



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/05/04, by John A. Fritchey

**SYNOPSIS AS INTRODUCED:**

225 ILCS 47/5  
225 ILCS 47/15  
225 ILCS 47/20  
225 ILCS 47/30 rep.  
225 ILCS 47/35 rep.  
225 ILCS 47/40 rep.

Amends the Health Care Worker Self-Referral Act. Replaces provisions allowing health care workers to make specified referrals with language requiring a health care worker making referrals to entities in which he or she has an investment interest to comply with applicable federal laws and regulations. Repeals provisions concerning rulemaking, application of the Administrative Procedure Act, and review under the Administrative Review Law. Effective July 1, 2004.

LRB093 15209 AMC 40805 b

1 AN ACT concerning health care workers.

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 Sections 5, 15, and 20 as follows:

6 (225 ILCS 47/5)

7 Sec. 5. Legislative intent. The General Assembly  
8 recognizes that patient referrals by health care workers for  
9 health services to an entity in which the referring health care  
10 worker has an investment interest may present a potential  
11 conflict of interest. The General Assembly finds that these  
12 referral practices may limit or completely eliminate  
13 competitive alternatives in the health care market. In some  
14 instances, these referral practices may expand and improve care  
15 or may make services available which were previously  
16 unavailable. They may also provide lower cost options to  
17 patients or increase competition. Generally, referral  
18 practices are positive occurrences. However, self-referrals  
19 may result in over utilization of health services, increased  
20 overall costs of the health care systems, and may affect the  
21 quality of health care.

22 It is the intent of the General Assembly to provide  
23 guidance to health care workers regarding acceptable patient  
24 referrals, to prohibit patient referrals to entities providing  
25 health services in which the referring health care worker has  
26 an investment interest, and to protect the citizens of Illinois  
27 from unnecessary and costly health care expenditures.

28 ~~Recognizing the need for flexibility to quickly respond to~~  
29 ~~changes in the delivery of health services, to avoid results~~  
30 ~~beyond the limitations on self-referral provided under this Act~~  
31 ~~and to provide minimal disruption to the appropriate delivery~~  
32 ~~of health care, the Health Facilities Planning Board shall be~~

1 ~~exclusively and solely authorized to implement and interpret~~  
2 ~~this Act through adopted rules.~~

3 ~~The General Assembly recognizes that changes in delivery of~~  
4 ~~health care has resulted in various methods by which health~~  
5 ~~care workers practice their professions. It is not the intent~~  
6 ~~of the General Assembly to limit appropriate delivery of care,~~  
7 ~~nor force unnecessary changes in the structures created by~~  
8 ~~workers for the health and convenience of their patients.~~

9 (Source: P.A. 87-1207.)

10 (225 ILCS 47/15)

11 Sec. 15. Definitions. In this Act:

12 (a) "Board" means the Health Facilities Planning Board.

13 (b) "Entity" means any individual, partnership, firm,  
14 corporation, or other business that provides health services  
15 but does not include an individual who is a health care worker  
16 who provides professional services to an individual.

17 (c) "Group practice" means a group of 2 or more health care  
18 workers legally organized as a partnership, professional  
19 corporation, not-for-profit corporation, faculty practice plan  
20 or a similar association in which:

21 (1) each health care worker who is a member or employee  
22 or an independent contractor of the group provides  
23 substantially the full range of services that the health  
24 care worker routinely provides, including consultation,  
25 diagnosis, or treatment, through the use of office space,  
26 facilities, equipment, or personnel of the group;

27 (2) the services of the health care workers are  
28 provided through the group, and payments received for  
29 health services are treated as receipts of the group; and

30 (3) the overhead expenses and the income from the  
31 practice are distributed by methods previously determined  
32 by the group.

33 (d) "Health care worker" means any individual licensed  
34 under the laws of this State to provide health services,  
35 including but not limited to: dentists licensed under the

1 Illinois Dental Practice Act; dental hygienists licensed under  
2 the Illinois Dental Practice Act; nurses and advanced practice  
3 nurses licensed under the Nursing and Advanced Practice Nursing  
4 Act; occupational therapists licensed under the Illinois  
5 Occupational Therapy Practice Act; optometrists licensed under  
6 the Illinois Optometric Practice Act of 1987; pharmacists  
7 licensed under the Pharmacy Practice Act of 1987; physical  
8 therapists licensed under the Illinois Physical Therapy Act;  
9 physicians licensed under the Medical Practice Act of 1987;  
10 physician assistants licensed under the Physician Assistant  
11 Practice Act of 1987; podiatrists licensed under the Podiatric  
12 Medical Practice Act of 1987; clinical psychologists licensed  
13 under the Clinical Psychologist Licensing Act; clinical social  
14 workers licensed under the Clinical Social Work and Social Work  
15 Practice Act; speech-language pathologists and audiologists  
16 licensed under the Illinois Speech-Language Pathology and  
17 Audiology Practice Act; or hearing instrument dispensers  
18 licensed under the Hearing Instrument Consumer Protection Act,  
19 or any of their successor Acts.

20 ~~(e) "Health services" means health care procedures and~~  
21 ~~services provided by or through a health care worker.~~

22 ~~(f) "Immediate family member" means a health care worker's~~  
23 ~~spouse, child, child's spouse, or a parent.~~

24 ~~(g) "Investment interest" means an equity or debt security~~  
25 ~~issued by an entity, including, without limitation, shares of~~  
26 ~~stock in a corporation, units or other interests in a~~  
27 ~~partnership, bonds, debentures, notes, or other equity~~  
28 ~~interests or debt instruments except that investment interest~~  
29 ~~for purposes of Section 20 does not include interest in a~~  
30 ~~hospital licensed under the laws of the State of Illinois.~~

31 ~~(h) "Investor" means an individual or entity directly or~~  
32 ~~indirectly owning a legal or beneficial ownership or investment~~  
33 ~~interest, (such as through an immediate family member, trust,~~  
34 ~~or another entity related to the investor).~~

35 ~~(i) "Office practice" includes the facility or facilities~~  
36 ~~at which a health care worker, on an ongoing basis, provides or~~

1 ~~supervises the provision of professional health services to~~  
2 ~~individuals.~~

3 ~~(j) "Referral" means any referral of a patient for health~~  
4 ~~services, including, without limitation:~~

5 ~~(1) The forwarding of a patient by one health care~~  
6 ~~worker to another health care worker or to an entity~~  
7 ~~outside the health care worker's office practice or group~~  
8 ~~practice that provides health services.~~

9 ~~(2) The request or establishment by a health care~~  
10 ~~worker of a plan of care outside the health care worker's~~  
11 ~~office practice or group practice that includes the~~  
12 ~~provision of any health services.~~

13 (Source: P.A. 89-72, eff. 12-31-95; 90-742, eff. 8-13-98.)

14 (225 ILCS 47/20)

15 Sec. 20. Prohibited referrals and claims for payment.

16 (a) A health care worker shall not refer a patient for  
17 health services to an entity outside the health care worker's  
18 office or group practice in which the health care worker is an  
19 investor, unless the health care worker directly provides  
20 health services within the entity and will be personally  
21 involved with the provision of care to the referred patient.

22 (b) A health care worker making referrals to entities in  
23 which he or she has an investment interest shall comply with 42  
24 U.S.C. 1395nn and accompanying regulations. Pursuant to Board  
25 ~~determination that the following exception is applicable, a~~  
26 ~~health care worker may invest in and refer to an entity,~~  
27 ~~whether or not the health care worker provides direct services~~  
28 ~~within said entity, if there is a demonstrated need in the~~  
29 ~~community for the entity and alternative financing is not~~  
30 ~~available. For purposes of this subsection (b), "demonstrated~~  
31 ~~need" in the community for the entity may exist if (1) there is~~  
32 ~~no facility of reasonable quality that provides medically~~  
33 ~~appropriate service, (2) use of existing facilities is onerous~~  
34 ~~or creates too great a hardship for patients, (3) the entity is~~  
35 ~~formed to own or lease medical equipment which replaces~~

1 ~~obsolete or otherwise inadequate equipment in or under the~~  
2 ~~control of a hospital located in a federally designated health~~  
3 ~~manpower shortage area, or (4) such other standards as~~  
4 ~~established, by rule, by the Board. "Community" shall be~~  
5 ~~defined as a metropolitan area for a city, and a county for a~~  
6 ~~rural area. In addition, the following provisions must be met~~  
7 ~~to be exempt under this Section:~~

8 ~~(1) Individuals who are not in a position to refer~~  
9 ~~patients to an entity are given a bona fide opportunity to~~  
10 ~~also invest in the entity on the same terms as those~~  
11 ~~offered a referring health care worker; and~~

12 ~~(2) No health care worker who invests shall be required~~  
13 ~~or encouraged to make referrals to the entity or otherwise~~  
14 ~~generate business as a condition of becoming or remaining~~  
15 ~~an investor; and~~

16 ~~(3) The entity shall market or furnish its services to~~  
17 ~~referring health care worker investors and other investors~~  
18 ~~on equal terms; and~~

19 ~~(4) The entity shall not loan funds or guarantee any~~  
20 ~~loans for health care workers who are in a position to~~  
21 ~~refer to an entity; and~~

22 ~~(5) The income on the health care worker's investment~~  
23 ~~shall be tied to the health care worker's equity in the~~  
24 ~~facility rather than to the volume of referrals made; and~~

25 ~~(6) Any investment contract between the entity and the~~  
26 ~~health care worker shall not include any covenant or~~  
27 ~~non competition clause that prevents a health care worker~~  
28 ~~from investing in other entities; and~~

29 ~~(7) When making a referral, a health care worker must~~  
30 ~~disclose his investment interest in an entity to the~~  
31 ~~patient being referred to such entity. If alternative~~  
32 ~~facilities are reasonably available, the health care~~  
33 ~~worker must provide the patient with a list of alternative~~  
34 ~~facilities. The health care worker shall inform the patient~~  
35 ~~that they have the option to use an alternative facility~~  
36 ~~other than one in which the health care worker has an~~

~~investment interest and the patient will not be treated differently by the health care worker if the patient chooses to use another entity. This shall be applicable to all health care worker investors, including those who provide direct care or services for their patients in entities outside their office practices; and~~

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

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

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

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

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

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

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

~~(3) any investment interest obtained after the effective date of this Act is traded on the exchanges~~

1 ~~listed in paragraph 1 of subsection (c) of this Section~~  
2 ~~after the entity became a publicly traded corporation; and~~

3 ~~(4) the entity markets or furnishes its services to~~  
4 ~~referring health care worker investors and other health~~  
5 ~~care workers on equal terms; and~~

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

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

13 ~~(7) the income on the health care worker's investment~~  
14 ~~is tied to the health care worker's equity in the entity~~  
15 ~~rather than to the volume of referrals made; and~~

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

18 ~~(d) Any hospital licensed under the Hospital Licensing Act~~  
19 ~~shall not discriminate against or otherwise penalize a health~~  
20 ~~care worker for compliance with this Act.~~

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

28 ~~(f) If compliance with the need and alternative investor~~  
29 ~~criteria is not practical, the health care worker shall~~  
30 ~~identify to the patient reasonably available alternative~~  
31 ~~facilities. The Board shall, by rule, designate when compliance~~  
32 ~~is "not practical".~~

33 ~~(g) Health care workers may request from the Board that it~~  
34 ~~render an advisory opinion that a referral to an existing or~~  
35 ~~proposed entity under specified circumstances does or does not~~  
36 ~~violate the provisions of this Act. The Board's opinion shall~~



1 ~~be presumptively correct. Failure to render such an advisory~~  
2 ~~opinion within 90 days of a completed written request pursuant~~  
3 ~~to this Section shall create a rebuttable presumption that a~~  
4 ~~referral described in the completed written request is not or~~  
5 ~~will not be a violation of this Act.~~

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

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

22 (225 ILCS 47/30 rep.)

23 (225 ILCS 47/35 rep.)

24 (225 ILCS 47/40 rep.)

25 Section 10. The Health Care Worker Self-Referral Act is  
26 amended by repealing Sections 30, 35, and 40.

27 Section 99. Effective date. This Act takes effect on July  
28 1, 2004.