

1 AN ACT 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
9 for health services to an entity outside 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
14 referred patient.

15 (b) Pursuant to Board determination that the following
16 exception is applicable, a health care worker may invest in
17 and 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
24 of existing facilities is onerous or creates too great a
25 hardship for patients, (3) the entity is formed to own or
26 lease medical equipment which replaces obsolete or otherwise
27 inadequate equipment in or under the control of a hospital
28 located in a federally designated health manpower shortage
29 area, or (4) such other standards as established, by rule, by
30 the Board. "Community" shall be defined as a metropolitan
31 area for a city, and a county for a rural area. In addition,

1 the following provisions must be met to be exempt under this
2 Section:

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

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

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

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

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

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

25 (7) When making a referral, a health care worker
26 must disclose his investment interest in an entity to the
27 patient being referred to such entity. If alternative
28 facilities are reasonably available, the health care
29 worker must provide the patient with a list of
30 alternative facilities. The health care worker shall
31 inform the patient that they have the option to use an
32 alternative facility other than one in which the health
33 care worker has an investment interest and the patient
34 will not be treated differently by the health care worker

1 if the patient chooses to use another entity. This shall
2 be applicable to all health care worker investors,
3 including those who provide direct care or services for
4 their patients in entities outside their office
5 practices; and

6 (8) If a third party payor requests information
7 with regard to a health care worker's investment
8 interest, the same shall be disclosed; and

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

13 (10) If a health care worker's financial interest
14 in an entity is incompatible with a referred patient's
15 interest, the health care worker shall make alternative
16 arrangements for the patient's care.

17 The Board shall make such a determination for a health
18 care worker within 90 days of a completed written request.
19 Failure to make such a determination within the 90 day time
20 frame shall mean that no alternative is practical based upon
21 the facts set forth in the completed written request.

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

26 (1) the entity is listed for trading on the New
27 York Stock Exchange or on the American Stock Exchange, or
28 is a national market system security traded under an
29 automated inter-dealer quotation system operated by the
30 National Association of Securities Dealers; and

31 (2) the entity had, at the end of the corporation's
32 most recent fiscal year, total net assets of at least
33 \$30,000,000 related to the furnishing of health services;
34 and

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

6 (4) the entity markets or furnishes its services to
7 referring health care worker investors and other health
8 care workers on equal terms; and

9 (5) all stock held in such publicly traded
10 companies, including stock held in the predecessor
11 privately held company, shall be of one class without
12 preferential treatment as to status or remuneration; and

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

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

20 (8) the investment interest does not exceed 1/2 of
21 1% of the entity's total equity.

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

25 (e) Any health care worker or other entity shall not
26 enter into an arrangement or scheme seeking to make referrals
27 to another health care worker or entity based upon the
28 condition that the health care worker or entity will make
29 referrals with an intent to evade the prohibitions of this
30 Act by inducing patient referrals which would be prohibited
31 by this Section if the health care worker or entity made the
32 referral directly.

33 (f) If compliance with the need and alternative investor
34 criteria is not practical, the health care worker shall

1 identify to the patient reasonably available alternative
2 facilities. The Board shall, by rule, designate when
3 compliance is "not practical".

4 (g) Health care workers may request from the Board that
5 it render an advisory opinion that a referral to an existing
6 or proposed entity under specified circumstances does or does
7 not violate the provisions of this Act. The Board's opinion
8 shall be presumptively correct. Failure to render such an
9 advisory opinion within 90 days of a completed written
10 request pursuant to this Section shall create a rebuttable
11 presumption that a referral described in the completed
12 written request is not or will not be a violation of this
13 Act.

14 (h) Notwithstanding any provision of this Act to the
15 contrary, a health care worker may refer a patient, who is a
16 member of a health maintenance organization "HMO" licensed in
17 this State, for health services to an entity, outside the
18 health care worker's office or group practice, in which the
19 health care worker is an investor, provided that any such
20 referral is made pursuant to a contract with the HMO.
21 Furthermore, notwithstanding any provision of this Act to the
22 contrary, a health care worker may refer an enrollee of a
23 "managed care community network", as defined in subsection
24 (b) of Section 5-11 of the Illinois Public Aid Code, for
25 health services to an entity, outside the health care
26 worker's office or group practice, in which the health care
27 worker is an investor, provided that any such referral is
28 made pursuant to a contract with the managed care community
29 network.

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