

1 AN ACT concerning 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.)