



State of Tennessee

PUBLIC CHAPTER NO. 916

SENATE BILL NO. 2048

By Crowe

Substituted for: House Bill No. 2020

By Hicks

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) The following records received by the department or the attorney general and reporter from the recipients or applicants of a certificate of public advantage for a cooperative agreement issued pursuant to this part shall not be subject to disclosure pursuant to title 10, chapter 7, part 5:

(1) Operating and capital budgets;

(2) Existing and future business plans other than any plans, and any modifications to those plans, that are required to be submitted to the state pursuant to a certificate of public advantage or application for a certificate of public advantage;

(3) Financial audit working papers as defined in § 4-3-304(7);

(4) Contracts or agreements with payors and payor pricing information;

(5) Physician recruitment plans and contracts or agreements with physicians;

(6) Contracts or agreements with vendors;

(7) Complaints, including hotline complaints and open investigations of such complaints; and

(8) Employee personnel files, including performance evaluations, disciplinary actions, individual compensation amounts, and employment contract terms not otherwise publicly available.

(b) Records set forth in subsection (a) may contain trade secrets as defined in § 47-25-1702. The state shall notify in writing the recipient or applicant of a certificate of public advantage for a cooperative agreement at least seven (7) business days before any intended disclosure of such records. The recipient, applicant, or third party may petition the department pursuant to § 4-5-223 for a declaratory order to determine if disclosure would cause the loss of a trade secret. Any contested case convened in response to the petition shall be conducted as set forth in title 4, chapter 5, part 3; however, the provisions of § 4-5-325 shall not be applicable. Records subject to the petition shall not be disclosed until the review process in title 4, chapter 5, part 3 is completed.

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

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PASSED: April 17, 2018


RANDY McNALL
SPEAKER OF THE SENATE


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 1st day of May 2018


BILL HASLAM, GOVERNOR