



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Terry Link

SYNOPSIS AS INTRODUCED:

20 ILCS 3960/3	from Ch. 111 1/2, par. 1153
20 ILCS 3960/4.2	
20 ILCS 3960/5.5 new	
20 ILCS 3960/6	from Ch. 111 1/2, par. 1156
20 ILCS 3960/8	from Ch. 111 1/2, par. 1158
20 ILCS 3960/12.5 new	

Amends the Illinois Health Facilities Planning Act. Provides that changes of ownership, mergers, and consolidations of health care facilities require a permit from the Health Facilities Planning Board and sets forth requirements for the permit application. Sets forth conditions that require a public hearing for a permit application and requires that the notice of the public hearing be published in a newspaper for 3 consecutive days. Provides that the Attorney General may evaluate certain transactions by health care facilities and sets forth requirements for notifying the Attorney General of the transactions. Provides that the Attorney General may require reimbursement for evaluating the transactions. Makes other changes.

LRB093 18445 BDD 46884 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning health facilities.

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 Sections 3, 4.2, 6, and 8 and by adding
6 Sections 5.5 and 12.5 as follows:

7 (20 ILCS 3960/3) (from Ch. 111 1/2, par. 1153)

8 (Section scheduled to be repealed on July 1, 2008)

9 Sec. 3. Definitions. As used in this Act:

10 "Health care facilities" means and includes the following
11 facilities and organizations:

12 1. An ambulatory surgical treatment center required to
13 be licensed pursuant to the Ambulatory Surgical Treatment
14 Center Act;

15 2. An institution, place, building, or agency required
16 to be licensed pursuant to the Hospital Licensing Act;

17 3. Skilled and intermediate long term care facilities
18 licensed under the Nursing Home Care Act;

19 3. Skilled and intermediate long term care facilities
20 licensed under the Nursing Home Care Act;

21 4. Hospitals, nursing homes, ambulatory surgical
22 treatment centers, or kidney disease treatment centers
23 maintained by the State or any department or agency
24 thereof;

25 5. Kidney disease treatment centers, including a
26 free-standing hemodialysis unit; and

27 6. An institution, place, building, or room used for
28 the performance of outpatient surgical procedures that is
29 leased, owned, or operated by or on behalf of an
30 out-of-state facility.

31 No federally owned facility shall be subject to the
32 provisions of this Act, nor facilities used solely for healing

1 by prayer or spiritual means.

2 No facility licensed under the Supportive Residences
3 Licensing Act or the Assisted Living and Shared Housing Act
4 shall be subject to the provisions of this Act.

5 A facility designated as a supportive living facility that
6 is in good standing with the demonstration project established
7 under Section 5-5.01a of the Illinois Public Aid Code shall not
8 be subject to the provisions of this Act.

9 This Act does not apply to facilities granted waivers under
10 Section 3-102.2 of the Nursing Home Care Act. However, if a
11 demonstration project under that Act applies for a certificate
12 of need to convert to a nursing facility, it shall meet the
13 licensure and certificate of need requirements in effect as of
14 the date of application.

15 This Act shall not apply to the closure of an entity or a
16 portion of an entity licensed under the Nursing Home Care Act
17 that elects to convert, in whole or in part, to an assisted
18 living or shared housing establishment licensed under the
19 Assisted Living and Shared Housing Act.

20 With the exception of those health care facilities
21 specifically included in this Section, nothing in this Act
22 shall be intended to include facilities operated as a part of
23 the practice of a physician or other licensed health care
24 professional, whether practicing in his individual capacity or
25 within the legal structure of any partnership, medical or
26 professional corporation, or unincorporated medical or
27 professional group. Further, this Act shall not apply to
28 physicians or other licensed health care professional's
29 practices where such practices are carried out in a portion of
30 a health care facility under contract with such health care
31 facility by a physician or by other licensed health care
32 professionals, whether practicing in his individual capacity
33 or within the legal structure of any partnership, medical or
34 professional corporation, or unincorporated medical or
35 professional groups. This Act shall apply to construction or
36 modification and to establishment by such health care facility

1 of such contracted portion which is subject to facility
2 licensing requirements, irrespective of the party responsible
3 for such action or attendant financial obligation.

4 "Person" means any one or more natural persons, legal
5 entities, governmental bodies other than federal, or any
6 combination thereof.

7 "Consumer" means any person other than a person (a) whose
8 major occupation currently involves or whose official capacity
9 within the last 12 months has involved the providing,
10 administering or financing of any type of health care facility,
11 (b) who is engaged in health research or the teaching of
12 health, (c) who has a material financial interest in any
13 activity which involves the providing, administering or
14 financing of any type of health care facility, or (d) who is or
15 ever has been a member of the immediate family of the person
16 defined by (a), (b), or (c).

17 "State Board" means the Health Facilities Planning Board.

18 "Construction or modification" means the establishment,
19 erection, building, alteration, reconstruction, modernization,
20 improvement, extension, discontinuation, change of ownership,
21 of or by a health care facility, or the purchase or acquisition
22 by or through a health care facility of equipment or service
23 for diagnostic or therapeutic purposes or for facility
24 administration or operation, or any capital expenditure made by
25 or on behalf of a health care facility which exceeds the
26 capital expenditure minimum; however, any capital expenditure
27 made by or on behalf of a health care facility for the
28 construction or modification of a facility licensed under the
29 Assisted Living and Shared Housing Act shall be excluded from
30 any obligations under this Act.

31 "Establish" means the construction of a health care
32 facility or the replacement of an existing facility on another
33 site.

34 "Major medical equipment" means medical equipment which is
35 used for the provision of medical and other health services and
36 which costs in excess of the capital expenditure minimum,

1 except that such term does not include medical equipment
2 acquired by or on behalf of a clinical laboratory to provide
3 clinical laboratory services if the clinical laboratory is
4 independent of a physician's office and a hospital and it has
5 been determined under Title XVIII of the Social Security Act to
6 meet the requirements of paragraphs (10) and (11) of Section
7 1861(s) of such Act. In determining whether medical equipment
8 has a value in excess of the capital expenditure minimum, the
9 value of studies, surveys, designs, plans, working drawings,
10 specifications, and other activities essential to the
11 acquisition of such equipment shall be included.

12 "Capital Expenditure" means an expenditure: (A) made by or
13 on behalf of a health care facility (as such a facility is
14 defined in this Act); and (B) which under generally accepted
15 accounting principles is not properly chargeable as an expense
16 of operation and maintenance, or is made to obtain by lease or
17 comparable arrangement any facility or part thereof or any
18 equipment for a facility or part; and which exceeds the capital
19 expenditure minimum.

20 For the purpose of this paragraph, the cost of any studies,
21 surveys, designs, plans, working drawings, specifications, and
22 other activities essential to the acquisition, improvement,
23 expansion, or replacement of any plant or equipment with
24 respect to which an expenditure is made shall be included in
25 determining if such expenditure exceeds the capital
26 expenditures minimum. Donations of equipment or facilities to a
27 health care facility which if acquired directly by such
28 facility would be subject to review under this Act shall be
29 considered capital expenditures, and a transfer of equipment or
30 facilities for less than fair market value shall be considered
31 a capital expenditure for purposes of this Act if a transfer of
32 the equipment or facilities at fair market value would be
33 subject to review.

34 "Capital expenditure minimum" means \$6,000,000, which
35 shall be annually adjusted to reflect the increase in
36 construction costs due to inflation, for major medical

1 equipment and for all other capital expenditures; provided,
2 however, that when a capital expenditure is for the
3 construction or modification of a health and fitness center,
4 "capital expenditure minimum" means the capital expenditure
5 minimum for all other capital expenditures in effect on March
6 1, 2000, which shall be annually adjusted to reflect the
7 increase in construction costs due to inflation.

8 "Non-clinical service area" means an area (i) for the
9 benefit of the patients, visitors, staff, or employees of a
10 health care facility and (ii) not directly related to the
11 diagnosis, treatment, or rehabilitation of persons receiving
12 services from the health care facility. "Non-clinical service
13 areas" include, but are not limited to, chapels; gift shops;
14 news stands; computer systems; tunnels, walkways, and
15 elevators; telephone systems; projects to comply with life
16 safety codes; educational facilities; student housing;
17 patient, employee, staff, and visitor dining areas;
18 administration and volunteer offices; modernization of
19 structural components (such as roof replacement and masonry
20 work); boiler repair or replacement; vehicle maintenance and
21 storage facilities; parking facilities; mechanical systems for
22 heating, ventilation, and air conditioning; loading docks; and
23 repair or replacement of carpeting, tile, wall coverings,
24 window coverings or treatments, or furniture. Solely for the
25 purpose of this definition, "non-clinical service area" does
26 not include health and fitness centers.

27 "Areawide" means a major area of the State delineated on a
28 geographic, demographic, and functional basis for health
29 planning and for health service and having within it one or
30 more local areas for health planning and health service. The
31 term "region", as contrasted with the term "subregion", and the
32 word "area" may be used synonymously with the term "areawide".

33 "Local" means a subarea of a delineated major area that on
34 a geographic, demographic, and functional basis may be
35 considered to be part of such major area. The term "subregion"
36 may be used synonymously with the term "local".

1 "Areawide health planning organization" or "Comprehensive
2 health planning organization" means the health systems agency
3 designated by the Secretary, Department of Health and Human
4 Services or any successor agency.

5 "Local health planning organization" means those local
6 health planning organizations that are designated as such by
7 the areawide health planning organization of the appropriate
8 area.

9 "Physician" means a person licensed to practice in
10 accordance with the Medical Practice Act of 1987, as amended.

11 "Licensed health care professional" means a person
12 licensed to practice a health profession under pertinent
13 licensing statutes of the State of Illinois.

14 "Director" means the Director of the Illinois Department of
15 Public Health.

16 "Agency" means the Illinois Department of Public Health.

17 "Comprehensive health planning" means health planning
18 concerned with the total population and all health and
19 associated problems that affect the well-being of people and
20 that encompasses health services, health manpower, and health
21 facilities; and the coordination among these and with those
22 social, economic, and environmental factors that affect
23 health.

24 "Alternative health care model" means a facility or program
25 authorized under the Alternative Health Care Delivery Act.

26 "Out-of-state facility" means a person that is both (i)
27 licensed as a hospital or as an ambulatory surgery center under
28 the laws of another state or that qualifies as a hospital or an
29 ambulatory surgery center under regulations adopted pursuant
30 to the Social Security Act and (ii) not licensed under the
31 Ambulatory Surgical Treatment Center Act, the Hospital
32 Licensing Act, or the Nursing Home Care Act. Affiliates of
33 out-of-state facilities shall be considered out-of-state
34 facilities. Affiliates of Illinois licensed health care
35 facilities 100% owned by an Illinois licensed health care
36 facility, its parent, or Illinois physicians licensed to

1 practice medicine in all its branches shall not be considered
2 out-of-state facilities. Nothing in this definition shall be
3 construed to include an office or any part of an office of a
4 physician licensed to practice medicine in all its branches in
5 Illinois that is not required to be licensed under the
6 Ambulatory Surgical Treatment Center Act.

7 "Change of ownership of a health care facility" means a
8 change in the person who has ownership or control of a health
9 care facility's physical plant and capital assets. A change in
10 ownership is indicated by the following transactions: sale,
11 transfer, acquisition, lease, change of sponsorship, or other
12 means of transferring control.

13 "Related person" means any person that: (i) is at least 50%
14 owned, directly or indirectly, by either the health care
15 facility or a person owning, directly or indirectly, at least
16 50% of the health care facility; or (ii) owns, directly or
17 indirectly, at least 50% of the health care facility.

18 "Charity care" means care provided by a health care
19 facility for which the provider does not expect to receive
20 payment from the patient or a third-party payer.

21 "Community benefits" means the unreimbursed cost to a
22 health care facility of providing charity care, language
23 assistant services, government-sponsored indigent health care,
24 donations, volunteer services, education, government-sponsored
25 program services, research, and subsidized health services and
26 collecting bad debts. "Community benefits" does not include the
27 cost of paying any taxes or other governmental assessments.

28 "Health facility" means any facility that operates acute
29 care services including entities licensed under the Hospital
30 Licensing Act.

31 (Source: P.A. 93-41, eff. 6-27-03.)

32 (20 ILCS 3960/4.2)

33 (Section scheduled to be repealed on July 1, 2008)

34 Sec. 4.2. Ex parte communications.

35 (a) Except in the disposition of matters that agencies are

1 authorized by law to entertain or dispose of on an ex parte
2 basis including, but not limited to rule making, the State
3 Board, any State Board member, employee, or a hearing officer
4 shall not engage in ex parte communication, after an
5 application for a permit is received, in connection with the
6 substance of any application for a permit with any person or
7 party or the representative of any party.

8 (b) A State Board member or employee may communicate with
9 other members or employees and any State Board member or
10 hearing officer may have the aid and advice of one or more
11 personal assistants.

12 (c) An ex parte communication received by the State Board,
13 any State Board member, employee, or a hearing officer shall be
14 made a part of the record of the pending matter, including all
15 written communications, all written responses to the
16 communications, and a memorandum stating the substance of all
17 oral communications and all responses made and the identity of
18 each person from whom the ex parte communication was received.

19 (d) "Ex parte communication" means a communication between
20 a person who is not a State Board member or employee and State
21 Board member or employee concerning the merits of an
22 application before the Board, except on notice and opportunity
23 for all parties to participate ~~that reflects on the substance~~
24 ~~of a pending State Board proceeding and that takes place~~
25 ~~outside the record of the proceeding.~~ Communications regarding
26 matters of procedure and practice, such as the format of
27 pleading, number of copies required, manner of service, and
28 status of proceedings, are not considered ex parte
29 communications. Technical assistance with respect to an
30 application, not intended to influence any decision on the
31 application, may be provided by employees to the applicant. Any
32 assistance shall be documented in writing by the applicant and
33 employees within 10 business days after the assistance is
34 provided.

35 (e) For purposes of this Section, "employee" means a person
36 the State Board or the Agency employs on a full-time,

1 part-time, contract, or intern basis.

2 (f) The State Board, State Board member, or hearing
3 examiner presiding over the proceeding, in the event of a
4 violation of this Section, must take whatever action is
5 necessary to ensure that the violation does not prejudice any
6 party or adversely affect the fairness of the proceedings.

7 (g) Nothing in this Section shall be construed to prevent
8 the State Board or any member of the State Board from
9 consulting with the attorney for the State Board.

10 (Source: P.A. 91-782, eff. 6-9-00.)

11 (20 ILCS 3960/5.5 new)

12 Sec. 5.5. Changes of ownership, mergers, and
13 consolidations; permit required. Changes of ownership,
14 mergers, and consolidations of health care facilities require a
15 permit from the State Board. As part of the permit application
16 for a change of ownership, merger, or consolidation, the
17 proposed owner or all entities proposed to merge or consolidate
18 must certify in writing that, for the 5-year period following
19 the transaction, the percentages of charity care and community
20 benefits provided each year to the population serviced by the
21 health care facility will be equal to or exceed the average
22 percentages of charity care and community benefits provided by
23 the health care facility for the 2 fiscal years immediately
24 preceding the acquisition.

25 (20 ILCS 3960/6) (from Ch. 111 1/2, par. 1156)

26 (Section scheduled to be repealed on July 1, 2008)

27 Sec. 6. Application for permit or exemption; exemption
28 regulations.

29 (a) An application for a permit or exemption shall be made
30 to the State Board upon forms provided by the State Board. This
31 application shall contain such information as the State Board
32 deems necessary. Such application shall include affirmative
33 evidence on which the Director may make the findings required
34 under this Section and upon which the State Board may make its

1 decision on the approval or denial of the permit or exemption.

2 (b) The State Board shall establish by regulation the
3 procedures and requirements regarding issuance of exemptions.
4 An exemption shall be approved when information required by the
5 Board by rule is submitted. ~~Projects eligible for an exemption,
6 rather than a permit, include, but are not limited to, change
7 of ownership of a health care facility. For a change of
8 ownership of a health care facility between related persons,
9 the State Board shall provide by rule for an expedited process
10 for obtaining an exemption.~~

11 (c) All applications shall be signed by the applicant and
12 shall be verified by any 2 officers thereof.

13 (d) Upon receipt of an application for a permit, the State
14 Board shall approve and authorize the issuance of a permit if
15 it finds (1) that the applicant is fit, willing, and able to
16 provide a proper standard of health care service for the
17 community with particular regard to the qualification,
18 background and character of the applicant, (2) that economic
19 feasibility is demonstrated in terms of effect on the existing
20 and projected operating budget of the applicant and of the
21 health care facility; in terms of the applicant's ability to
22 establish and operate such facility in accordance with
23 licensure regulations promulgated under pertinent state laws;
24 and in terms of the projected impact on the total health care
25 expenditures in the facility and community, (3) that safeguards
26 are provided which assure that the establishment, construction
27 or modification of the health care facility or acquisition of
28 major medical equipment is consistent with the public interest
29 and that maintain or enhance access to health care services,
30 the level of community benefits, and the level of charity care,
31 and (4) that the proposed project is consistent with the
32 orderly and economic development of such facilities and
33 equipment and is in accord with standards, criteria, or plans
34 of need adopted and approved pursuant to the provisions of
35 Section 12 of this Act.

36 (Source: P.A. 93-41, eff. 6-27-03.)

1 (20 ILCS 3960/8) (from Ch. 111 1/2, par. 1158)

2 (Section scheduled to be repealed on July 1, 2008)

3 Sec. 8. The Agency shall assist communities and regions
4 throughout the State to establish areawide health planning
5 organizations and, in particular, shall assist such
6 organizations to develop health care facilities planning which
7 meets the criteria for recognition thereof. Areawide health
8 planning organizations may be recognized to do health
9 facilities planning by providing this component of health
10 planning within the organization or by contracting with a
11 special-purpose health planning organization that meets the
12 criteria for health facilities planning.

13 Recognition of these organizations with regard to health
14 facilities planning, including establishment of the criteria
15 for such recognition, shall be the responsibility of the State
16 Board, as provided elsewhere in this Act.

17 The Agency is authorized to make grants-in-aid or to
18 furnish direct services to organizations in the development of
19 health facilities planning capability, as a part of other
20 financial and service assistance which the Agency is empowered
21 and required to provide in support of health planning
22 organizations.

23 Upon receipt of an application for a permit to establish,
24 construct or modify a health care facility, the Agency shall
25 notify the applicant in writing within 10 working days either
26 that the application is complete or the reasons why the
27 application is not complete. If the application is complete,
28 the Agency shall notify affected persons of the beginning of a
29 review and the review time cycle for the purposes of this Act
30 shall begin on the date this notification is mailed.

31 Upon notifying affected persons of the beginning of a
32 review of an application for a permit, a complete copy of such
33 application shall be transmitted to the areawide health
34 planning organization serving the area or community where the
35 health care facility or major medical equipment is proposed to

1 be acquired, established, constructed or modified. The Agency
2 shall also transmit a complete copy of such application to any
3 reasonably contiguous areawide health planning organization.
4 The Agency shall afford a reasonable time as established by the
5 State Board, but not to exceed 120 days in length, for the
6 areawide planning organizations' review of the application.
7 After reviewing the application, each recognized areawide
8 planning organization shall certify its findings to the State
9 Board as to whether or not the application is approved or
10 disapproved in accordance with standards, criteria or plans of
11 need adopted and approved by the recognized areawide health
12 planning organization pursuant to its recognition by the State
13 Board for health care facilities planning. The 120-day period
14 shall begin on the day the application is found to be
15 substantially complete, as that term is defined by the State
16 Board. During such 120-day period, the applicant may request an
17 extension. An applicant may modify the application at any time
18 prior to a final administrative decision on the application.

19 Upon its receipt of an application, the areawide health
20 planning organization or the Agency, as the case may be, may
21 submit a copy of such application to the federally-recognized
22 professional standards review organization, if any, and
23 appropriate local health planning organization, if any,
24 existing in the area where the proposed project is to occur.
25 Such organizations may review the application for a permit and
26 submit, within 30 days from the receipt of the application, a
27 finding to the agency or to the areawide health planning
28 organization, as the case may be. A review and finding by a
29 federally-recognized professional standards review
30 organization must be relevant to the activities for which such
31 organization is recognized, and shall be considered by the
32 Agency or the areawide health planning organization, as the
33 case may be, in its review of the application.

34 The State Board shall prescribe and provide the forms upon
35 which the review and finding of the organization shall be made.
36 The recognized areawide health planning organizations shall

1 submit their review and finding to the Agency for its finding
2 on the application and transmittal to the State Board for its
3 consideration of denial or approval.

4 If there is no areawide health planning organization in the
5 area where the proposed establishment, construction or
6 modification of a health care facility is to occur, then the
7 Agency shall be afforded a reasonable time, but not to exceed
8 120 days, for its review and finding thereon. The Agency shall
9 submit its review and finding to the State Board for its
10 approval or denial of the permit.

11 When an application for a permit is initially reviewed by a
12 recognized areawide health planning organization or the
13 Agency, as herein provided, the organization or the Agency, as
14 the case may be, shall ensure that a public hearing is
15 conducted if one or more of the following circumstances apply:
16 the review to be conducted is competitive; the proponent
17 proposes to spend \$5,000,000 or more; a written request for a
18 public hearing is received before the end of the comment
19 period; or the Agency determines that a hearing is in the
20 public interest. The ~~afford an opportunity for a~~ public hearing
21 must be held within a reasonable time after receipt of the
22 complete application, not to exceed 90 days. Notice of such
23 hearing shall be made promptly by certified mail to the
24 applicant and, within 20 ~~10~~ days of the hearing, by publication
25 on 3 consecutive days in a newspaper of general circulation in
26 the area or community to be affected. For hearings pertaining
27 to facilities located within a metropolitan statistical area,
28 notice of the hearing must be made by publication on 3
29 consecutive days in 2 newspapers of general circulation in the
30 area or community to be affected. Such hearing shall be
31 conducted in the area or community where the proposed project
32 is to occur, and shall be for the purpose of allowing the
33 applicant and any interested person to present public testimony
34 concerning the approval, denial, renewal or revocation of the
35 permit. All interested persons attending such hearing shall be
36 given reasonable opportunity to present their views or

1 arguments in writing or orally, and a record of all such
2 testimony shall accompany any recommendation of the Agency or
3 the recognized areawide health planning organization for the
4 issuance, denial, revocation or renewal of a permit to the
5 State Board. The State Board shall promulgate reasonable rules
6 and regulations governing the procedure and conduct of such
7 hearings.

8 (Source: P.A. 88-18.)

9 (20 ILCS 3960/12.5 new)

10 Sec. 12.5. Powers and duties of the Attorney General.

11 (a) Following an agreement to sell, lease, convey,
12 exchange, transfer, or otherwise dispose of all or
13 substantially all of its assets, as outlined in a letter of
14 intent between the parties involved in the agreement, a
15 not-for-profit corporation that operates a health facility
16 must give written notice to the Illinois Attorney General a
17 minimum of 120 days prior to the execution of the agreement.

18 (b) The notice to the Attorney General must include a plan
19 of merger, an asset sale agreement or merger agreement, a
20 financial plan, audited financial statements for all affected
21 entities for the last 3 years, and any other information the
22 Attorney General deems necessary. The notice and any other
23 information provided to the Attorney General under this Section
24 shall be made available by the Attorney General to the public
25 in written form.

26 (c) Upon request, the Attorney General shall be entitled to
27 reimbursement from the not-for-profit corporation for all
28 actual, reasonable, and direct costs incurred in reviewing and
29 evaluating transactions covered by this Section, including the
30 costs of:

31 (1) Contracting with, consulting with, and receiving
32 advice from any State agency on those terms and conditions
33 that the Attorney General deems appropriate.

34 (2) In his or her sole discretion, contracting with
35 experts or consultants to assist in reviewing the proposed

1 agreement or transaction.

2 Contract costs may not exceed an amount that is reasonable and
3 necessary to conduct the review and evaluation. The
4 not-for-profit corporation must promptly pay the Attorney
5 General, upon request, for all of those costs.

6 (d) The Attorney General may extend the 120-day review
7 period for one additional 45-day period if any of the following
8 conditions are satisfied:

9 (1) The extension is necessary to obtain information;

10 or

11 (2) The proposed agreement or transaction involves a
12 multifacility health system serving multiple communities,
13 rather than a single facility.

14 (e) Review conducted under this Section shall not limit the
15 Attorney General's powers to conduct an antitrust review.