALL INCLUDE:

(a) A COPY OF THE AGREEMENT TOGETHER WITH AN IDENTIFICATION OF THE PARTIES TO THE AGREEMENT AND EACH PARTY RECEIVING IMMUNITY FROM ANTITRUST LAWS BECAUSE OF COMPLIANCE WITH THIS PART 27;

(b) A DESCRIPTION, WITH PARTICULARITY, OF THE NATURE AND SCOPE OF THE COOPERATION AND JOINT ACTIVITIES CONTEMPLATED BY THE AGREEMENT;

(c) A DESCRIPTION OF THE CONSIDERATION PASSING TO ANY PARTY UNDER THE AGREEMENT;

(d) A SUCCINCT EXPLANATION OF HOW THE STANDARD SET FORTH IN SECTION 24-32-2706 (1) APPLIES TO THE AGREEMENT; AND

(e) ANY MATERIAL OR INFORMATION THAT THE BOARD MAY REASONABLY REQUIRE BY REGULATION THAT IS RELEVANT TO THE STANDARD SET FORTH IN SECTION 24-32-2706 (1).

(2) THE BOARD SHALL REVIEW ALL SUBMITTED APPLICATIONS IN ACCORDANCE WITH THE STANDARD SET FORTH IN SECTION 24-32-2706 (1). ITS REVIEW SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 24-4-103 (2), (3), (4) (a), (4) (c), (13), AND (14) AND SUCH OTHER PROCEDURES AS MAY BE PRESCRIBED BY REGULATION, WHICH REGULATIONS SHALL REQUIRE A PUBLIC HEARING. NOTICE OF ALL APPLICATIONS SUBMITTED TO THE BOARD SHALL BE OFFICIALLY PUBLISHED AS OTHERWISE PROVIDED BY LAW, AND SHALL BE MAILED TO ANY PERSON REQUESTING SUCH NOTICE. THE ATTORNEY GENERAL MAY BECOME A PARTY TO ANY PROCEEDING UNDER THIS SECTION BY FILING A WRITTEN APPEARANCE WITH THE BOARD WITHIN THIRTY DAYS AFTER SERVICE OF THE APPLICATION. THE BOARD SHALL APPROVE OR DISAPPROVE AN APPLICATION, IN WHOLE OR IN PART, WITHIN NINETY DAYS AFTER THE DATE THE COMPLETED APPLICATION WAS FILED. THE BOARD'S DECISION SHALL BE IN WRITING AND SHALL INCLUDE ITS SPECIFIC FINDINGS AND THE BASIS THEREFOR, AS WELL AS ANY REASONABLE AND RELATED CONDITIONS OR RESTRICTIONS IMPOSED PURSUANT TO SECTION 24-32-2706 (1). THE BOARD SHALL SERVE COPIES OF ITS DECISION ON THE APPLICANTS, THE ATTORNEY GENERAL, AND ANY OTHER ADMITTED PARTY. IF THE BOARD'S APPROVAL IS PARTIAL THE DECISION SHALL SPECIFY WHICH ASPECTS OF THE COOPERATIVE AGREEMENT HAVE BEEN APPROVED AND WHICH HAVE NOT. ACTIONS OF THE BOARD TO APPROVE, DISAPPROVE, OR MODIFY A COOPERATIVE HEALTH CARE AGREEMENT SHALL NOT BE SET ASIDE BY THE EXECUTIVE DIRECTOR OF THE

DEPARTMENT OF LOCAL AFFAIRS, OR THE EXECUTIVE DIRECTOR OF ANY SUBSEQUENT DEPARTMENT TO WHICH THE BOARD MAY BE TRANSFERRED, EXCEPT UPON THE GROUNDS SET FORTH IN SECTION 24-4-106 (7).

(3) THE APPROVAL OF A COOPERATIVE AGREEMENT BY THE BOARD SHALL NOT PRECLUDE BOARD CONSIDERATION OR APPROVAL OF ANY OTHER COOPERATIVE AGREEMENT.

(4) THE BOARD SHALL NOT BE AUTHORIZED ON OR AFTER JULY 1, 1998, TO APPROVE ANY COOPERATIVE AGREEMENTS THAT IT HAS NOT PREVIOUSLY APPROVED. THE BOARD SHALL CONTINUE TO HAVE AND TO EXERCISE ALL OF ITS POWERS AS SET FORTH IN THIS PART 27 WITH RESPECT TO COOPERATIVE AGREEMENTS APPROVED PRIOR TO JULY 1, 1998, INCLUDING WITHOUT LIMITATION ITS POWER TO TERMINATE OR MODIFY ITS APPROVAL, REQUIRE THE SUBMISSION OF ANNUAL REPORTS AND OTHER INFORMATION, CONDUCT AUDITS, AND SUBPOENA WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS, AND DOCUMENTS.

(5) SUBSECTIONS (1), (2), AND (3) OF THIS SECTION AND THIS SUBSECTION (5) ARE REPEALED, EFFECTIVE JULY 1, 1998.

**24-32-2706. Standard for approval - factors.** (1) THE BOARD SHALL APPROVE A COOPERATIVE AGREEMENT IF IT DETERMINES THAT SUCH AGREEMENT IS LIKELY TO IMPROVE THE COST EFFECTIVENESS, AVAILABILITY, QUALITY, OR DELIVERY OF HOSPITAL OR HEALTH CARE SERVICES IN COLORADO AND IS CONSISTENT WITH OTHER STATE STATUTORY HEALTH CARE POLICIES AND PROGRAMS. THE BOARD MAY IMPOSE SUCH REASONABLE AND RELATED CONDITIONS AND RESTRICTIONS ON THE PARTIES TO THE COOPERATIVE AGREEMENT AS IT DEEMS NECESSARY TO ASSURE COMPLIANCE WITH THE STANDARD SET FORTH IN THIS SUBSECTION (1).

(2) IN DETERMINING WHETHER A COOPERATIVE AGREEMENT MEETS THE STANDARD SET FORTH IN SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL CONSIDER WHETHER SUCH AGREEMENT IS LIKELY TO:

(a) ENHANCE THE AVAILABILITY OR QUALITY OF HOSPITAL OR HEALTH CARE PROVIDED TO COLORADO CITIZENS;

(b) PRESERVE HOSPITAL OR OTHER HEALTH CARE FACILITIES OR SERVICES WITHIN GEOGRAPHIC PROXIMITY TO THE COMMUNITIES TRADITIONALLY SERVED BY SUCH FACILITIES;

(c) REDUCE THE COST OF SERVICES PROVIDED BY THE HEALTH CARE PROVIDERS INVOLVED;

(d) INCREASE THE EFFICIENCY WITH WHICH SERVICES ARE PROVIDED BY THE HEALTH CARE PROVIDERS INVOLVED;

(e) IMPROVE THE UTILIZATION OF HEALTH CARE RESOURCES AND CAPITAL EQUIPMENT;

(f) AVOID UNNECESSARY DUPLICATION OF HEALTH CARE RESOURCES;

(g) PROVIDE SERVICES THAT WOULD NOT OTHERWISE BE AVAILABLE;

(h) AFFECT PATIENTS AND EMPLOYEES OF PARTIES TO THE AGREEMENT, IF APPLICABLE; OR

(i) AFFECT COMPETITION IN THE HEALTH CARE SYSTEM, INCLUDING A CONSIDERATION OF THE BENEFITS OF ANY REDUCTION OR ELIMINATION OF COMPETITION AND WHETHER SUCH BENEFITS EQUAL OR EXCEED THE DISADVANTAGES OF ANY SUCH REDUCTION OR ELIMINATION OF COMPETITION. WHILE IT IS THE INTENT OF THE GENERAL ASSEMBLY TO DISPLACE COMPETITION, AS DESCRIBED IN SECTION 24-32-2702, IT IS ALSO THE INTENT OF THE GENERAL ASSEMBLY THAT THE BOARD SPECIFICALLY TAKE INTO CONSIDERATION THE EFFECT OF THE COOPERATIVE AGREEMENT ON COMPETITION AS WELL AS THE OTHER FACTORS IN THIS SUBSECTION (2) WHEN DETERMINING WHETHER TO GRANT OR DENY APPROVAL OF A COOPERATIVE AGREEMENT AND WHEN PERFORMING ITS CONTINUING OVERSIGHT RESPONSIBILITIES, AS SET FORTH IN SECTIONS 24-32-2708 AND 24-32-2709. IN ADDITION, IF THE ATTORNEY GENERAL BELIEVES THAT SUBSEQUENT TO APPROVAL AND IMPLEMENTATION OF A COOPERATIVE AGREEMENT THERE HAS BEEN A SUBSTANTIAL ADVERSE IMPACT ON COMPETITION BECAUSE OF SUCH AGREEMENT AND BECAUSE OF SUCH ADVERSE IMPACT THE AGREEMENT IS NO LONGER LIKELY TO MEET THE STANDARD SET FORTH IN SUBSECTION (1) OF THIS SECTION, THEN THE ATTORNEY GENERAL MAY AT ANY TIME REQUEST THE BOARD TO TAKE ACTION UNDER SECTIONS 24-32-2708 AND 24-32-2709. UPON SUCH REQUEST THE BOARD SHALL TAKE ACTION UNDER SUCH SECTIONS AND MAY INITIATE PROCEEDINGS UNDER THE PROVISIONS OF SECTION 24-32-2707 TO TERMINATE OR MODIFY ITS APPROVAL OF A COOPERATIVE AGREEMENT.

(3) IN ADDITION TO THE MATTERS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE BOARD SHALL ALSO CONSIDER THE EXTENT OF COMMUNITY PLANNING AND SUPPORT FOR THE AGREEMENT, IF ANY.

**24-32-2707. Termination or modification of board approval.** (1) THE BOARD MAY TERMINATE OR MODIFY ITS APPROVAL OF A COOPERATIVE AGREEMENT IF IT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:

(a) ITS APPROVAL OF THE AGREEMENT WAS PROCURED BY MATERIAL FRAUD OR MISREPRESENTATION;

(b) THE PARTIES HAVE FAILED, IN A MATERIAL RESPECT, TO COMPLY WITH THE TERMS OF THE AGREEMENT AS APPROVED BY THE BOARD OR WITH THE TERMS OF THE BOARD'S DECISION APPROVING THE AGREEMENT AND HAVE FAILED, TO THE REASONABLE SATISFACTION OF THE BOARD, TO CURE THEIR NONCOMPLIANCE; OR

(c) THE AGREEMENT NO LONGER MEETS THE STANDARD FOR APPROVAL SET FORTH IN SECTION 24-32-2706 (1) BECAUSE OF MATERIALLY CHANGED CIRCUMSTANCES.

(2) THE BOARD SHALL NOT TERMINATE ITS APPROVAL OF A COOPERATIVE AGREEMENT PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION IF IT IS REASONABLY POSSIBLE FOR THE PARTIES TO MODIFY THE AGREEMENT TO ACCOMMODATE THE EFFECT OF THE CHANGED CIRCUMSTANCES.

(3) ANY DETERMINATION MADE BY THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE MADE ONLY AFTER AN OPPORTUNITY FOR A HEARING HAS BEEN PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-105 AND NOTICE HAS BEEN GIVEN TO THE PARTIES TO THE AGREEMENT, THE ATTORNEY GENERAL, AND ANY OTHER PARTIES ADMITTED TO ANY PREVIOUS PROCEEDING INVOLVING THE AGREEMENT.

(4) THE ATTORNEY GENERAL MAY APPEAR BEFORE THE BOARD IN CONNECTION WITH ANY PROCEEDING DESCRIBED IN SUBSECTION (1) OF THIS SECTION AND MAY PROVIDE TESTIMONY RELATING THERETO. ANY PARTY TO A PROCEEDING SHALL HAVE AN OPPORTUNITY TO RESPOND TO TESTIMONY GIVEN BY THE ATTORNEY GENERAL.

(5) THE TERMINATION OF ANY APPROVAL OF AN AGREEMENT BY THE BOARD PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION SHALL BE PROSPECTIVE IN APPLICATION.

**24-32-2708. Reports - audits.** (1) THE BOARD SHALL PROMULGATE RULES REQUIRING THE PARTIES TO ANY APPROVED COOPERATIVE AGREEMENT TO SUBMIT ANNUAL REPORTS THAT PROVIDE INFORMATION REASONABLY NECESSARY TO ENABLE THE BOARD TO EVALUATE THE IMPACT OF THE AGREEMENT ON THE AVAILABILITY, COST EFFECTIVENESS, QUALITY, AND DELIVERY OF HOSPITAL OR HEALTH CARE SERVICES AND TO DETERMINE WHETHER SUCH PARTIES HAVE COMPLIED WITH THE TERMS OF THE AGREEMENT AND WITH THE ORDER OF THE BOARD APPROVING SUCH TERMS. FOR THE PURPOSES OF THIS SUBSECTION (1), THE BOARD SHALL REVIEW EACH ANNUAL REPORT.

(2) THE BOARD MAY, OR UPON REQUEST OF THE ATTORNEY GENERAL SHALL, CONDUCT SUCH AUDITS OF THE BOOKS, RECORDS, AND OTHER DOCUMENTS PERTAINING TO THE AGREEMENT AND OF THE OPERATIONS UNDER THE AGREEMENT AS THE BOARD OR THE ATTORNEY GENERAL SHALL DETERMINE TO BE REASONABLY NECESSARY. ANY SUCH AUDIT SHALL BE FOR THE PURPOSE OF DETERMINING WHETHER GROUNDS EXIST TO INITIATE PROCEEDINGS TO MODIFY OR TERMINATE THE APPROVAL OF AN AGREEMENT PURSUANT TO SECTION 24-32-2707.

(3) NOTHING IN THIS PART 27 SHALL BE CONSTRUED TO LIMIT OR AFFECT ANY OTHER INVESTIGATIVE AUTHORITY PROVIDED BY LAW TO THE ATTORNEY GENERAL.

**24-32-2709. Discovery procedures.** THE CHAIRPERSON OF THE BOARD OR THE CHAIRPERSON'S DESIGNEE MAY, OR UPON REQUEST OF THE ATTORNEY GENERAL SHALL, SUBPOENA WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS, AND DOCUMENTS THAT ARE PERTINENT TO AN APPLICATION OR TO THE MODIFICATION OR TERMINATION OF THE APPROVAL OF A COOPERATIVE AGREEMENT. ANY SUCH SUBPOENA SHALL BE SERVED IN THE MANNER PROVIDED BY RULE 45, COLORADO RULES OF CIVIL PROCEDURE, AND SHALL BE ENFORCEABLE IN ANY DISTRICT COURT.

**24-32-2710. Open records.** THE BOARD SHALL MAINTAIN ON FILE ALL COOPERATIVE AGREEMENTS WHICH IT HAS APPROVED AND WHICH REMAIN IN EFFECT. ALL AGREEMENTS SUBMITTED TO THE BOARD SHALL BE OPEN FOR PUBLIC REVIEW AND INSPECTION. ANY PARTY TO AN AGREEMENT WHICH HAS BEEN TERMINATED BY AGREEMENT OF THE PARTIES SHALL FILE A NOTICE OF THE TERMINATION WITH THE BOARD WITHIN THIRTY DAYS AFTER THE TERMINATION.



**24-32-2711. Judicial review of board action.** ANY APPLICANT, THE ATTORNEY GENERAL, OR ANY PARTY AGGRIEVED BY A DECISION OF THE BOARD WITH RESPECT TO ITS APPROVAL OR DISAPPROVAL OF ALL OR PART OF AN APPLICATION, ITS REFUSAL TO ACT ON AN APPLICATION, OR ITS DECISION TO TERMINATE OR MODIFY ITS APPROVAL OF A COOPERATIVE AGREEMENT SHALL BE ENTITLED TO JUDICIAL REVIEW OF SUCH ACTION IN ACCORDANCE WITH SECTION 24-4-106.

**24-32-2712. Immunity - notice requirements.** (1) ANY PARTY TO A COOPERATIVE AGREEMENT WHICH HAS BEEN APPROVED IN WHOLE OR IN PART BY THE BOARD PURSUANT TO SECTION 24-32-2705 SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL ANTITRUST ACTION, IF SUCH ACTION IS BASED UPON THE COOPERATIVE AGREEMENT OR ARISES FROM CONDUCT OR ACTIVITY REASONABLY NECESSARY AND REASONABLY FORESEEABLE TO IMPLEMENT SUCH AGREEMENT OR ANY DECISION OR ORDER ISSUED BY THE BOARD.

(2) ANY PARTY TO A COOPERATIVE AGREEMENT THAT HAS BEEN FILED WITH THE BOARD PURSUANT TO SECTION 24-32-2705 SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL ANTITRUST ACTION, IF SUCH ACTION IS BASED UPON OR ARISES FROM THE NEGOTIATION OF OR ENTERING INTO THE COOPERATIVE AGREEMENT.

(3) ALL PERSONS WHO PARTICIPATE IN COMMUNITY PLANNING, DISCUSSIONS, OR NEGOTIATIONS INTENDED IN GOOD FAITH TO CULMINATE IN A COOPERATIVE AGREEMENT TO BE FILED WITH THE BOARD PURSUANT TO THE PROVISIONS OF THIS PART 27 SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL ANTITRUST ACTION, IF SUCH ACTION IS BASED UPON OR ARISES FROM SUCH CONDUCT.

(4) (a) THE IMMUNITY PROVIDED IN THIS SECTION SHALL APPLY ONLY TO COMMUNITY PLANNING, DISCUSSIONS, AND NEGOTIATIONS THAT OCCUR AFTER NOTICE OF SUCH ACTIVITIES HAS BEEN SENT TO THE BOARD, IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (4).

(b) THE NOTICE TO THE BOARD SHALL INCLUDE A DESCRIPTION OF THE PROPOSED PURPOSE OF THE AGREEMENT, THE POTENTIAL PARTIES, AND THE POTENTIAL NATURE AND SCOPE OF THE COOPERATION AND JOINT ACTIVITIES CONTEMPLATED. THE PERSONS FILING SUCH NOTICE SHALL ALSO NOTIFY THE BOARD IF NEGOTIATIONS HAVE TERMINATED, OR, IF NEGOTIATIONS ARE CONTINUING THEY SHALL NOTIFY THE BOARD OF THE PROGRESS OF NEGOTIATIONS AT LEAST ONCE EVERY SIX MONTHS. THE BOARD MAY REQUEST ADDITIONAL INFORMATION FROM THE POTENTIAL PARTIES AND MAY COMMUNICATE WITH AND MONITOR THEM IN ANY MANNER THEY DEEM NECESSARY, BUT SHALL NOT HINDER OR INTERFERE WITH NEGOTIATIONS.

(5) THE SUBMISSION OF A COOPERATIVE AGREEMENT FOR BOARD APPROVAL PURSUANT TO SECTION 24-32-2705 IS VOLUNTARY, AND THE FAILURE OF THE PARTIES TO ANY SUCH AGREEMENT TO SEEK APPROVAL SHALL NOT BE ADMISSIBLE IN ANY CIVIL OR CRIMINAL ANTITRUST ACTION, IF SUCH ACTION IS BASED UPON THE COOPERATIVE AGREEMENT OR ARISES FROM CONDUCT OR ACTIVITY REASONABLY NECESSARY AND REASONABLY FORESEEABLE TO IMPLEMENT THE COOPERATIVE AGREEMENT.

(6) NOTHING IN THIS PART 27 SHALL BE CONSTRUED TO LIMIT THE APPLICATION OF ANY OTHER STATUTE CONCERNING THE LICENSURE OF FACILITIES, SERVICES, OR

PROFESSIONS, AND ANY ACTIVITIES UNDERTAKEN PURSUANT TO A COOPERATIVE AGREEMENT SHALL COMPLY WITH APPLICABLE LAW.

**24-32-2713. Fees - cooperative health care agreements fund.** (1) THE BOARD BY RULE SHALL ESTABLISH FEES FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS PART 27, WHICH FEES SHALL BE ASSESSED WHENEVER ANY PARTY SUBMITS A COOPERATIVE HEALTH CARE AGREEMENT TO THE BOARD FOR APPROVAL. ALL FEES COLLECTED BY THE BOARD SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE COOPERATIVE HEALTH CARE AGREEMENTS FUND, WHICH FUND IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS PART 27. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(2) THE FOLLOWING FEES SHALL BE ESTABLISHED AND ASSESSED BY THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION:

- (a) AN APPLICATION FEE; AND
- (b) A PROCESSING FEE.

**24-32-2714. Board may accept donations and grants.** THE BOARD MAY ACCEPT DONATIONS AND GRANTS FOR ANY PURPOSE CONNECTED WITH ITS WORK AND HAS THE POWER TO DIRECT THE DISPOSITION OF ANY SUCH DONATIONS AND GRANTS FOR ANY PURPOSE CONSISTENT WITH THE TERMS AND CONDITIONS UNDER WHICH GIVEN; EXCEPT THAT NO GRANT OR DONATION SHALL BE ACCEPTED IF THE CONDITIONS ATTACHED TO SUCH GRANT OR DONATION REQUIRE THE EXPENDITURE THEREOF IN A MANNER CONTRARY TO LAW.

**24-32-2715. Repeal of board functions.** (1) BEFORE THE FUNCTIONS OF THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD AS SET FORTH IN SECTION 24-32-2705 (1), (2), AND (3) ARE TERMINATED ON JULY 1, 1998, AS PROVIDED IN SECTION 24-32-2705 (5), AND NO LATER THAN JULY 1, 1997, THE DEPARTMENT OF LOCAL AFFAIRS SHALL COMPLETE AN ANALYSIS AND EVALUATION OF THE PERFORMANCE OF THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD. IN CONDUCTING ITS ANALYSIS AND EVALUATION THE DEPARTMENT SHALL TAKE INTO CONSIDERATION, BUT NEED NOT BE LIMITED TO CONSIDERING, THE FACTORS LISTED IN SECTION 24-34-104 (9) (b). THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY NO LATER THAN JULY 1, 1997, WITH SUCH SUPPORTING MATERIALS AS MAY BE REQUESTED, FOR REVIEW BY A STANDING COMMITTEE, AND A COPY OF THE REPORT SHALL BE MADE AVAILABLE TO EACH MEMBER OF THE GENERAL ASSEMBLY. SUCH REPORT SHALL INCLUDE THE DEPARTMENT'S FINDINGS AND RECOMMENDATIONS, INCLUDING WHETHER THE BOARD SHOULD BE TERMINATED, CONTINUED, OR REESTABLISHED, WHETHER ITS FUNCTIONS SHOULD BE TERMINATED, CONTINUED, REVISED, OR REESTABLISHED, AND, IF IT DEEMS ADVISABLE, MAY INCLUDE PROPOSED BILLS TO CARRY OUT ITS RECOMMENDATIONS.

(2) PRIOR TO THE TERMINATION, CONTINUATION, REESTABLISHMENT, OR REVISION OF THE BOARD OR ITS FUNCTIONS, A COMMITTEE OF REFERENCE IN EACH HOUSE OF THE

GENERAL ASSEMBLY SHALL HOLD A PUBLIC HEARING TO CONSIDER THE REPORT PROVIDED BY THE DEPARTMENT OF LOCAL AFFAIRS, WHICH HEARING SHALL INCLUDE THE FACTORS AND TESTIMONY SET FORTH IN SECTION 24-34-104 (9) (b).

**SECTION 2.** 6-4-108, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**6-4-108. Exemptions.** (5) NOTHING IN THIS ARTICLE SHALL PROHIBIT OR BE CONSTRUED TO PROHIBIT:

(a) THE FORMATION OF A COOPERATIVE HEALTH CARE AGREEMENT THAT HAS BEEN APPROVED IN WHOLE OR IN PART IN ACCORDANCE WITH THE PROVISIONS OF PART 27 OF ARTICLE 32 OF TITLE 24, C.R.S.;

(b) ANY CONDUCT OR ACTIVITY REASONABLY NECESSARY AND REASONABLY FORESEEABLE TO IMPLEMENT A BOARD-APPROVED COOPERATIVE HEALTH CARE AGREEMENT OR A DECISION OR ORDER ISSUED BY THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD PURSUANT TO PART 27 OF ARTICLE 32 OF TITLE 24, C.R.S.;

(c) THE NEGOTIATION OF OR ENTERING INTO ANY COOPERATIVE HEALTH CARE AGREEMENT WHICH IS FILED WITH THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD; OR

(d) COMMUNITY PLANNING, DISCUSSIONS, OR NEGOTIATIONS INTENDED IN GOOD FAITH TO CULMINATE IN A COOPERATIVE HEALTH CARE AGREEMENT TO BE FILED WITH THE COOPERATIVE HEALTH CARE AGREEMENTS BOARD. SUCH AGREEMENTS, CONDUCT, OR ACTIVITIES SHALL NOT BE HELD OR CONSTRUED TO BE ILLEGAL COMBINATIONS OR CONSPIRACIES IN RESTRAINT OF TRADE UNDER THIS ARTICLE.

**SECTION 3.** 24-1-125, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-1-125. Department of local affairs - creation.** (9) THE COOPERATIVE HEALTH AGREEMENTS BOARD, CREATED IN PART 27 OF ARTICLE 32 OF THIS TITLE, SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS AS IF THE SAME WERE TRANSFERRED BY A **TYPE 2** TRANSFER TO THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS.

**SECTION 4. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the cooperative health care agreements fund not otherwise appropriated, to the department of local affairs, for allocation to the cooperative health care agreements board, for the fiscal year beginning July 1, 1993, the sum of twenty-six thousand two hundred eighty-eight dollars (\$26,288) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 5. Effective date.** This act shall take effect July 1, 1993.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 1993