

1 S.249

2 Introduced by Senator Collamore

3 Referred to Committee on

4 Date:

5 Subject: Health; health care reform; hospitals; health systems; Agency of

6 Human Services; antitrust; state action immunity

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

12 An act relating to hospital collaboration and state action immunity

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

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

15 § 9405d. HOSPITAL COLLABORATION; STATE ACTION IMMUNITY

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

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

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

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

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

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

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

6 (d) Process for approval; State supervision.

7 (1) A hospital seeking to collaborate with another hospital or a health
8 system in a manner that the hospital determines may violate State or federal
9 antitrust law shall seek approval from the Secretary of Human Services prior to
10 engaging in such collaboration. Separate approval shall be required for the
11 parties to discuss and explore opportunities to work together to further the
12 State's health policy goals, using the process set forth in subdivision (2) of this
13 subsection, and for implementation of any initiatives developed pursuant to
14 these discussions, using the process set forth in subdivision (3) of this
15 subsection.

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

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

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

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

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

18 (D) If the Secretary approves a proposed collaboration under this
19 subdivision (2), with or without conditions, the collaborating parties shall
20 report to the Agency of Human Services at least quarterly, or more frequently
21 if required by the Agency, describing material developments related to the

1 collaboration. The reports shall include any third-party reports related to the
2 collaboration if an aggregator or facilitator is required as a condition of
3 approval.

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

10 (i) the names of the parties to the proposed initiative;

11 (ii) how each proposed initiative would further the State's health
12 policy goals and achieve cost containment, improved access to care, quality
13 improvement, preservation of rural or community hospitals, advancement of
14 the State Health Care Delivery Strategic Plan, once established, or
15 enhancement of an existing initiative in a manner that is consistent with the
16 principles expressed in section 9371 of this title, or a combination of these;

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

19 (iv) a timeline for implementation.

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

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

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

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

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

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

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

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

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

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

16 (D) ensure that their efforts continue to be aligned with and in
17 furtherance of the State’s health policy goals.

18 (e) Confidentiality of materials.

19 (1) Except as specified in subdivision (2) of this subsection, all
20 applications, reports, analyses, and other materials submitted to or generated
21 by the Agency of Human Services in connection with a proposed, approved, or

1 rejected collaboration under this section are exempt from public inspection and
2 copying under the Public Records Act, are presumed to contain proprietary or
3 competitively sensitive information, and shall be kept confidential, unless a
4 hospital or health system specifies that any of the materials should not be
5 considered exempt or kept confidential.

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

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

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

2 § 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER
3 PROTECTION

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

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

11 (c) The Attorney General shall adopt rules, when necessary and proper to
12 carry out the purposes of this chapter, relating to unfair methods of competition
13 in commerce and unfair or deceptive acts or practices in commerce. The rules
14 shall not be inconsistent with the rules, regulations, and decisions of the
15 Federal Trade Commission and the federal courts interpreting the Federal
16 Trade Commission Act.

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

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

