

H.719

Introduced by Representatives Canfield of Fair Haven, Bosch of Clarendon,
Casey of Hubbardton, Harvey of Castleton, Howard of Rutland
City, Howland of Rutland Town, Keyser of Rutland City, Labor
of Morgan, Maguire of Rutland City, Malay of Pittsford,
McCoy of Poultney, Morgan, M. of Milton, Morrissey of
Bennington, Pinsonault of Dorset, Pritchard of Pawlet, and
Taylor of Mendon

Referred to Committee on

Date:

Subject: Health; health care reform; hospitals; health systems; Agency of
Human Services; antitrust; state action immunity

Statement of purpose of bill as introduced: This bill proposes to allow
hospitals and health systems to collaborate on efforts that align with or further
Vermont's health policy goals and to provide for sufficient State supervision of
the collaborations to qualify for state action immunity under federal and State
antitrust law.

An act relating to hospital collaboration and state action immunity

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 18 V.S.A. § 9405d is added to read:

3 § 9405d. HOSPITAL COLLABORATION; STATE ACTION IMMUNITY

4 (a) Intent. It is the intent of the General Assembly that hospital and health
5 system collaboration efforts that meet the requirements of this section be
6 afforded state action immunity under applicable federal and State laws. This
7 immunity is in addition to the hospital cost containment conduct afforded state
8 action immunity under subdivision 9456(d)(2) of this title.

9 (b) Qualifying conduct. Conduct undertaken by rural hospitals, community
10 hospitals, and health systems, or a combination of them, for the purposes of
11 cost containment, improved access to care, quality improvement, preservation
12 of rural or community hospitals, advancement of the State Health Care
13 Delivery Strategic Plan, once established, or enhancement of any existing
14 health care initiative in a manner that is consistent with the principles
15 expressed in section 9371 of this title shall be afforded state action immunity
16 from criminal and civil litigation under applicable federal and State antitrust
17 laws if the conduct meets all of the following conditions:

18 (1) the Secretary of Human Services authorizes the parties to explore
19 opportunities to collaborate to achieve one or more of the purposes set forth in
20 this subsection;

1 (2) the Secretary of Human Services deems any initiatives proposed by
2 the collaborating parties as a result of their authorized collaboration to be
3 consistent with the State's health policy goals;

4 (3) the Secretary of Human Services approves each initiative proposed
5 by the parties prior to its implementation; and

6 (4) the Agency of Human Services actively supervises the parties'
7 conduct throughout the collaboration and implementation of the approved
8 initiatives, as set forth in subsection (d) of this section.

9 (c) Information sharing. Hospitals and health systems participating in
10 discussions and collaborations approved under this section may share cost,
11 utilization, workforce, and quality data as necessary to achieve the purposes of
12 the collaboration. This information sharing shall not be deemed a violation of
13 federal or State antitrust law.

14 (d) Process for approval; State supervision.

15 (1) A hospital seeking to collaborate with another hospital or a health
16 system in a manner that the hospital determines may violate State or federal
17 antitrust law shall seek approval from the Secretary of Human Services prior to
18 engaging in such collaboration. Separate approval shall be required for the
19 parties to discuss and explore opportunities to work together to further the
20 State's health policy goals, using the process set forth in subdivision (2) of this
21 subsection, and for implementation of any initiatives developed pursuant to

1 these discussions, using the process set forth in subdivision (3) of this
2 subsection.

3 (2)(A) A hospital interested in exploring potential collaboration with
4 one or more hospitals or health systems shall submit an application to the
5 Secretary of Human Services describing the proposed collaboration and
6 specifying the manner in which the proposed activity would further Vermont's
7 health policy goals and achieve one or more of the purposes set forth in
8 subsection (b) of this section.

9 (B)(i) The Secretary shall review the proposed collaboration and may
10 request additional information from the applicant or request an informal
11 hearing, or both.

12 (ii) Within 30 days following receipt of the proposal, the Secretary
13 shall approve, approve with conditions, or reject the proposed collaboration.
14 Approval or approval with conditions shall constitute the Secretary's
15 determination that the proposed collaboration is consistent with the State's
16 health policy goals and is likely to achieve one or more of the purposes set
17 forth in subsection (b) of this section.

18 (iii) If the Secretary rejects the proposal, the Secretary's decision
19 shall set forth the basis for the rejection and the ways in which the proposed
20 collaboration fails to align with or further the State's health policy goals or to
21 achieve any of the purposes set forth in subsection (b) of this section.

1 (C) The Secretary may order a hospital or health system engaged in
2 an approved collaboration to obtain, at the hospital's or health system's own
3 expense, the services of a third-party aggregator or facilitator as a condition of
4 approval.

5 (D) If the Secretary approves a proposed collaboration under this
6 subdivision (2), with or without conditions, the collaborating parties shall
7 report to the Agency of Human Services at least quarterly, or more frequently
8 if required by the Agency, describing material developments related to the
9 collaboration. The reports shall include any third-party reports related to the
10 collaboration if an aggregator or facilitator is required as a condition of
11 approval.

12 (3)(A) If the parties to a collaboration approved pursuant to subdivision
13 (2) of this subsection (d) develop proposed initiatives to further the State's
14 health policy goals and to achieve one or more of the purposes set forth in
15 subsection (b) of this section, the parties shall submit a joint application
16 describing the proposed initiatives to the Secretary of Human Services for
17 approval. The application shall include:

18 (i) the names of the parties to the proposed initiative;
19 (ii) how each proposed initiative would further the State's health
20 policy goals and achieve cost containment, improved access to care, quality
21 improvement, preservation of rural or community hospitals, advancement of

1 the State Health Care Delivery Strategic Plan, once established, or
2 enhancement of an existing initiative in a manner that is consistent with the
3 principles expressed in section 9371 of this title, or a combination of these;

4 (iii) the expected impact of each proposed initiative on patients,
5 providers, payers, and the State; and

6 (iv) a timeline for implementation.

7 (B)(i) The Secretary shall review the application and may request
8 additional information from the applicants or request an informal hearing, or
9 both.

10 (ii)(I) Within 60 days following receipt of the application, the
11 Secretary shall approve, approve with conditions, or reject the proposed
12 initiative or initiatives. Approval or approval with conditions shall constitute
13 the Secretary's determination that the proposed initiative or initiatives are
14 consistent with the State's health policy goals and are likely to achieve one or
15 more of the purposes set forth in subsection (b) of this section.

16 (II) If the Secretary rejects the application, the Secretary's
17 decision shall set forth the basis for the rejection and the ways in which the
18 proposed initiative or initiatives fail to align with or further the State's health
19 policy goals or to achieve any of the purposes set forth in subsection (b) of this
20 section.

1 (iii) The Secretary may order the parties to obtain, at the parties'
2 own expense, the services of a third-party aggregator or facilitator as a
3 condition of approval.

4 (C) The parties shall continue to report to the Agency of Human
5 Services at least quarterly, or more frequently if required by the Agency,
6 throughout the course of any initiative or initiatives approved pursuant to this
7 subdivision (3).

8 (D) The Secretary may revoke approval or require submission of
9 additional materials at any time upon finding that the collaborative conduct is
10 inconsistent with the State's health policy goals, is not on track to achieve any
11 of the purposes set forth in subsection (b) of this section, or materially deviates
12 from the original application.

13 (4) Actions taken in furtherance of a collaboration approved by the
14 Secretary under subdivision (2) or (3) of this subsection may occur without the
15 presence or involvement of any State employee, provided the parties:

16 (A) report their activities to the Agency as required by Agency under
17 this subsection (d);

18 (B) submit any additional materials reasonably requested by the
19 Agency during the course of the collaboration;

1 (C) obtain additional approval from the Secretary prior to engaging in
2 any collaborative activities that exceed or deviate from those approved by the
3 Secretary; and

4 (D) ensure that their efforts continue to be aligned with and in
5 furtherance of the State's health policy goals.

6 (e) Confidentiality of materials.

7 (1) Except as specified in subdivision (2) of this subsection, all
8 applications, reports, analyses, and other materials submitted to or generated
9 by the Agency of Human Services in connection with a proposed, approved, or
10 rejected collaboration under this section are exempt from public inspection and
11 copying under the Public Records Act, are presumed to contain proprietary or
12 competitively sensitive information, and shall be kept confidential, unless a
13 hospital or health system specifies that any of the materials should not be
14 considered exempt or kept confidential.

15 (2) Notwithstanding subdivision (1) of this subsection, the Agency may
16 make publicly available the fact of an approval under this section and the
17 general nature and purpose of an approved collaboration, as well as any
18 findings necessary to demonstrate compliance with State policy objectives,
19 provided the Agency strives to strike a reasonable balance between the
20 confidentiality of proprietary or competitively sensitive information and the
21 public interest in transparency.

1 (f) Notice to Attorney General. The Agency of Human Services shall
2 provide annual written notice to the Office of the Attorney General of the
3 hospitals and health systems whose collaborations were approved, approved
4 with conditions, rejected, or revoked under this section during the preceding
5 year, along with a description of the general nature of each collaboration. The
6 notice shall not disclose proprietary or competitively sensitive information
7 protected pursuant to subsection (e) of this section.

8 Sec. 2. 9 V.S.A. § 2453 is amended to read:

9 § 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER

10 PROTECTION

11 (a) Unfair methods of competition in commerce and unfair or deceptive
12 acts or practices in commerce are hereby declared unlawful.

13 (b) It is the intent of the Legislature that in construing subsection (a) of this
14 section, the courts of this State will be guided by the construction of similar
15 terms contained in Section 5(a)(1) of the Federal Trade Commission Act as
16 from time to time amended by the Federal Trade Commission and the courts of
17 the United States.

18 (c) The Attorney General shall adopt rules, when necessary and proper to
19 carry out the purposes of this chapter, relating to unfair methods of competition
20 in commerce and unfair or deceptive acts or practices in commerce. The rules
21 shall not be inconsistent with the rules, regulations, and decisions of the

1 Federal Trade Commission and the federal courts interpreting the Federal
2 Trade Commission Act.

3 (d) Violation of a rule adopted by the Attorney General is prima facie proof
4 of the commission of an unfair or deceptive act in commerce.

5 (e) The provisions of subsections (a), (c), and (d) of this section shall also
6 be applicable to real estate transactions.

7 (f) The provisions of this section shall not apply to hospital and health
8 system collaborations that comply with the requirements of 18 V.S.A. § 9405d.

9 Sec. 3. 9 V.S.A. § 2453a is amended to read:

10 § 2453a. PRACTICES PROHIBITED; CRIMINAL ANTITRUST

11 VIOLATIONS

12 (a) Collusion is hereby declared to be a crime.

13 (b) Subsection (a) of this section shall not be construed to apply to
14 activities of or arrangements between or among persons that are permitted,
15 authorized, approved, or required by federal or state statutes or regulations,
16 including hospital and health system collaborations that comply with the
17 requirements of 18 V.S.A. § 9405d.

18 * * *

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on passage.