

1 AN ACT concerning civil law.

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

4 Section 5. The Illinois Health Facilities Planning Act is
5 amended by changing Section 8.5 as follows:

6 (20 ILCS 3960/8.5)

7 (Section scheduled to be repealed on December 31, 2029)

8 Sec. 8.5. Certificate of exemption for change of ownership
9 of a health care facility; discontinuation of a category of
10 service; public notice and public hearing.

11 (a) Upon a finding that an application for a change of
12 ownership is complete, the State Board shall publish a legal
13 notice on 3 consecutive days in a newspaper of general
14 circulation in the area or community to be affected and afford
15 the public an opportunity to request a hearing. If the
16 application is for a facility located in a Metropolitan
17 Statistical Area, an additional legal notice shall be
18 published in a newspaper of limited circulation, if one
19 exists, in the area in which the facility is located. If the
20 newspaper of limited circulation is published on a daily
21 basis, the additional legal notice shall be published on 3
22 consecutive days. The applicant shall pay the cost incurred by
23 the Board in publishing the change of ownership notice in

1 newspapers as required under this subsection. The legal notice
2 shall also be posted on the Health Facilities and Services
3 Review Board's web site and sent to the State Representative
4 and State Senator of the district in which the health care
5 facility is located and to the Office of the Attorney General.
6 An application for change of ownership of a hospital shall not
7 be deemed complete without a signed certification that for a
8 period of 2 years after the change of ownership transaction is
9 effective, the hospital will not adopt a charity care policy
10 that is more restrictive than the policy in effect during the
11 year prior to the transaction. An application for a change of
12 ownership need not contain signed transaction documents so
13 long as it includes the following key terms of the
14 transaction: names and background of the parties; structure of
15 the transaction; the person who will be the licensed or
16 certified entity after the transaction; the ownership or
17 membership interests in such licensed or certified entity both
18 prior to and after the transaction; fair market value of
19 assets to be transferred; and the purchase price or other form
20 of consideration to be provided for those assets. The issuance
21 of the certificate of exemption shall be contingent upon the
22 applicant submitting a statement to the Board within 90 days
23 after the closing date of the transaction, or such longer
24 period as provided by the Board, certifying that the change of
25 ownership has been completed in accordance with the key terms
26 contained in the application. If such key terms of the

1 transaction change, a new application shall be required.

2 Where a change of ownership is among related persons, and
3 there are no other changes being proposed at the health care
4 facility that would otherwise require a permit or exemption
5 under this Act, the applicant shall submit an application
6 consisting of a standard notice in a form set forth by the
7 Board briefly explaining the reasons for the proposed change
8 of ownership. Once such an application is submitted to the
9 Board and reviewed by the Board staff, the Board Chair shall
10 take action on an application for an exemption for a change of
11 ownership among related persons within 45 days after the
12 application has been deemed complete, provided the application
13 meets the applicable standards under this Section. If the
14 Board Chair has a conflict of interest or for other good cause,
15 the Chair may request review by the Board. Notwithstanding any
16 other provision of this Act, for purposes of this Section, a
17 change of ownership among related persons means a transaction
18 where the parties to the transaction are under common control
19 or ownership before and after the transaction is completed.

20 Nothing in this Act shall be construed as authorizing the
21 Board to impose any conditions, obligations, or limitations,
22 other than those required by this Section, with respect to the
23 issuance of an exemption for a change of ownership, including,
24 but not limited to, the time period before which a subsequent
25 change of ownership of the health care facility could be
26 sought, or the commitment to continue to offer for a specified

1 time period any services currently offered by the health care
2 facility.

3 (a-3) (Blank).

4 (a-5) Upon a finding that an application to discontinue a
5 category of service is complete and provides the requested
6 information, as specified by the State Board, an exemption
7 shall be issued. No later than 30 days after the issuance of
8 the exemption, the health care facility must give written
9 notice of the discontinuation of the category of service to
10 the State Senator and State Representative serving the
11 legislative district in which the health care facility is
12 located. No later than 90 days after a discontinuation of a
13 category of service, the applicant must submit a statement to
14 the State Board certifying that the discontinuation is
15 complete.

16 (b) If a public hearing is requested, it shall be held at
17 least 15 days but no more than 30 days after the date of
18 publication of the legal notice in the community in which the
19 facility is located. The hearing shall be held in the affected
20 area or community in a place of reasonable size and
21 accessibility and a full and complete written transcript of
22 the proceedings shall be made. All interested persons
23 attending the hearing shall be given a reasonable opportunity
24 to present their positions in writing or orally. The applicant
25 shall provide a summary or describe the proposed change of
26 ownership at the public hearing.

1 (c) For the purposes of this Section "newspaper of limited
2 circulation" means a newspaper intended to serve a particular
3 or defined population of a specific geographic area within a
4 Metropolitan Statistical Area such as a municipality, town,
5 village, township, or community area, but does not include
6 publications of professional and trade associations.

7 (d) The changes made to this Section by this amendatory
8 Act of the 101st General Assembly shall apply to all
9 applications submitted after the effective date of this
10 amendatory Act of the 101st General Assembly.

11 (Source: P.A. 100-201, eff. 8-18-17; 101-83, eff. 7-15-19.)

12 Section 10. The State Finance Act is amended by adding
13 Section 5.990 as follows:

14 (30 ILCS 105/5.990 new)

15 Sec. 5.990. The Antitrust Enforcement Fund.

16 Section 15. The Illinois Antitrust Act is amended by
17 changing Section 7.2 and by adding Sections 7.2a and 13 as
18 follows:

19 (740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

20 Sec. 7.2. (1) Whenever it appears to the Attorney General
21 that any person has engaged in, is engaging in, or is about to
22 engage in any act or practice prohibited by this Act, or that

1 any person has assisted or participated in any agreement or
2 combination of the nature described herein, he may, in his
3 discretion, conduct an investigation as he deems necessary in
4 connection with the matter and has the authority prior to the
5 commencement of any civil or criminal action as provided for
6 in the Act to subpoena witnesses, and pursuant to a subpoena
7 (i) compel their attendance for the purpose of examining them
8 under oath, (ii) require the production of any books,
9 documents, records, writings or tangible things hereafter
10 referred to as "documentary material" which the Attorney
11 General deems relevant or material to his investigation, for
12 inspection, reproducing or copying under such terms and
13 conditions as hereafter set forth, (iii) require written
14 answers under oath to written interrogatories, or (iv) require
15 compliance with a combination of the foregoing. Any subpoena
16 issued by the Attorney General shall contain the following
17 information:

18 (a) The statute and section thereof, the alleged
19 violation of which is under investigation and the general
20 subject matter of the investigation.

21 (b) The date and place at which time the person is
22 required to appear or produce documentary material in his
23 possession, custody or control or submit answers to
24 interrogatories in the office of the Attorney General
25 located in Springfield or Chicago. Said date shall not be
26 less than 10 days from date of service of the subpoena.

1 (c) Where documentary material is required to be
2 produced, the same shall be described by class so as to
3 clearly indicate the material demanded.

4 The Attorney General is hereby authorized, and may so
5 elect, to require the production, pursuant to this section, of
6 documentary material or interrogatory answers prior to the
7 taking of any testimony of the person subpoenaed. Said
8 documentary material shall be made available for inspection
9 and copying during normal business hours at the principal
10 place of business of the person served, or at such other time
11 and place, as may be agreed upon by the person served and the
12 Attorney General. When documentary material is demanded by
13 subpoena, said subpoena shall not:

14 (i) contain any requirement which would be
15 unreasonable or improper if contained in a subpoena duces
16 tecum issued by a court of this State; or

17 (ii) require the disclosure of any documentary
18 material which would be privileged, or which for any other
19 reason would not be required by a subpoena duces tecum
20 issued by a court of this State.

21 (2) The production of documentary material in response to
22 a subpoena served pursuant to this Section shall be made under
23 a sworn certificate, in such form as the subpoena designates,
24 by the person, if a natural person, to whom the demand is
25 directed or, if not a natural person, by a person or persons
26 having knowledge of the facts and circumstances relating to

1 such production, to the effect that all of the documentary
2 material required by the demand and in the possession,
3 custody, or control of the person to whom the demand is
4 directed has been produced and made available to the
5 custodian. Answers to interrogatories shall be accompanied by
6 a statement under oath attesting to the accuracy of the
7 answers.

8 While in the possession of the Attorney General and under
9 such reasonable terms and conditions as the Attorney General
10 shall prescribe: (A) documentary material shall be available
11 for examination by the person who produced such material or by
12 any duly authorized representative of such person, (B)
13 transcript of oral testimony shall be available for
14 examination by the person who produced such testimony, or his
15 or her counsel and (C) answers to interrogatories shall be
16 available for examination by the person who swore to their
17 accuracy.

18 Except as otherwise provided in this Section, no
19 documentary material, transcripts of oral testimony, or
20 answers to interrogatories, or copies thereof, in the
21 possession of the Attorney General shall be available for
22 examination by any individual other than an authorized
23 employee of the Attorney General or other law enforcement
24 officials, federal, State, or local, without the consent of
25 the person who produced such material, transcripts, or
26 interrogatory answers. Such documentary material, transcripts

1 of oral testimony, or answers to interrogatories, or copies
2 thereof may be used by the Attorney General in any
3 administrative or judicial action or proceeding.

4 For purposes of this Section, all documentary materials,
5 transcripts of oral testimony, ~~or~~ answers to interrogatories
6 obtained by the Attorney General from other law enforcement
7 officials, information voluntarily produced to the Attorney
8 General for purposes of any investigation conducted under
9 subsection (1), or information provided to the Attorney
10 General pursuant to the notice requirement of Section 7.2a
11 shall be treated as if produced pursuant to a subpoena served
12 pursuant to this Section for purposes of maintaining the
13 confidentiality of such information.

14 (3) No person shall, with intent to avoid, evade, prevent,
15 or obstruct compliance in whole or in part by any person with
16 any duly served subpoena of the Attorney General under this
17 Act, knowingly remove from any place, conceal, withhold,
18 destroy, mutilate, alter, or by any other means falsify any
19 documentary material that is the subject of such subpoena. A
20 violation of this subsection is a Class A misdemeanor. The
21 Attorney General, with such assistance as he may from time to
22 time require of the State's Attorneys in the several counties,
23 shall investigate suspected violations of this subsection and
24 shall commence and try all prosecutions under this subsection.

25 (Source: P.A. 96-751, eff. 1-1-10; 96-1000, eff. 7-2-10.)

1 (740 ILCS 10/7.2a new)

2 Sec. 7.2a. Notification to the Attorney General.

3 (a) As used in this Section:

4 "Acquisition" means an agreement, arrangement, or activity
5 the consummation of which results in a person acquiring
6 directly or indirectly the control of another person.
7 "Acquisition" includes the acquisition of voting securities
8 and noncorporate interests, such as assets, capital stock,
9 membership interests, or equity interests.

10 "Contracting affiliation" means the formation of a
11 relationship between 2 or more entities that permits the
12 entities to negotiate jointly with health carriers or
13 third-party administrators over rates for professional medical
14 services, or for one entity to negotiate on behalf of the other
15 entity with health carriers or third-party administrators over
16 rates for professional medical services. "Contracting
17 affiliation" does not include arrangements among entities
18 under common ownership.

19 "Covered transaction" means any merger, acquisition, or
20 contracting affiliation between 2 or more health care
21 facilities or provider organizations not previously under
22 common ownership or contracting affiliation.

23 "Health care facility" means the following facilities,
24 organizations, and related persons:

25 (1) An ambulatory surgical treatment center required
26 to be licensed under the Ambulatory Surgical Treatment

1 Center Act.

2 (2) An institution, place, building, or agency
3 required to be licensed under the Hospital Licensing Act.

4 (3) A hospital, ambulatory surgical treatment center,
5 or kidney disease treatment center maintained by the State
6 or any department or agency thereof.

7 (4) A kidney disease treatment center, including a
8 free-standing hemodialysis unit required to meet the
9 requirements of 42 CFR 494 in order to be certified for
10 participation in Medicare and Medicaid under Titles XVIII
11 and XIX of the federal Social Security Act of 1935.

12 (5) An institution, place, building, or room used for
13 the performance of outpatient surgical procedures that is
14 leased, owned, or operated by or on behalf of an
15 out-of-state facility.

16 (6) An institution, place, building, or room used for
17 provision of a health care category of service, as defined
18 under the Illinois Health Facilities Planning Act,
19 including, but not limited to, cardiac catheterization and
20 open heart surgery.

21 With the exception of those health care facilities
22 specifically included in this Section, nothing in this Section
23 shall be intended to include facilities operated as a part of
24 the practice of a physician or other licensed health care
25 professional, whether practicing in his or her individual
26 capacity or within the legal structure of any partnership,

1 medical or professional corporation, or unincorporated medical
2 or professional group. Further, this Section shall not apply
3 to physicians or other licensed health care professional's
4 practices where such practices are carried out in a portion of
5 a health care facility under contract with such health care
6 facility by a physician or by other licensed health care
7 professionals, whether practicing in his or her individual
8 capacity or within the legal structure of any partnership,
9 medical or professional corporation, or unincorporated medical
10 or professional groups, unless the entity constructs,
11 modifies, or establishes a health care facility as
12 specifically defined in this Section.

13 "Health care services revenue" means the total revenue
14 received for health care services in the previous 12 months.

15 "Health carriers" has the meaning given to that term in
16 Section 10 of the Health Carrier External Review Act.

17 "Illinois health care entity" means a health care facility
18 or provider organization that has an office in or is doing
19 business in this State.

20 "Merger" means the consolidation of 2 or more
21 organizations, including 2 or more organizations joining
22 through a common parent organization or 2 or more
23 organizations forming a new organization, but does not include
24 a corporate reorganization.

25 "Out-of-state health care entity" means a health care
26 facility or provider organization that is not headquartered in

1 this State and does not do business in this State.

2 "Provider organization" means a corporation, partnership,
3 business trust, association, or organized group of persons,
4 whether incorporated or not, which is in the business of
5 health care delivery or management and that represents 20 or
6 more health care providers in contracting with health carriers
7 or third-party administrators for the payment of health care
8 services. "Provider organization" includes physician
9 organizations, physician-hospital organizations, independent
10 practice associations, provider networks, and accountable care
11 organizations.

12 "Third-party administrator" means an entity that
13 administers payments for health care services on behalf of a
14 client in exchange for an administrative fee.

15 (b) Health care facilities or provider organizations that
16 are party to a covered transaction shall provide notice of
17 such transaction to the Attorney General no later than 30 days
18 prior to the transaction closing or effective date of the
19 transaction.

20 Covered transactions between an Illinois health care
21 entity and an out-of-state health care entity must provide
22 notice under this subsection where the out-of-state entity
23 generates \$10,000,000 or more in annual revenue from patients
24 residing in this State.

25 (c) The written notice provided by the parties under
26 subsection (b) shall be provided as follows:

1 (1) For any health care facility or provider
2 organization that is a party to a covered transaction and
3 files a premerger notification with the Federal Trade
4 Commission or the United States Department of Justice, in
5 compliance with the Hart-Scott-Rodino Antitrust
6 Improvements Act of 1976, 15 U.S.C. 18a, the notice
7 requirement is satisfied by providing a copy of such
8 filing to the Attorney General at the same time as it is
9 provided to the federal government.

10 (2) For any health care facility that is a party to a
11 covered transaction that is not described in paragraph
12 (1), the notice requirement is satisfied when the
13 healthcare facility files an application for a change of
14 ownership with the Health Facilities and Services Review
15 Board, in compliance with the Illinois Health Facilities
16 Planning Act. The Health Facilities and Services Review
17 Board shall provide a copy of such filing to the Attorney
18 General at the same time as it is provided to the
19 applicable State legislators under subsection (a) of
20 Section 8.5 of the Illinois Health Facilities Planning
21 Act.

22 (3) For any health care facility or provider
23 organization that is a party to a covered transaction that
24 is not described in paragraph (1) or (2), written notice
25 provided by the parties must include:

26 (A) the names of the parties and their current

- 1 business address;
2 (B) identification of all locations where health
3 care services are currently provided by each party;
4 (C) a brief description of the nature and purpose
5 of the proposed transaction; and
6 (D) the anticipated effective date of the proposed
7 transaction.

8 Nothing in this subsection prohibits the parties to a
9 covered transaction from voluntarily providing additional
10 information to the Attorney General.

11 (d) The Attorney General may make any requests for
12 additional information from the parties that is relevant to
13 its investigation of the covered transaction within 30 days of
14 the date notice is received under subsections (b) and (c). If
15 the Attorney General requests additional information, the
16 covered transaction may not proceed until 30 days after the
17 parties have substantially complied with the request. Any
18 subsequent request for additional information by the Attorney
19 General shall not further delay the covered transaction from
20 proceeding. Nothing in this Section precludes the Attorney
21 General from conducting an investigation or enforcing State or
22 federal antitrust laws at a later date.

23 (e) Any health care facility or provider organization that
24 fails to comply with any provision of this Section is subject
25 to a civil penalty of not more than \$500 per day for each day
26 during which the health care facility or provider organization

1 is in violation of this Section.

2 Whenever the Attorney General has reason to believe that a
3 health care facility or provider organization has engaged in
4 or is engaging in a covered transaction without complying with
5 the provisions of this Section, the Attorney General may apply
6 for and obtain, in an action in the Circuit Court of Sangamon
7 or Cook County, a temporary restraining order or injunction,
8 or both, prohibiting the health care facility or provider
9 organization from continuing its noncompliance or doing any
10 act in furtherance thereof. The court may make such further
11 orders or judgments, at law or in equity, as may be necessary
12 to remedy such noncompliance.

13 Before bringing such an action or seeking to recover a
14 civil penalty, the Attorney General shall permit the health
15 care facility or provider organization to come into compliance
16 with this Section within 10 days of being notified of its
17 alleged noncompliance. The right to cure noncompliance does
18 not exist on or after the covered transaction's proposed or
19 actual closing date of the covered transaction, whichever is
20 sooner.

21 (740 ILCS 10/13 new)

22 Sec. 13. Antitrust Enforcement Fund. Any penalties
23 collected from an entity for violations of this Act shall be
24 deposited into the Antitrust Enforcement Fund, a special fund
25 created in the State treasury that is dedicated to enforcing

1 this Act.

2 Section 99. Effective date. This Act takes effect January
3 1, 2024.