

SENATE BILL 2048

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7 and Title 68, Chapter 11, Part 13, relative to disclosure of confidential and proprietary information in connection with hospital cooperative agreements.

WHEREAS, the General Assembly enacted substantial revisions in 2015 to the Hospital Cooperation Act of 1993 to promote cooperation and coordination among hospitals in the provision of health services by issuing certificates of public advantage when the likely benefits of a cooperative agreement between hospitals outweigh any disadvantages attributable to a reduction in competition; and

WHEREAS, the parties to a cooperative agreement governed by a certificate of public advantage are ongoing private business enterprises and not governmental agencies;

WHEREAS, public disclosure of pricing, financing, strategic business plans, employment issues, and other proprietary and confidential business information would impair the ability of parties to a cooperative agreement governed by a certificate of public advantage to function in the healthcare market and to fulfill the policies of this state set forth in the Hospital Cooperation Act; and

WHEREAS, public disclosure of this information would also unnecessarily impair competition in the healthcare market to the detriment of consumers; and

WHEREAS, public disclosure of such information is not necessary to provide all relevant information needed for the public to assess applications filed and certificates granted pursuant to the Hospital Cooperation Act; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 13, is amended by adding the following as a new section:

68-11-1310.

(a) Records made or received by an independent firm or individual retained by the state to monitor, review, supervise, or otherwise provide oversight with respect to a cooperative agreement governed by a certificate of public advantage, including, but not limited to, monitoring compliance and evaluating performance, are not public records under § 10-7-503.

(b)

(1) Documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, obtained by the state or its agents in connection with a cooperative agreement governed by a certificate of public advantage are confidential where the material is related to:

- (A) Operating and capital budgets and expenditures;
- (B) Existing and future business, marketing, and strategic plans;
- (C) Financial audits;
- (D) Facility assessments;
- (E) Agreements with payors and payor pricing information;
- (F) Physician recruitment and agreements with physicians;
- (G) Employment agreements, employee compensation, and status of employment;
- (H) Agreements with vendors;
- (I) Consulting reports;
- (J) Facility closures or repurposing;
- (K) Additions and deletions of service lines;
- (L) Financing;

(M) Reports of internal investigations, including hotline complaints and responses to complaints, and self-assessments of legal compliance, including compliance with this part; and

(N) Information regarding threatened litigation.

(2) The requirements of this subsection (b) shall not apply to documents otherwise publicly available.

(c) In addition to documents identified in subsection (b), other material obtained by the state or its agents in connection with a cooperative agreement governed by a certificate of public advantage are confidential where the material contains proprietary information the disclosure of which would materially impair the business operations of the certificate holder and harm the certificate holder's ability to advance the policies set forth in § 68-11-1303(a), and the material shall not be publicly divulged except in legal proceedings in which the state is a party. The holder shall notify the state of material covered by this subsection (c) prior to providing the material to the state. If the state does not agree that the material falls within the scope of this subsection (c), it shall notify the holder in writing. The holder may file a declaratory judgment action in the chancery court of Davidson County within ten (10) days of receiving such notice to determine whether the material is confidential under this subsection (c).

(d) Confidential materials under this section may be submitted by the state in legal proceedings related to the certificate of public advantage pursuant to an appropriate judicial protective order to preserve the confidentiality of the material.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.