

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

IN RE:

MEDIMPACT HEALTHCARE SYSTEMS, INC.

ACTION NO. _____

PETITION FOR PROTECTIVE ORDER

Petitioner MedImpact Healthcare Systems, Inc. (“MedImpact”) files this Petition for Protective Order, pursuant to Miss. Code Ann. § 25-61-9 and other pertinent law, to prevent disclosure of its trade secrets, including but not limited to its confidential and proprietary commercial and financial information. More specifically, MedImpact seeks protection from a September 26, 2022 public records request that Change Healthcare Pharmacy Solutions, Inc. (“Change”) submitted to the Mississippi Division of Medicaid (“DOM”).

1. MedImpact is a California Corporation qualified to do business in Mississippi. Its principal place of business is located at 10181 Scripps Gateway Court, San Diego, California 92131.

2. Change is a Maine corporation with its principal place of business at 45 Commerce Drive, Augusta, Maine 04330. Change is registered to do business in Mississippi. Pursuant to Mississippi law, “[a]ny party seeking [a] protective order [under the Act] shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.” Miss. Code § 25-61-9(1). As Change is a represented party in this matter, MedImpact will provide notice to Change’s counsel.

3. DOM is an agency of the State of Mississippi and has its principal place of business at 550 High Street, Suite 1000, Jackson, Mississippi 39201. It will be served via the Attorney General, consistent with Mississippi law.

4. This Court has jurisdiction over this action under Article VI, Section 159 of the Mississippi Constitution and the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1, *et seq.*

5. Venue is appropriate in this Court. Miss. Code Ann. § 11-5-1.

FACTS REGARDING MEDIMPACT'S CONFIDENTIAL INFORMATION

6. On September 23, 2021, MedImpact responded to a DOM Request for Proposal (“MedImpact’s Response”) for Pharmacy Preferred Drug List, Supplemental Rebate, Rate Setting and Programmatic Review and Assessment of Core Components (“Combined Services”). The request was identified as Solicitation No. 20210813 (“RFP”).

7. In its response to the RFP, MedImpact provided extensive proprietary information regarding their respective businesses.

8. MedImpact’s response included, *inter alia* and without limitation, a proposal, client references, account management team resumes, audited financial statements, pricing and performance guarantees, and other proprietary and confidential business and financial information (together, “confidential and protected information”).

9. On December 15, 2021, DOM published a Notice of Intent to Award to MedImpact, which MedImpact accepted on December 17, 2021. This Solicitation was cancelled on February 25, 2022, when DOM issued a Solicitation Cancellation Notice, but the Solicitation Cancellation Notice was rescinded on March 18, 2022.

10. Following a hearing before a Hearing Officer on June 22, 2022, DOM issued a second Notice of Intent to Award to MedImpact on July 21, 2022.

11. The July 21, 2022, Notice was, however, cancelled on July 29, 2022.
12. Thereafter, DOM requested and received confirmation from both MedImpact and Change that they desired to re-certify their proposals.
13. On August 19, 2022, DOM issued a Third Notice of Intent to Award recommending award of the contract to MedImpact (the “Third Notice”).
14. On August 26, 2022, Change filed a protest of the Third Notice arguing it was “decided in error for several reasons[.]”
15. Change also submitted several public records requests to DOM regarding Change’s proposal, including the request at issue in this action, including one on September 26, 2022.
16. DOM has produced to Change a redacted copy of MedImpact’s Response.
17. The September 26, 2022 public records request is the one at issue in this action.
18. The September 26, 2022 public records request sought “[t]he unredacted proposal submitted by MedImpact Healthcare Systems, Inc. in response to the RFP.”
19. On September 27, 2022, DOM provided MedImpact with notice of Change’s request for an unredacted version of MedImpact’s response to the RFP.
20. In response, MedImpact provided notice of this Petition to Change and to DOM, and the notice was posted on the procurement webpage for seven days.
21. MedImpact’s Petition is timely because it is being filed within 21 days of receipt of DOM’s September 27, 2022 notice.

**FACTS REGARDING CHANGE’S ADMISSION THAT THIS INFORMATION IS
CONFIDENTIAL AND NOT SUBJECT TO A PUBLIC RECORDS REQUEST**

22. Change also responded to the RFP.

23. After Change responded to the RFP, a third party requested an unredacted copy of Change's response to the RFP.

24. Change filed an action for protective order in this Court, objecting to the third party request for an unredacted copy of its proposal in response to the RFP, arguing that the "information has independent economic value because it is not generally known by Change Healthcare's competitors in the marketplace" and that producing an "unredacted copy of Change Healthcare's Response . . . would leave Change Healthcare's confidential and protected information unguarded." *See* Case No. 25CH122-cv-00246.

25. Change's arguments regarding its own unredacted response to the RFP apply to MedImpact's unredacted response to the RFP.

26. On May 10, 2022, this Court accepted Change's arguments and entered a protective order guarding Change's unredacted proposal.

27. And that is not the only the time Change has sought to protect the same type of information at issue here.

28. On August 5, 2022, Change filed a separate action for protective order related to its submissions in response to a 2016 RFP, also for pharmacy services. *See* Case No. 25CH1:22-cv-00392.

29. In that filing, Change argued (among other things) that its unredacted responses to the 2016 RFP contained confidential information.

30. Change also argued that "[i]f the Requested Information became public, Change Healthcare Pharmacy Solutions' hard-earned competitive advantage would he lost, as competitors could anticipate Change Healthcare Pharmacy Solutions' future strategies. mimic its structures.

and poach its clients and personnel . . . now, these risks are all too real, *as a direct competitor* of Change Healthcare Pharmacy Solutions seeks the Requested Information” (emphasis added).

31. Again, Change’s own arguments show why it is not entitled to MedImpact’s unredacted proposal—it is seeking the same type of information, and it is MedImpact’s competitor.

32. This Court accepted Change’s arguments for a second time, entering a protective order on August 5, 2022.

33. The August 5, 2022 order also reveals Change’s true motivation for its bid protest and for its improper records request — it has been administering the pharmacy program on an interim basis, and it therefore wants to hinder the confirmation of the Third Notice as long as it possibly can.

REQUEST FOR INJUNCTION AND FOR PROTECTIVE ORDER

34. Mississippi law requires that MedImpact’s confidential and protected information (as included in its unredacted proposal) be safeguarded from disclosure to third parties for inspection, examination, copying, or reproduction. *See* Miss. Code Ann. § 25-61-9(1); Miss. Code Ann. § 79-23-1(1).

35. MedImpact thus objects to the release of its unredacted response to the RFP.

36. The Court should protect MedImpact’s confidential information.

37. MedImpact’s response to the RFP included information about the company’s business systems, strategies, and pricing structures, all of which are designed to distinguish it from its competitors. If this information became public, the company’s hard-earned competitive advantage would be significantly decreased. Competitors could anticipate its marketing strategies and pricing structures and adopt its business systems. MedImpact does not otherwise have an

adequate remedy at law for the serious damage it will suffer if DOM releases the requested information.

38. In addition, Change should be estopped or otherwise prevented from claiming that it is entitled to an unredacted copy of MedImpact's unredacted proposal, after previously arguing to this Court that such unredacted materials are subject to protection and obtaining an order from this Court.

39. MedImpact respectfully asks that the Court order DOM (or any other Mississippi department or entity) to protect MedImpact's confidential and protected information by not disclosing the following to Change or any other third party: (i) "[t]he unredacted proposal submitted by MedImpact Healthcare Systems, Inc. in response to the RFP" (ii) any other information, documents, or the contents of any documents that MedImpact marked or otherwise designated as "Confidential," or (any other documents or information that constitute protected information under Mississippi Code Sections 25-61-9(1), 79-23-1(1), submitted to DOM in response to any of DOM's RFPs, including, but not limited to, MedImpact's Response to the August 13, 2021, RFP for Combined Services; and (iv) any contract, addenda, amendments, or portions thereof that contain trade secrets or proprietary and confidential business information, financial information, or pricing information. *See* Miss. Code Ann. § 25-61-9(1); Miss. Code Ann. § 79-23-1(1).

40. MedImpact further asks that the Court hold that DOM has produced to Change all of MedImpact's information to which Change is entitled, such that no further production is required.

41. MedImpact also asks that the Court, upon hearing or waiver, immediately issue a Protective Order on these terms, prohibiting DOM's disclosure or release of the portions of

MedImpact's Response that was marked or otherwise designated as "Confidential," and other documents or information submitted to DOM which contain confidential and protected information, such as set forth in the unredacted version of MedImpact's Response. MedImpact also requests any additional relief the Court deems warranted under the circumstances.

42. Finally, MedImpact respectfully asks that, to the extent possible, the Court allow this Petition and related proceedings to be expedited so that it takes precedence over other matters on the docket and is set for hearing at the earliest practicable date.

43. Finally, because Change is acting in bad faith — in two instances asking that the Court protect the very type of information at issue here, and in another instance asking that DOM produce that type of information, all in an effort to continue its status as the interim provider — MedImpact requests that the Court award it all of its fees and expenses related to this Petition.

Dated: October 5, 2022.

Respectfully submitted,

MEDIMPACT HEALTHCARE SYSTEMS,
INC.

By: /s/ D. Sterling Kidd
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CERTIFICATE OF SERVICE

I do hereby certify that on this day I have filed the foregoing document with the Clerk of the Court using the MEC system and certify that a true and correct copy of the foregoing Petition for Protective Order has been served on the following by personal service:

Mississippi Division of Medicaid
c/o Lynn Fitch, in capacity of Attorney General for the State of Mississippi
550 High Street, Suite 1000
Jackson, Mississippi 39201

I do hereby certify that a true and correct copy of the above and foregoing has been served on counsel of record by electronic mail:

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Dated: October 5, 2022.

/s/ D. Sterling Kidd
D. Sterling Kidd (MSB No. 103670)