

House Bill No. 357

An act relating to hospital meetings and records; amending s. 395.3035, F.S.; defining the term "strategic plan" for purposes of provisions which provide for the confidentiality of such plans and of meetings relating thereto; providing an exemption from open meetings requirements for meetings at which such plans are modified or approved by the hospital's governing board; providing for future review and repeal; providing conditions for the early release of transcripts of meetings at which such plans are discussed; prohibiting public hospitals from taking certain specified actions at closed meetings; requiring certain notice; providing a finding of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (4) of section 395.3035, Florida Statutes, are amended, present subsection (6) is renumbered as subsection (9), and new subsections (6), (7), and (8) are added to that section, to read:

395.3035 Confidentiality of ~~public~~ hospital records and meetings.—

(2) The following ~~public hospital~~ records and information of any hospital that is subject to chapter 119 and s. 24(a), Art. I of the State Constitution are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(b) A ~~public hospital's~~ strategic plan the disclosure of which would be reasonably likely to be used by a competitor to frustrate, circumvent, or exploit the purpose of the plan before it is implemented and which is not otherwise known or cannot otherwise be legally obtained by the competitor plans, including plans for marketing its services, which services are or may reasonably be expected by the hospital's governing board to be provided by competitors of the hospital. However, documents that are submitted to the hospital's governing board as part of the board's approval of the hospital's budget, and the budget itself, are not confidential and exempt.

(4)(a) Those portions of a board meeting at which one or more ~~the~~ written strategic plans that are confidential pursuant to subsection (2), including written plans for marketing its services, are discussed, or reported on, modified, or approved by the governing board are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) All portions of any board meeting which are closed to the public pursuant to this subsection shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the

meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the meeting shall be off the record. The court reporter's notes shall be fully transcribed and maintained by the hospital records custodian within a reasonable time after the meeting. The closed meeting shall be restricted to discussion, reports, modification, or approval of a written strategic plan. The transcript shall become public 3 years after the date of the board meeting or at an earlier date if the strategic plan discussed, reported on, modified, or approved at the meeting has been publicly disclosed by the hospital or implemented to the extent that confidentiality of the strategic plan is no longer necessary. If a discrete part of a strategic plan has been publicly disclosed by the hospital or has been implemented to the extent that confidentiality of that portion of the plan is no longer necessary, then the hospital shall redact the transcript and release only that part which records discussion of the nonconfidential part of the strategic plan, unless such disclosure would divulge any part of the strategic plan that remains confidential.

(c) This subsection does not allow the boards of two separate public entities to meet together in a closed meeting to discuss, report on, modify, or approve the implementation of a strategic plan that affects both public entities.

(6) For purposes of this section, the term "strategic plan" means any record which describes actions or activities to:

- (a) Initiate or acquire a new health service;
- (b) Materially expand an existing health service;
- (c) Acquire additional facilities by purchase or by lease;
- (d) Materially expand existing facilities;
- (e) Change all or a material part of the use of an existing facility or a newly acquired facility;
- (f) Acquire another health care facility or health care provider;
- (g) Merge or consolidate with another health care facility when the surviving entity is an entity that is subject to s. 24, Art. I of the State Constitution;
- (h) Enter into a shared service arrangement with another health care provider; or
- (i) Any combination of paragraphs (a)-(h).

The term "strategic plan" does not include records that describe the existing operations of a hospital or other health care facility which implement or execute the provisions of a strategic plan, unless disclosure of any such document would divulge any part of a strategic plan which has not been fully implemented or is a record that is otherwise exempt from the public records laws. Such existing operations include, without limitation, the hiring of

employees, the purchase of equipment, the placement of advertisements, and the entering into contracts with physicians to perform medical services. Records that describe operations are not exempt, except as specifically provided in this section.

(7) If the governing board of the hospital closes a portion of any board meeting pursuant to subsection (4) before placing the strategic plan or any separate component of the strategic plan into operation, the governing board must give notice of an open meeting in accordance with s. 286.011, and conduct the meeting to inform the public, in general terms, of the business activity that is to be implemented. If a strategic plan involves a substantial reduction in the level of medical services provided to the public, the meeting notice must be given at least 30 days prior to the meeting at which the governing board considers the decision to implement the strategic plan.

(8) A hospital may not approve a binding agreement to implement a strategic plan at any closed meeting of the board. Any such approval must be made at a meeting open to the public and noticed in accordance with s. 286.011.

Section 2. The Legislature finds that community hospitals in this state are often the safety-net providers of health care to our less advantaged residents and visitors. Yet community hospitals that are subject to the public records and open meeting laws of the state, unlike most agencies that provide services to the public, must compete directly with their private-sector counterparts. The economic survival of Florida's community hospitals depends on their ability to obtain revenues from services they provide in competition with their private-sector counterparts. The Legislature further finds that the governing boards of these hospitals do not discuss, debate, or participate in the modification or approval of their written strategic plans because the governing boards' discussions and the records are open to the public, thereby giving private-sector competitor hospitals advance disclosure of the hospitals' planned strategic moves. The Legislature finds that it is a public necessity that the governing boards of these hospitals be involved in the discussion, modification, and approval of the hospitals' strategic plans. Consequently, the Legislature finds that it is a public necessity that the written strategic plan of any hospital which is subject to the public records laws of the state, and notes and transcripts that are recorded pursuant to section 395.3035(4)(c), Florida Statutes, be confidential and exempt from the public records laws of this state as provided in this act. The Legislature also finds that it is a public necessity that those portions of a hospital's governing board meeting during which one or more written strategic plans which are exempt from the open records laws are discussed, reported on, modified, or approved shall be confidential and exempt from the public meeting laws of this state. The Legislature further finds that it is a public necessity to clarify that the records and meetings of any privately operated hospital which are subject to the public records law and open meetings law of this state are exempt from both in the same manner and to the same extent as are records and meetings of publicly operated hospitals and as otherwise provided by law.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.