



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Tom Cross

SYNOPSIS AS INTRODUCED:

225 ILCS 47/20

Amends the Health Care Worker Self-Referral Act. Makes a technical change to a Section concerning prohibited referrals and claims for payment.

LRB093 15134 AMC 40729 b

1 AN ACT concerning professional regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Worker Self-Referral Act is
5 amended by changing Section 20 as follows:

6 (225 ILCS 47/20)

7 Sec. 20. Prohibited referrals and claims for payment.

8 (a) A health care worker must ~~shall~~ not refer a patient for
9 health services to an entity outside the health care worker's
10 office or group practice in which the health care worker is an
11 investor, unless the health care worker directly provides
12 health services within the entity and will be personally
13 involved with the provision of care to the referred patient.

14 (b) Pursuant to Board determination that the following
15 exception is applicable, a health care worker may invest in and
16 refer to an entity, whether or not the health care worker
17 provides direct services within said entity, if there is a
18 demonstrated need in the community for the entity and
19 alternative financing is not available. For purposes of this
20 subsection (b), "demonstrated need" in the community for the
21 entity may exist if (1) there is no facility of reasonable
22 quality that provides medically appropriate service, (2) use of
23 existing facilities is onerous or creates too great a hardship
24 for patients, (3) the entity is formed to own or lease medical
25 equipment which replaces obsolete or otherwise inadequate
26 equipment in or under the control of a hospital located in a
27 federally designated health manpower shortage area, or (4) such
28 other standards as established, by rule, by the Board.
29 "Community" shall be defined as a metropolitan area for a city,
30 and a county for a rural area. In addition, the following
31 provisions must be met to be exempt under this Section:

32 (1) Individuals who are not in a position to refer

1 patients to an entity are given a bona fide opportunity to
2 also invest in the entity on the same terms as those
3 offered a referring health care worker; and

4 (2) No health care worker who invests shall be required
5 or encouraged to make referrals to the entity or otherwise
6 generate business as a condition of becoming or remaining
7 an investor; and

8 (3) The entity shall market or furnish its services to
9 referring health care worker investors and other investors
10 on equal terms; and

11 (4) The entity shall not loan funds or guarantee any
12 loans for health care workers who are in a position to
13 refer to an entity; and

14 (5) The income on the health care worker's investment
15 shall be tied to the health care worker's equity in the
16 facility rather than to the volume of referrals made; and

17 (6) Any investment contract between the entity and the
18 health care worker shall not include any covenant or
19 non-competition clause that prevents a health care worker
20 from investing in other entities; and

21 (7) When making a referral, a health care worker must
22 disclose his investment interest in an entity to the
23 patient being referred to such entity. If alternative
24 facilities are reasonably available, the health care
25 worker must provide the patient with a list of alternative
26 facilities. The health care worker shall inform the patient
27 that they have the option to use an alternative facility
28 other than one in which the health care worker has an
29 investment interest and the patient will not be treated
30 differently by the health care worker if the patient
31 chooses to use another entity. This shall be applicable to
32 all health care worker investors, including those who
33 provide direct care or services for their patients in
34 entities outside their office practices; and

35 (8) If a third party payor requests information with
36 regard to a health care worker's investment interest, the

1 same shall be disclosed; and

2 (9) The entity shall establish an internal utilization
3 review program to ensure that investing health care workers
4 provided appropriate or necessary utilization; and

5 (10) If a health care worker's financial interest in an
6 entity is incompatible with a referred patient's interest,
7 the health care worker shall make alternative arrangements
8 for the patient's care.

9 The Board shall make such a determination for a health care
10 worker within 90 days of a completed written request. Failure
11 to make such a determination within the 90 day time frame shall
12 mean that no alternative is practical based upon the facts set
13 forth in the completed written request.

14 (c) It shall not be a violation of this Act for a health
15 care worker to refer a patient for health services to a
16 publicly traded entity in which he or she has an investment
17 interest provided that:

18 (1) the entity is listed for trading on the New York
19 Stock Exchange or on the American Stock Exchange, or is a
20 national market system security traded under an automated
21 inter-dealer quotation system operated by the National
22 Association of Securities Dealers; and

23 (2) the entity had, at the end of the corporation's
24 most recent fiscal year, total net assets of at least
25 \$30,000,000 related to the furnishing of health services;
26 and

27 (3) any investment interest obtained after the
28 effective date of this Act is traded on the exchanges
29 listed in paragraph 1 of subsection (c) of this Section
30 after the entity became a publicly traded corporation; and

31 (4) the entity markets or furnishes its services to
32 referring health care worker investors and other health
33 care workers on equal terms; and

34 (5) all stock held in such publicly traded companies,
35 including stock held in the predecessor privately held
36 company, shall be of one class without preferential

1 treatment as to status or remuneration; and

2 (6) the entity does not loan funds or guarantee any
3 loans for health care workers who are in a position to be
4 referred to an entity; and

5 (7) the income on the health care worker's investment
6 is tied to the health care worker's equity in the entity
7 rather than to the volume of referrals made; and

8 (8) the investment interest does not exceed 1/2 of 1%
9 of the entity's total equity.

10 (d) Any hospital licensed under the Hospital Licensing Act
11 shall not discriminate against or otherwise penalize a health
12 care worker for compliance with this Act.

13 (e) Any health care worker or other entity shall not enter
14 into an arrangement or scheme seeking to make referrals to
15 another health care worker or entity based upon the condition
16 that the health care worker or entity will make referrals with
17 an intent to evade the prohibitions of this Act by inducing
18 patient referrals which would be prohibited by this Section if
19 the health care worker or entity made the referral directly.

20 (f) If compliance with the need and alternative investor
21 criteria is not practical, the health care worker shall
22 identify to the patient reasonably available alternative
23 facilities. The Board shall, by rule, designate when compliance
24 is "not practical".

25 (g) Health care workers may request from the Board that it
26 render an advisory opinion that a referral to an existing or
27 proposed entity under specified circumstances does or does not
28 violate the provisions of this Act. The Board's opinion shall
29 be presumptively correct. Failure to render such an advisory
30 opinion within 90 days of a completed written request pursuant
31 to this Section shall create a rebuttable presumption that a
32 referral described in the completed written request is not or
33 will not be a violation of this Act.

34 (h) Notwithstanding any provision of this Act to the
35 contrary, a health care worker may refer a patient, who is a
36 member of a health maintenance organization "HMO" licensed in

1 this State, for health services to an entity, outside the
2 health care worker's office or group practice, in which the
3 health care worker is an investor, provided that any such
4 referral is made pursuant to a contract with the HMO.
5 Furthermore, notwithstanding any provision of this Act to the
6 contrary, a health care worker may refer an enrollee of a
7 "managed care community network", as defined in subsection (b)
8 of Section 5-11 of the Illinois Public Aid Code, for health
9 services to an entity, outside the health care worker's office
10 or group practice, in which the health care worker is an
11 investor, provided that any such referral is made pursuant to a
12 contract with the managed care community network.

13 (Source: P.A. 92-370, eff. 8-15-01.)