

SENATE BILL 2620

By Campbell

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 11, Part 13, relative to the Hospital
Cooperation Act of 1993.

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:

(a) The general assembly finds that:

(1) Notwithstanding the Tennessee Constitution's categorical prohibition against monopolies, this state has elected to engage in an economic experiment allowing monopolies, specifically, a scheme in which hospital systems could be exempted from antitrust regulation under a presumption that state supervision by the department of health and the attorney general and reporter could assure that public benefits would outweigh public harms;

(2) The merger that created Ballad Health was permitted pursuant to this economic experiment, over objection and warnings from the federal trade commission;

(3) Notably, there is now clear evidence of public harms, including, but not limited to, Ballad Health's failure to meet its annual charity care obligations by approximately one hundred forty-eight million dollars (\$148,000,000) over a span of four years; and Ballad Health's overwhelming failure to meet its quality-of-care benchmarks, including downgrading by the centers for medicare and medicaid services of Ballad Health's three (3) major community hospitals from pre-merger ratings of three (3) and four (4) stars to current ratings of one (1) and two (2)

stars, and failing sixty-one (61) of seventy-five (75) target quality measures from July 2021 through June 2022;

(4) The Tennessee department of health and the attorney general and reporter have allowed these and other harms, as shown by repeatedly waiving the charity care obligations each year after Ballad Health failed to meet them; keeping the public in the dark about quality of health care by stopping publication of a "final score" for Ballad Health's compliance with the terms of certification for the certificate of public advantage (COPA); loosening original restrictions designed to protect the region against abuse and exploitation of monopoly power by specifically allowing Ballad Health to oppose any certificate of need application by competitors and allowing Ballad Health to restrict healthcare employment and practice opportunities with restrictive non-compete covenants; and turning a deaf ear to the people of upper east Tennessee by allowing the local COPA advisory council to cease hosting periodic public hearings to receive comments, complaints, or concerns from citizens;

(5) The COPA experiment has shown that benefits to the public do not outweigh the disadvantages and harms. Accordingly, the general assembly finds that the COPA experiment has failed;

(6) The people of upper east Tennessee should no longer bear the burden and cost of this failed experiment; and

(7) It is no longer the policy of this state, in any instance, to displace competition among hospitals, as healthy competition is in the best interest of the people and in accordance with Tennessee Constitution Article I, § 22.

(b) Notwithstanding another law to the contrary:

(1) A hospital shall not negotiate or enter into anti-competitive agreements or engage in activity that purports to look like anti-competitive conduct with other hospitals in this state; and

(2) No state funds or employees may engage in an activity that purports to look like the active supervision of anti-competitive conduct in the healthcare sector.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it, and applies to contracts and agreements executed, modified, or renewed on or after the effective date of this act.