

[Fla. Stat. § 395.3035.]

§ 395.3035. Confidentiality of hospital records and meetings: Hospitals and Other Licensed Facilities

- (1) All meetings of a governing board of a public hospital and all public hospital records shall be open and available to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution and chapter 119 and s. 24(a), Art. I of the State Constitution, respectively, unless made confidential or exempt by law.
- (2) The following 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:
- (a) Contracts for managed care arrangements under which the public hospital provides health care services, including preferred provider organization contracts, health maintenance organization contracts, exclusive provider organization contracts, and alliance network arrangements, and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed care or alliance network arrangements. As used in this paragraph, the term “managed care” means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed-care techniques most often include one or more of the following: prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services; contracts with selected health care providers; financial incentives or disincentives related to the use of specific providers, services, or service sites; controlled access to and coordination of services by a case manager; and payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.
- (b) A 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. 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.
- (c) Trade secrets, as defined in s. 688.002, including reimbursement methodologies and rates.
- (d) Documents, offers, and contracts, not including contracts for managed care, that are the product of negotiations with nongovernmental entities for the payment for services when such negotiations concern services that are or may reasonably be expected by the hospital’s governing board to be provided by competitors of the hospital. If the governing board is required to vote on the documents, offers, or contracts, this exemption expires 30 days prior to the date of the meeting at which the hospital’s governing board is scheduled to take the vote.
- (3) Those portions of a governing board meeting at which negotiations for contracts with nongovernmental entities occur or are reported on when such negotiations or reports concern services that are or may reasonably be expected by the hospital’s governing board to be provided by competitors of the hospital are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All governing board meetings at which the board is scheduled to vote to accept, reject, or amend contracts, except managed care contracts, shall be open to the public. All portions of any board meeting which are closed to the public 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 transcript shall become public 1 year after the termination or completion of the term of the contract to which such negotiations relate or, if no contract was executed, 1 year after termination of the negotiations.

(4)(a) Those portions of a board meeting at which one or more written strategic plans that are confidential pursuant to subsection (2) are discussed, reported on, modified, or approved by the governing board are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(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.

(5) Any public records, such as tape recordings, minutes, and notes, generated at any governing board meeting or portion of a governing board meeting which is closed to the public pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. All such records shall be retained and shall cease to be exempt at the same time as the transcript of the meeting becomes available to the public.

(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.

(9)(a) No less than once every 3 months, the hospital shall report in writing to the governing board on the number of records for which a public records request has been made and the records have been declared to be confidential under the provisions of this section. For each such record, the hospital shall provide the governing board with a general description of the record, the date on which the record became confidential, whether the public will have access to the record at a future time, and, if so, on what date the public will be granted access to such record. The hospital shall also report in writing to the governing board each record that had been confidential to which the public has been granted access since the hospital’s last report to the board. For each such record to which the public now has access, the hospital shall give a general description of the record and the date on which the record became confidential. The governing board of the hospital shall retain copies of these reports for 5 years from the date on which the report was made to the governing board of the hospital. If the governing board of a public hospital is comprised of members who are appointed, the board shall transmit each report to the official or authority that appoints the members to the governing board within 10 working days after the date on which the governing board received the report from the hospital.

(b) The governing board of the hospital shall maintain a written list of the meetings or portions of meetings that were closed under the provisions of this section. For each such meeting or portion of meeting, the governing board shall list the date on which the meeting was closed, the approximate length of time the meeting was closed, a general description of the subject of the meeting, the titles of the meeting participants, and a description of the format of the meeting. The governing board may purge information about a meeting from this list 5 years after the date on which the meeting was closed. If the governing board of a public

hospital is comprised of members who are appointed, the board shall transmit the list required by this paragraph to the official or authority that appoints the members to the governing board no less than once every 3 months.