

HOUSE BILL No. 4160

February 4, 2009, Introduced by Rep. Smith and referred to the Committee on Health Policy.

A bill entering into the midwest pharmaceutical compact; and for related purposes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. The midwest pharmaceutical compact is enacted into law
2 and entered into with all jurisdictions legally joining in the
3 compact, in the form substantially as follows:

4 MIDWEST PHARMACEUTICAL COMPACT

5 ARTICLE I. PURPOSE

6 The purpose of the midwest pharmaceutical compact shall be to
7 provide an enlarged pool for the purchase of pharmaceutical
8 products and services for all medicaid recipients, publicly insured
9 or uninsured health care recipients, and any other persons who the

1 commission deems eligible who reside in the compacting states that
2 are party to this compact. Pharmaceuticals purchased through the
3 compact shall be distributed as determined by the commission to
4 medicaid recipients, publicly insured and uninsured citizens, and
5 any other persons deemed eligible who are served by health care
6 professionals, public hospitals and clinics, nonprofit hospitals
7 and clinics, organized emergency departments, or free clinics
8 within each compacting state.

9 ARTICLE II. DEFINITIONS

10 As used in this compact:

11 (a) "Commission" means the midwest pharmaceutical commission
12 established by this compact.

13 (b) "Compacting state" means any state or province that has
14 enacted the enabling legislation for this compact.

15 (c) "Compacting state's delegation" means the 5 resident
16 members of the commission from a compacting state.

17 (d) "Health care professional" means an individual licensed or
18 registered under article 15 of the public health code, 1978 PA 368,
19 MCL 333.16101 to 333.18838, and engaged in the practice of his or
20 her health profession in a proprietorship, partnership,
21 professional corporation, or other business entity. Health care
22 professional does not include a sanitarian or a veterinarian.

23 (e) "Pharmaceutical" means any medicinal substance,
24 preparation, device, or service recognized by the United States
25 pharmacopoeia and national formulary, or any revision thereof, any
26 substance and preparation dispensed pursuant to a prescription
27 issued by an authorized health care professional and intended for

1 external and internal use in the cure, diagnosis, mitigation,
2 treatment, or prevention of disease in humans, and any substance
3 and preparation other than food intended to affect the structure or
4 any function of the human body. Pharmaceutical includes any drug
5 delivery system, testing kit, or any other supplies dispensed
6 pursuant to a prescription.

7 (f) "State" means any state of the United States, the District
8 of Columbia, and any other territory of the United States.

9 ARTICLE III. THE COMMISSION

10 (1) The compacting states hereby create the midwest
11 pharmaceutical commission. The commission shall be a public body
12 corporate of each compacting state. The commission shall serve as
13 the negotiating and purchasing entity for pharmaceutical products
14 for the compacting states. The commission shall have all the
15 responsibilities, powers, and duties as provided under this
16 compact, including the power to sue and be sued, and any additional
17 powers that may be conferred upon it by subsequent action of the
18 respective legislatures of the compacting states in accordance with
19 the terms of this compact.

20 (2) The commission shall consist of 5 resident members of each
21 compacting state as follows:

22 (a) The governor or minister or his or her designee who shall
23 serve during the tenure of office of the governor or minister.

24 (b) One legislator from each chamber who shall serve 2-year
25 terms and be appointed by the appropriate appointing authority in
26 each chamber of the legislature.

27 (c) One member at large from the health care field who shall

1 be appointed by the governor or minister.

2 (d) One member at large who shall be a layperson appointed by
3 the governor or minister.

4 (3) One of the 2 at-large members initially appointed in each
5 state shall serve a 2-year term. The other, and any regularly
6 appointed successor to either at-large member, shall serve a 4-year
7 term unless otherwise established by law in a compacting state. All
8 vacancies shall be filled in the same manner as the original
9 appointment and in accordance with the laws of the appointing
10 state. Any member appointed to fill the vacancy shall serve until
11 the end of the incomplete term.

12 (4) The commission shall select annually, from among its
13 members, a chairperson, a vice-chairperson, and a treasurer.

14 (5) The commission shall appoint an executive director who
15 shall serve at its pleasure and who shall act as secretary to the
16 commission. The treasurer, the executive director, and other
17 personnel that the commission may determine shall be bonded in any
18 amount required by the commission.

19 (6) The commission shall meet at least once each calendar
20 year. The chairperson may call additional meetings and, upon the
21 request of a majority of the commission members of the compacting
22 states, shall call additional meetings. Public notice shall be
23 given of all meetings and meetings shall be open to the public.

24 (7) Each compacting state represented at any meeting of the
25 commission is entitled to 1 vote. Each compacting state's
26 delegation shall appoint 1 member of the delegation as its voting
27 member with the authority to vote on behalf of that compacting

1 state and represent the position of that compacting state in all
2 matters before the commission. A majority of the voting members
3 from the compacting states shall constitute a quorum for the
4 transaction of business, unless a larger quorum is required by the
5 bylaws of the commission. Within each compacting state, a proxy may
6 be assigned to another member of that compacting state's
7 delegation.

8 ARTICLE IV. POWERS AND DUTIES OF THE COMMISSION

9 (1) The commission shall adopt a seal and suitable bylaws
10 governing its management and operations.

11 (2) Irrespective of the civil service, personnel, or other
12 merit system laws of any of the compacting states, the commission
13 in its bylaws shall provide for the personnel policies and programs
14 of the compact.

15 (3) The commission shall submit a budget to the governor and
16 legislature of each compacting state as may be required by each
17 compacting state. The budget shall contain specific recommendations
18 of the amount or amounts to be appropriated by each of the
19 compacting states.

20 (4) The commission shall report annually to the governor and
21 legislature of each compacting state concerning the activities of
22 the commission during the preceding year. The reports shall include
23 any recommendations that may have been adopted by the commission.

24 (5) The commission may borrow, accept, or contract for the
25 services of personnel from any state, province, the United States,
26 Canada or any subdivision or agency thereof, any interstate agency,
27 or any institution, foundation, person, firm, or corporation.

1 (6) The commission may accept for any of its purposes and
2 functions under the compact any donations, grants, or both, of
3 money, equipment, supplies, materials, and services from any state,
4 province, the United States, Canada, or any subdivision or agency
5 thereof, any interstate agency, or any institution, foundation,
6 person, firm, or corporation and may receive, utilize, and dispose
7 of the same.

8 (7) The commission may establish and maintain offices that are
9 located within 1 or more of the compacting states.

10 (8) The commission may establish committees and hire staff as
11 necessary to carry out its functions.

12 (9) The commission may provide for actual and necessary
13 expenses for attendance of its members at official meetings of the
14 commission or its designated committees.

15 ARTICLE V. ACTIVITIES OF THE COMMISSION

16 (1) The commission shall determine the pharmaceutical needs of
17 each compacting state. The commission shall negotiate
18 pharmaceutical prices from each pharmaceutical company that seeks
19 to provide pharmaceuticals for the formularies for all states and
20 provinces in the compact. The prices negotiated shall be at least
21 as low to all compacting states as the lowest price to the
22 individual state or province entering the compact.

23 (2) The commission shall be empowered to establish an open
24 formulary for all of the compacting states or to designate which,
25 if any, pharmaceuticals shall be preauthorized for use within the
26 compact. The commission shall not exclude from its formulary any
27 product of any pharmaceutical company that has entered into

1 agreement with the commission.

2 (3) The commission may enter into agreements with any of the
3 compacting states to provide pharmaceutical supplies and services
4 to any of the other compacting states, provided that the price is
5 less than that negotiated by the commission.

6 (4) The commission shall, after negotiations with interested
7 parties and the compacting states, determine the costs of providing
8 pharmaceuticals for use in its agreements. The compacting states
9 shall contribute appropriated funds not otherwise provided, as
10 determined by the commission, for carrying out the agreements. The
11 commission may also serve as the administrative and fiscal agent in
12 carrying out agreements for pharmaceutical services.

13 ARTICLE VI. FINANCE

14 (1) Each compacting state shall be individually responsible
15 for the purchase of the pharmaceuticals necessary to meet the
16 demand of its state.

17 (2) The monies necessary to finance the general operation of
18 the commission not otherwise provided for in carrying forth its
19 duties, responsibilities, and powers as stated in this compact
20 shall be appropriated to the commission by the compacting states,
21 when authorized by the respective legislatures, by equal
22 apportionment among the compacting states.

23 (3) The commission shall keep accurate accounts of all
24 receipts and disbursements. The receipts and disbursements of the
25 commission shall be subject to the audit and accounting procedures
26 established under its bylaws. The receipts and disbursements of the
27 commission shall also be subject to audit by the official

1 legislative auditor general or similar entity of any compacting
2 state. However, all receipts and disbursements of funds handled by
3 the commission shall be audited annually by a certified or licensed
4 public accountant and the report of the audit shall be included in
5 and become part of the annual report of the commission.

6 (4) The accounts of the commission shall be open at any
7 reasonable time for inspection by duly authorized representatives
8 of the compacting states and persons authorized by the commission.

9 ARTICLE VII. ELIGIBLE PARTIES AND ENTRY INTO COMPACT

10 (1) The states of Illinois, Indiana, Kansas, Minnesota,
11 Michigan, Missouri, Nebraska, North Dakota, Ohio, and Wisconsin and
12 the Province of Ontario, Canada, are eligible to become party to
13 this compact. Additional states will be eligible if approved by a
14 majority of the compacting states.

15 (2) As to any eligible state or province, this compact shall
16 become effective when its legislature enacts the same into law.
17 However, the compact is not effective unless enacted into law by 3
18 states prior to December 31, 2010.

19 (3) Amendments to the compact are effective upon their
20 enactment by the legislature of each compacting state.

21 ARTICLE VIII. WITHDRAWAL, DEFAULT, AND TERMINATION

22 (1) Any compacting state may withdraw from this compact by
23 repealing the compact. A withdrawing state or province is liable
24 for any obligations that it may have incurred on account of its
25 party status up to the effective date of withdrawal, except that if
26 the withdrawing state has specifically undertaken or committed
27 itself to any performance of an obligation extending beyond the

1 effective date of withdrawal, it shall remain liable to the extent
2 of the obligation.

3 (2) If any compacting state shall default in the performance
4 of its obligations, assumed or imposed, in accordance with the
5 provisions of this compact, all rights, privileges, and benefits
6 conferred by this compact or agreements under this compact are
7 suspended from the effective date of the default as fixed by the
8 commission. The commission shall stipulate the conditions and
9 maximum time for compliance under which the defaulting state or
10 province may resume its regular status. Unless the default is
11 remedied under the stipulations and within the time period set
12 forth by the commission, this compact may be terminated with
13 respect to the defaulting state or province by affirmative vote of
14 a majority of the other members to the compact. Any defaulting
15 state may be reinstated by performing all acts and obligations as
16 stipulated by the commission.

17 ARTICLE IX. SEVERABILITY AND CONSTRUCTION

18 The provisions of the compact entered into under this act are
19 severable and if any phrase, clause, sentence, or provision of the
20 compact is declared to be contrary to the constitution of any
21 compacting state or province or of the United States or Canada or
22 the applicability thereof to any government, agency, person, or
23 circumstance is held invalid, the validity of the remainder of this
24 compact and the applicability of the compact to any government,
25 agency, person, or circumstance is not affected. If the compact
26 entered into under this act is held contrary to the constitution of
27 any compacting state or province, the compact shall remain in full

1 force and effect as to the remaining compacting states and in full
2 force and effect as to the compacting state affected as to all
3 severable matters. The provisions of this compact shall be
4 liberally construed to effectuate the purposes of this act.