

HB2764



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2764

Introduced 2/22/2005, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

225 ILCS 47/20

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

LRB094 07794 RAS 37972 b

A BILL FOR

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

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

1 (1) Individuals who are not in a position to refer
2 patients to an entity are given a bona fide opportunity to
3 also invest in the entity on the same terms as those
4 offered a referring health care worker; and

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

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

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

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

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

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

36 (8) If a third party payor requests information with

1 regard to a health care worker's investment interest, the
2 same shall be disclosed; and

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

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

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

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

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

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

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

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

35 (5) all stock held in such publicly traded companies,
36 including stock held in the predecessor privately held

1 company, shall be of one class without preferential
2 treatment as to status or remuneration; and

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

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

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

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

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

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

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

35 (h) Notwithstanding any provision of this Act to the
36 contrary, a health care worker may refer a patient, who is a

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

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