



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3021

Introduced 2/23/2011, by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.4

from Ch. 111 1/2, par. 151.4

Amends the Hospital Licensing Act. In a provision concerning a medical staff member's right to request a fair hearing, deletes language that provides that the hearing panel shall have independent authority to recommend action to the hospital governing board. Provides instead that the hearing panel shall have independent authority to preside over the fair hearing, consider evidence and testimony presented at the hearing, and issue a finding and decision on the matter. Provides that the fair hearing panel may uphold, rescind, modify, amend, or otherwise alter the original adverse decision issued against a medical staff member. Sets forth provisions concerning the findings of the hearing panel and adjudicatory recourse for an adversely affected physician. Effective January 1, 2012.

LRB097 05295 RPM 45349 b

1 AN ACT concerning health facilities.

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

4 Section 5. The Hospital Licensing Act is amended by  
5 changing Section 10.4 as follows:

6 (210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

7 Sec. 10.4. Medical staff privileges.

8 (a) Any hospital licensed under this Act or any hospital  
9 organized under the University of Illinois Hospital Act shall,  
10 prior to the granting of any medical staff privileges to an  
11 applicant, or renewing a current medical staff member's  
12 privileges, request of the Director of Professional Regulation  
13 information concerning the licensure status and any  
14 disciplinary action taken against the applicant's or medical  
15 staff member's license, except: (1) for medical personnel who  
16 enter a hospital to obtain organs and tissues for transplant  
17 from a donor in accordance with the Illinois Anatomical Gift  
18 Act; or (2) for medical personnel who have been granted  
19 disaster privileges pursuant to the procedures and  
20 requirements established by rules adopted by the Department.  
21 Any hospital and any employees of the hospital or others  
22 involved in granting privileges who, in good faith, grant  
23 disaster privileges pursuant to this Section to respond to an

1 emergency shall not, as a result of their acts or omissions, be  
2 liable for civil damages for granting or denying disaster  
3 privileges except in the event of willful and wanton  
4 misconduct, as that term is defined in Section 10.2 of this  
5 Act. Individuals granted privileges who provide care in an  
6 emergency situation, in good faith and without direct  
7 compensation, shall not, as a result of their acts or  
8 omissions, except for acts or omissions involving willful and  
9 wanton misconduct, as that term is defined in Section 10.2 of  
10 this Act, on the part of the person, be liable for civil  
11 damages. The Director of Professional Regulation shall  
12 transmit, in writing and in a timely fashion, such information  
13 regarding the license of the applicant or the medical staff  
14 member, including the record of imposition of any periods of  
15 supervision or monitoring as a result of alcohol or substance  
16 abuse, as provided by Section 23 of the Medical Practice Act of  
17 1987, and such information as may have been submitted to the  
18 Department indicating that the application or medical staff  
19 member has been denied, or has surrendered, medical staff  
20 privileges at a hospital licensed under this Act, or any  
21 equivalent facility in another state or territory of the United  
22 States. The Director of Professional Regulation shall define by  
23 rule the period for timely response to such requests.

24 No transmittal of information by the Director of  
25 Professional Regulation, under this Section shall be to other  
26 than the president, chief operating officer, chief

1 administrative officer, or chief of the medical staff of a  
2 hospital licensed under this Act, a hospital organized under  
3 the University of Illinois Hospital Act, or a hospital operated  
4 by the United States, or any of its instrumentalities. The  
5 information so transmitted shall be afforded the same status as  
6 is information concerning medical studies by Part 21 of Article  
7 VIII of the Code of Civil Procedure, as now or hereafter  
8 amended.

9 (b) All hospitals licensed under this Act, except county  
10 hospitals as defined in subsection (c) of Section 15-1 of the  
11 Illinois Public Aid Code, shall comply with, and the medical  
12 staff bylaws of these hospitals shall include rules consistent  
13 with, the provisions of this Section in granting, limiting,  
14 renewing, or denying medical staff membership and clinical  
15 staff privileges. Hospitals that require medical staff members  
16 to possess faculty status with a specific institution of higher  
17 education are not required to comply with subsection (1) below  
18 when the physician does not possess faculty status.

19 (1) Minimum procedures for pre-applicants and  
20 applicants for medical staff membership shall include the  
21 following:

22 (A) Written procedures relating to the acceptance  
23 and processing of pre-applicants or applicants for  
24 medical staff membership, which should be contained in  
25 medical staff bylaws.

26 (B) Written procedures to be followed in

1 determining a pre-applicant's or an applicant's  
2 qualifications for being granted medical staff  
3 membership and privileges.

4 (C) Written criteria to be followed in evaluating a  
5 pre-applicant's or an applicant's qualifications.

6 (D) An evaluation of a pre-applicant's or an  
7 applicant's current health status and current license  
8 status in Illinois.

9 (E) A written response to each pre-applicant or  
10 applicant that explains the reason or reasons for any  
11 adverse decision (including all reasons based in whole  
12 or in part on the applicant's medical qualifications or  
13 any other basis, including economic factors).

14 (2) Minimum procedures with respect to medical staff  
15 and clinical privilege determinations concerning current  
16 members of the medical staff shall include the following:

17 (A) A written notice of an adverse decision.

18 (B) An explanation of the reasons for an adverse  
19 decision including all reasons based on the quality of  
20 medical care or any other basis, including economic  
21 factors.

22 (C) A statement of the medical staff member's right  
23 to request a fair hearing on the adverse decision  
24 before a hearing panel whose membership is mutually  
25 agreed upon by the medical staff and the hospital  
26 governing board. The hearing panel shall have

1 independent authority to preside over the fair  
2 hearing, consider evidence and testimony presented at  
3 the hearing, and issue a finding and decision on the  
4 matter. The fair hearing panel may uphold, rescind,  
5 modify, amend, or otherwise alter the original adverse  
6 decision issued against the medical staff member, and  
7 the hospital governing board shall adopt and abide by  
8 the findings and decision of the hearing panel, unless  
9 the fair hearing panel decision is arbitrary,  
10 capricious, or against the manifest weight of the  
11 evidence ~~recommend action to the hospital governing~~  
12 ~~board.~~ Upon the request of the medical staff member or  
13 the hospital governing board, the hearing panel shall  
14 make findings concerning the nature of each basis for  
15 any adverse decision recommended to and accepted by the  
16 hospital governing board or otherwise explain the  
17 reasons the hearing panel has chosen to uphold,  
18 rescind, modify, amend, or otherwise alter the  
19 original adverse decision issued against the medical  
20 staff member. If a hospital refuses to fully adopt and  
21 abide by the findings of the hearing panel based on an  
22 allegation that the panel's decision was arbitrary,  
23 capricious, or against the manifest weight of the  
24 evidence, then the adversely affected physician shall  
25 be authorized to immediately file an action in local  
26 circuit court for the purpose of determining whether

1 the panel's decision was arbitrary, capricious, or  
2 against the manifest weight of the evidence and also  
3 whether the medical staff bylaws were followed as  
4 relates to the adverse decision. Under the rule of  
5 limited review in hospital privileging issues, the  
6 court shall give great weight and deference to the  
7 findings and decisions made by the fair hearing panel.  
8 The legal concept of fundamental fairness shall apply  
9 to any adversely affected physician during the fair  
10 hearing and any appellate reviews or final decisions  
11 against the physician. If an adversely affected  
12 physician substantially prevails against a hospital in  
13 circuit court, then the court may issue any reasonable  
14 award to the physician, including attorney's fees and  
15 costs.

16 (i) Nothing in this subparagraph (C) limits a  
17 hospital's or medical staff's right to summarily  
18 suspend, without a prior hearing, a person's  
19 medical staff membership or clinical privileges if  
20 the continuation of practice of a medical staff  
21 member constitutes an immediate danger to the  
22 public, including patients, visitors, and hospital  
23 employees and staff. In the event that a hospital  
24 or the medical staff imposes a summary suspension,  
25 the Medical Executive Committee, or other  
26 comparable governance committee of the medical

1 staff as specified in the bylaws, must meet as soon  
2 as is reasonably possible to review the suspension  
3 and to recommend whether it should be affirmed,  
4 lifted, expunged, or modified if the suspended  
5 physician requests such review. A summary  
6 suspension may not be implemented unless there is  
7 actual documentation or other reliable information  
8 that an immediate danger exists. This  
9 documentation or information must be available at  
10 the time the summary suspension decision is made  
11 and when the decision is reviewed by the Medical  
12 Executive Committee. If the Medical Executive  
13 Committee recommends that the summary suspension  
14 should be lifted, expunged, or modified, this  
15 recommendation must be reviewed and considered by  
16 the hospital governing board, or a committee of the  
17 board, on an expedited basis. Nothing in this  
18 subparagraph (C) shall affect the requirement that  
19 any requested hearing must be commenced within 15  
20 days after the summary suspension and completed  
21 without delay unless otherwise agreed to by the  
22 parties. A fair hearing shall be commenced within  
23 15 days after the suspension and completed without  
24 delay, except that when the medical staff member's  
25 license to practice has been suspended or revoked  
26 by the State's licensing authority, no hearing



1 shall be necessary.

2 (ii) Nothing in this subparagraph (C) limits a  
3 medical staff's right to permit, in the medical  
4 staff bylaws, summary suspension of membership or  
5 clinical privileges in designated administrative  
6 circumstances as specifically approved by the  
7 medical staff. This bylaw provision must  
8 specifically describe both the administrative  
9 circumstance that can result in a summary  
10 suspension and the length of the summary  
11 suspension. The opportunity for a fair hearing is  
12 required for any administrative summary  
13 suspension. Any requested hearing must be  
14 commenced within 15 days after the summary  
15 suspension and completed without delay. Adverse  
16 decisions other than suspension or other  
17 restrictions on the treatment or admission of  
18 patients may be imposed summarily and without a  
19 hearing under designated administrative  
20 circumstances as specifically provided for in the  
21 medical staff bylaws as approved by the medical  
22 staff.

23 (iii) If a hospital exercises its option to  
24 enter into an exclusive contract and that contract  
25 results in the total or partial termination or  
26 reduction of medical staff membership or clinical

1 privileges of a current medical staff member, the  
2 hospital shall provide the affected medical staff  
3 member 60 days prior notice of the effect on his or  
4 her medical staff membership or privileges. An  
5 affected medical staff member desiring a hearing  
6 under subparagraph (C) of this paragraph (2) must  
7 request the hearing within 14 days after the date  
8 he or she is so notified. The requested hearing  
9 shall be commenced and completed (with a report and  
10 recommendation to the affected medical staff  
11 member, hospital governing board, and medical  
12 staff) within 30 days after the date of the medical  
13 staff member's request. If agreed upon by both the  
14 medical staff and the hospital governing board,  
15 the medical staff bylaws may provide for longer  
16 time periods.

17 (C-5) All peer review used for the purpose of  
18 credentialing, privileging, disciplinary action, or  
19 other recommendations affecting medical staff  
20 membership or exercise of clinical privileges, whether  
21 relying in whole or in part on internal or external  
22 reviews, shall be conducted in accordance with the  
23 medical staff bylaws and applicable rules,  
24 regulations, or policies of the medical staff. If  
25 external review is obtained, any adverse report  
26 utilized shall be in writing and shall be made part of

1 the internal peer review process under the bylaws. The  
2 report shall also be shared with a medical staff peer  
3 review committee and the individual under review. If  
4 the medical staff peer review committee or the  
5 individual under review prepares a written response to  
6 the report of the external peer review within 30 days  
7 after receiving such report, the governing board shall  
8 consider the response prior to the implementation of  
9 any final actions by the governing board which may  
10 affect the individual's medical staff membership or  
11 clinical privileges. Any peer review that involves  
12 willful or wanton misconduct shall be subject to civil  
13 damages as provided for under Section 10.2 of this Act.

14 (D) A statement of the member's right to inspect  
15 all pertinent information in the hospital's possession  
16 with respect to the decision.

17 (E) A statement of the member's right to present  
18 witnesses and other evidence at the hearing on the  
19 decision.

20 (F) A written notice and written explanation of the  
21 decision resulting from the hearing.

22 (F-5) A written notice of a final adverse decision  
23 by a hospital governing board.

24 (G) Notice given 15 days before implementation of  
25 an adverse medical staff membership or clinical  
26 privileges decision based substantially on economic

1 factors. This notice shall be given after the medical  
2 staff member exhausts all applicable procedures under  
3 this Section, including item (iii) of subparagraph (C)  
4 of this paragraph (2), and under the medical staff  
5 bylaws in order to allow sufficient time for the  
6 orderly provision of patient care.

7 (H) Nothing in this paragraph (2) of this  
8 subsection (b) limits a medical staff member's right to  
9 waive, in writing, the rights provided in  
10 subparagraphs (A) through (G) of this paragraph (2) of  
11 this subsection (b) upon being granted the written  
12 exclusive right to provide particular services at a  
13 hospital, either individually or as a member of a  
14 group. If an exclusive contract is signed by a  
15 representative of a group of physicians, a waiver  
16 contained in the contract shall apply to all members of  
17 the group unless stated otherwise in the contract.

18 (3) Every adverse medical staff membership and  
19 clinical privilege decision based substantially on  
20 economic factors shall be reported to the Hospital  
21 Licensing Board before the decision takes effect. These  
22 reports shall not be disclosed in any form that reveals the  
23 identity of any hospital or physician. These reports shall  
24 be utilized to study the effects that hospital medical  
25 staff membership and clinical privilege decisions based  
26 upon economic factors have on access to care and the

1 availability of physician services. The Hospital Licensing  
2 Board shall submit an initial study to the Governor and the  
3 General Assembly by January 1, 1996, and subsequent reports  
4 shall be submitted periodically thereafter.

5 (4) As used in this Section:

6 "Adverse decision" means a decision reducing,  
7 restricting, suspending, revoking, denying, or not  
8 renewing medical staff membership or clinical privileges.

9 "Economic factor" means any information or reasons for  
10 decisions unrelated to quality of care or professional  
11 competency.

12 "Pre-applicant" means a physician licensed to practice  
13 medicine in all its branches who requests an application  
14 for medical staff membership or privileges.

15 "Privilege" means permission to provide medical or  
16 other patient care services and permission to use hospital  
17 resources, including equipment, facilities and personnel  
18 that are necessary to effectively provide medical or other  
19 patient care services. This definition shall not be  
20 construed to require a hospital to acquire additional  
21 equipment, facilities, or personnel to accommodate the  
22 granting of privileges.

23 (5) Any amendment to medical staff bylaws required  
24 because of this amendatory Act of the 91st General Assembly  
25 shall be adopted on or before July 1, 2001.

26 (c) All hospitals shall consult with the medical staff

1 prior to closing membership in the entire or any portion of the  
2 medical staff or a department. If the hospital closes  
3 membership in the medical staff, any portion of the medical  
4 staff, or the department over the objections of the medical  
5 staff, then the hospital shall provide a detailed written  
6 explanation for the decision to the medical staff 10 days prior  
7 to the effective date of any closure. No applications need to  
8 be provided when membership in the medical staff or any  
9 relevant portion of the medical staff is closed.

10 (Source: P.A. 95-331, eff. 8-21-07; 96-445, eff. 8-14-09.)

11 Section 99. Effective date. This Act takes effect January  
12 1, 2012.