



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5481

Introduced 2/15/2012, 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. Provides that the minimum procedures, with respect to medical staff and clinical privilege determinations concerning current medical members of the medical staff, shall include the right to be represented by a personal attorney throughout the medical staff credentialing process. Effective immediately.

LRB097 15728 CEL 60872 b

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 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 recommend action to the
2 hospital governing board. Upon the request of the
3 medical staff member or the hospital governing board,
4 the hearing panel shall make findings concerning the
5 nature of each basis for any adverse decision
6 recommended to and accepted by the hospital governing
7 board.

8 (i) Nothing in this subparagraph (C) limits a
9 hospital's or medical staff's right to summarily
10 suspend, without a prior hearing, a person's
11 medical staff membership or clinical privileges if
12 the continuation of practice of a medical staff
13 member constitutes an immediate danger to the
14 public, including patients, visitors, and hospital
15 employees and staff. In the event that a hospital
16 or the medical staff imposes a summary suspension,
17 the Medical Executive Committee, or other
18 comparable governance committee of the medical
19 staff as specified in the bylaws, must meet as soon
20 as is reasonably possible to review the suspension
21 and to recommend whether it should be affirmed,
22 lifted, expunged, or modified if the suspended
23 physician requests such review. A summary
24 suspension may not be implemented unless there is
25 actual documentation or other reliable information
26 that an immediate danger exists. This

1 documentation or information must be available at
2 the time the summary suspension decision is made
3 and when the decision is reviewed by the Medical
4 Executive Committee. If the Medical Executive
5 Committee recommends that the summary suspension
6 should be lifted, expunged, or modified, this
7 recommendation must be reviewed and considered by
8 the hospital governing board, or a committee of the
9 board, on an expedited basis. Nothing in this
10 subparagraph (C) shall affect the requirement that
11 any requested hearing must be commenced within 15
12 days after the summary suspension and completed
13 without delay unless otherwise agreed to by the
14 parties. A fair hearing shall be commenced within
15 15 days after the suspension and completed without
16 delay, except that when the medical staff member's
17 license to practice has been suspended or revoked
18 by the State's licensing authority, no hearing
19 shall be necessary.

20 (ii) Nothing in this subparagraph (C) limits a
21 medical staff's right to permit, in the medical
22 staff bylaws, summary suspension of membership or
23 clinical privileges in designated administrative
24 circumstances as specifically approved by the
25 medical staff. This bylaw provision must
26 specifically describe both the administrative

1 circumstance that can result in a summary
2 suspension and the length of the summary
3 suspension. The opportunity for a fair hearing is
4 required for any administrative summary
5 suspension. Any requested hearing must be
6 commenced within 15 days after the summary
7 suspension and completed without delay. Adverse
8 decisions other than suspension or other
9 restrictions on the treatment or admission of
10 patients may be imposed summarily and without a
11 hearing under designated administrative
12 circumstances as specifically provided for in the
13 medical staff bylaws as approved by the medical
14 staff.

15 (iii) If a hospital exercises its option to
16 enter into an exclusive contract and that contract
17 results in the total or partial termination or
18 reduction of medical staff membership or clinical
19 privileges of a current medical staff member, the
20 hospital shall provide the affected medical staff
21 member 60 days prior notice of the effect on his or
22 her medical staff membership or privileges. An
23 affected medical staff member desiring a hearing
24 under subparagraph (C) of this paragraph (2) must
25 request the hearing within 14 days after the date
26 he or she is so notified. The requested hearing

1 shall be commenced and completed (with a report and
2 recommendation to the affected medical staff
3 member, hospital governing board, and medical
4 staff) within 30 days after the date of the medical
5 staff member's request. If agreed upon by both the
6 medical staff and the hospital governing board,
7 the medical staff bylaws may provide for longer
8 time periods.

9 (C-5) All peer review used for the purpose of
10 credentialing, privileging, disciplinary action, or
11 other recommendations affecting medical staff
12 membership or exercise of clinical privileges, whether
13 relying in whole or in part on internal or external
14 reviews, shall be conducted in accordance with the
15 medical staff bylaws and applicable rules,
16 regulations, or policies of the medical staff. If
17 external review is obtained, any adverse report
18 utilized shall be in writing and shall be made part of
19 the internal peer review process under the bylaws. The
20 report shall also be shared with a medical staff peer
21 review committee and the individual under review. If
22 the medical staff peer review committee or the
23 individual under review prepares a written response to
24 the report of the external peer review within 30 days
25 after receiving such report, the governing board shall
26 consider the response prior to the implementation of

1 any final actions by the governing board which may
2 affect the individual's medical staff membership or
3 clinical privileges. Any peer review that involves
4 willful or wanton misconduct shall be subject to civil
5 damages as provided for under Section 10.2 of this Act.

6 (D) A statement of the member's right to inspect
7 all pertinent information in the hospital's possession
8 with respect to the decision.

9 (E) A statement of the member's right to present
10 witnesses and other evidence at the hearing on the
11 decision.

12 (E-5) The right to be represented by a personal
13 attorney throughout the medical staff credentialing
14 process.

15 (F) A written notice and written explanation of the
16 decision resulting from the hearing.

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

19 (G) Notice given 15 days before implementation of
20 an adverse medical staff membership or clinical
21 privileges decision based substantially on economic
22 factors. This notice shall be given after the medical
23 staff member exhausts all applicable procedures under
24 this Section, including item (iii) of subparagraph (C)
25 of this paragraph (2), and under the medical staff
26 bylaws in order to allow sufficient time for the

1 orderly provision of patient care.

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

13 (3) Every adverse medical staff membership and
14 clinical privilege decision based substantially on
15 economic factors shall be reported to the Hospital
16 Licensing Board before the decision takes effect. These
17 reports shall not be disclosed in any form that reveals the
18 identity of any hospital or physician. These reports shall
19 be utilized to study the effects that hospital medical
20 staff membership and clinical privilege decisions based
21 upon economic factors have on access to care and the
22 availability of physician services. The Hospital Licensing
23 Board shall submit an initial study to the Governor and the
24 General Assembly by January 1, 1996, and subsequent reports
25 shall be submitted periodically thereafter.

26 (4) As used in this Section:

1 "Adverse decision" means a decision reducing,
2 restricting, suspending, revoking, denying, or not
3 renewing medical staff membership or clinical privileges.

4 "Economic factor" means any information or reasons for
5 decisions unrelated to quality of care or professional
6 competency.

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

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

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

21 (c) All hospitals shall consult with the medical staff
22 prior to closing membership in the entire or any portion of the
23 medical staff or a department. If the hospital closes
24 membership in the medical staff, any portion of the medical
25 staff, or the department over the objections of the medical
26 staff, then the hospital shall provide a detailed written

1 explanation for the decision to the medical staff 10 days prior
2 to the effective date of any closure. No applications need to
3 be provided when membership in the medical staff or any
4 relevant portion of the medical staff is closed.

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

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.