

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

IN RE:

MEDIMPACT HEALTHCARE SYSTEMS, INC. &
MERCER HEALTH & BENEFITS, LLC

ACTION NO. _____

PETITION FOR PROTECTIVE ORDER

Petitioners MedImpact Healthcare Systems, Inc. (“MedImpact”) and Mercer Health and Benefits, LLC (“Mercer”, or collectively with MedImpact, “Petitioners”) file this Petition for Protective Order, pursuant to Miss. Code Ann. § 25-61-9 and other pertinent law, to prevent disclosure of their trade secrets. More specifically, Petitioners seek protection from a December 2, 2022 public records request that Amerigroup Mississippi, Inc. (“Amerigroup”) 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. Mercer is a Delaware Limited Liability Company qualified to do business in Mississippi. Its principal place of business is located at 1166 Avenue of the Americas, New York, New York 10036.

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. Amerigroup is a Mississippi corporation with its principal place of business at 220 Virginia Avenue, Indianapolis, Indiana 46204. Amerigroup 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). Petitioners will provide notice to Amerigroup’s counsel.

5. 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.*

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

7. On September 23, 2021, MedImpact responded to a DOM Request for Proposal 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 (“the RFP”). MedImpact disclosed that Mercer would be subcontracting on certain aspects of the RFP, and the RFP permitted such subcontracting.

8. The RFP also contemplated that the entities submitting proposals would submit two versions, including “an electronic, single document version of proposals redacting those provisions of the proposal which contain trade secrets or other proprietary data.” RFP at § 5.7.3. The RFP made clear that the purpose of this procedure was to protect confidential information, as it went on to say that “[o]fferors should be aware that their un-redacted proposals are considered public record and are subject to release by DOM pursuant to and in accordance with Miss. Code Ann. § 25-61-1 (1972, as amended) absent a court-issued protective order or agreement by the requesting party to receive a redacted version.” *Id.*

9. The unredacted version of MedImpact’s response provided extensive proprietary information regarding Petitioners’ respective businesses.

10. On December 15, 2021, DOM published a Notice of Intent to Award to MedImpact, which MedImpact accepted on December 17, 2021.

11. The RFP was cancelled on February 25, 2022, when DOM issued a Solicitation Cancellation Notice.
12. The Solicitation Cancellation Notice was itself rescinded on March 18, 2022.
13. Following a hearing before a Hearing Officer on June 22, 2022, DOM issued a Notice of Intent to Award to MedImpact on July 21, 2022 (the “Second Notice”).
14. The Second Notice was cancelled on July 29, 2022.
15. Thereafter, DOM requested and received confirmation from both MedImpact and Change that they desired to re-certify their proposals.
16. On August 19, 2022, DOM issued a Third Notice of Intent to Award recommending award of the contract to MedImpact (the “Third Notice”).
17. On December 2, 2022, Amerigroup made a public records request seeking MedImpact’s “unredacted proposal submitted to the Division in response to RFP# 20210813.”
18. On December 2, 2022, DOM provided MedImpact with notice of Amerigroup’s request for an unredacted version of MedImpact’s response to the RFP.
19. Upon information and belief, DOM already has produced the redacted version of MedImpact’s proposal to Amerigroup.
20. MedImpact’s Petition is timely because it is being filed within 21 days of receipt of DOM’s December 2, 2022 notice.
21. Mississippi law requires that Petitioners’ confidential and protected information as included in their 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).

22. Petitioners thus object to the release of their unredacted response to the RFP.

23. The Court should protect Petitioners' confidential information.

24. Petitioners' unredacted response to the RFP contained information about Petitioners' business systems, business, strategies, pricing structures, and financial well-being, all of which are designed to distinguish it from its competitors. If this information became public, Petitioners' hard-earned competitive advantage would be significantly decreased. Binding Mississippi case law has recognized that both types of information are protected from disclosure.

25. Petitioners do not otherwise have an adequate remedy at law for the serious damage it will suffer if DOM releases the requested information.

26. Petitioners respectfully asks that the Court order DOM (or any other Mississippi department or entity) to protect their confidential and protected information and specifically to not disclose the following to Amerigroup : (i) their unredacted proposal 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 (iii) 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).

27. Petitioners further ask that the Court hold that DOM has produced to Amerigroup all of their information to which Amerigroup is entitled, such that no further production is required.

28. Petitioners 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.

29. Petitioners respectfully ask 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.

Dated: December ___, 2022.

Respectfully submitted,

MEDIMPACT HEALTHCARE SYSTEMS,
INC.

-and-

MERCER HEALTH AND BENEFITS,
LLC

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: December __, 2022.

/s/ D. Sterling Kidd
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