HB5193

LRB09515939DRJ41948b

95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5193

by Rep. Timothy L. Schmitz

SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.4 from Ch. 111 1/2, par. 151.4
210 ILCS 85/10.5 new

Amends the Hospital Licensing Act. In connection with a hospital's or medical staff's right to summarily suspend, without a prior hearing, a person's medical staff membership or clinical privileges in the case of an immediate danger to the public, provides that an immediate danger must be evidenced by a documented act or acts that directly threaten patient care in the hospital and are not of an administrative nature; provides that when a medical staff member's license to practice has been suspended or revoked by the State's licensing authority, no hearing is necessary. Adds provisions concerning medical staff peer review. Adds provisions concerning medical staff self-governance, including: the right to establish criteria and requirements for medical staff membership, privileges, and activities; the right to select and remove medical staff officers; and the right to assess dues. Also sets forth provisions concerning dispute resolution. Effective January 1, 2009.

LRB095 15939 DRJ 41948 b

A BILL FOR

AN ACT concerning regulation.

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

Section 5. The Hospital Licensing Act is amended by changing Section 10.4 and by adding Section 10.5 as follows:

(210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

Sec. 10.4. Medical staff privileges.

(a) Any hospital licensed under this Act or any hospital organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the applicant's or medical staff member's license, except: (1) for medical personnel who enter a hospital to obtain organs and tissues for transplant from a donor in accordance with the Illinois Anatomical Gift Act; or (2) for medical personnel who have been granted disaster privileges pursuant to the procedures and requirements established by rules adopted by the Department. Any hospital and any employees of the hospital or others involved in granting privileges who, in good faith, grant disaster privileges pursuant to this Section to respond to an

emergency shall not, as a result of their acts or omissions, be liable for civil damages for granting or denying disaster privileges except in the event of willful and wanton misconduct, as that term is defined in Section 10.2 of this Act. Individuals granted privileges who provide care in an emergency situation, in good faith and without direct compensation, shall not, as a result of their acts or omissions, except for acts or omissions involving willful and wanton misconduct, as that term is defined in Section 10.2 of this Act, on the part of the person, be liable for civil damages. The Director of Professional Regulation shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of imposition of any periods of supervision or monitoring as a result of alcohol or substance abuse, as provided by Section 23 of the Medical Practice Act of 1987, and such information as may have been submitted to the Department indicating that the application or medical staff member has been denied, or has surrendered, medical staff privileges at a hospital licensed under this Act, or any equivalent facility in another state or territory of the United States. The Director of Professional Regulation shall define by rule the period for timely response to such requests.

No transmittal of information by the Director of Professional Regulation, under this Section shall be to other than the president, chief operating officer, chief

administrative officer, or chief of the medical staff of a hospital licensed under this Act, a hospital organized under the University of Illinois Hospital Act, or a hospital operated by the United States, or any of its instrumentalities. The information so transmitted shall be afforded the same status as is information concerning medical studies by Part 21 of Article VIII of the Code of Civil Procedure, as now or hereafter amended.

(b) All hospitals licensed under this Act, except county hospitals as defined in subsection (c) of Section 15-1 of the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing, or denying medical staff membership and clinical staff privileges. Hospitals that require medical staff members to possess faculty status with a specific institution of higher education are not required to comply with subsection (1) below when the physician does not possess faculty status.

(1) Minimum procedures for pre-applicants and applicants for medical staff membership shall include the following:

(A) Written procedures relating to the acceptance and processing of pre-applicants or applicants for medical staff membership, which should be contained in medical staff bylaws.

(B) Written procedures to be followed in

determining a pre-applicant's or an applicant's qualifications for being granted medical staff membership and privileges.

(C) Written criteria to be followed in evaluating a pre-applicant's or an applicant's qualifications.

(D) An evaluation of a pre-applicant's or an applicant's current health status and current license status in Illinois.

(E) A written response to each pre-applicant or applicant that explains the reason or reasons for any adverse decision (including all reasons based in whole or in part on the applicant's medical qualifications or any other basis, including economic factors).

(2) Minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff shall include the following:

(A) A written notice of an adverse decision.

(B) An explanation of the reasons for an adverse decision including all reasons based on the quality of medical care or any other basis, including economic factors.

(C) A statement of the medical staff member's right to request a fair hearing on the adverse decision before a hearing panel whose membership is mutually agreed upon by the medical staff and the hospital governing board. The hearing panel shall have

independent authority to recommend action to the hospital governing board. Upon the request of the medical staff member or the hospital governing board, the hearing panel shall make findings concerning the nature of each basis for any adverse decision recommended to and accepted by the hospital governing board.

(i) Nothing in this subparagraph (C) limits a hospital's or medical staff's right to summarily suspend, without a prior hearing, a person's medical staff membership or clinical privileges if the continuation of practice of a medical staff member constitutes an immediate danger to the public, including patients, visitors, and hospital employees and staff. An immediate danger must be evidenced by a documented act or acts that directly threaten patient care in the hospital and are not of an administrative nature. A fair hearing shall be commenced within 15 days after the suspension and completed without delay, except that when the medical staff member's license to practice has been suspended or revoked by the State's licensing authority, no hearing is necessary.

(ii) Nothing in this subparagraph (C) limits a medical staff's right to permit, in the medical staff bylaws, summary suspension of membership or

clinical privileges in designated administrative circumstances as specifically approved by the medical staff. This bylaw provision must specifically describe both the administrative circumstance that can result in a summary suspension and the length of the summary suspension. The opportunity for a fair hearing is required for any administrative summary suspension. Any requested hearing must be commenced within 15 days after the summary suspension and completed without delay. Adverse decisions other than suspension or other restrictions on the treatment or admission of patients may be imposed summarily and without a hearing under designated administrative circumstances as specifically provided for in the medical staff bylaws as approved by the medical staff.

(iii) If a hospital exercises its option to enter into an exclusive contract and that contract results in the total or partial termination or reduction of medical staff membership or clinical privileges of a current medical staff member, the hospital shall provide the affected medical staff member 60 days prior notice of the effect on his or her medical staff membership or privileges. An

affected medical staff member desiring a hearing under subparagraph (C) of this paragraph (2) must request the hearing within 14 days after the date he or she is so notified. The requested hearing shall be commenced and completed (with a report and recommendation to the affected medical staff member, hospital governing board, and medical staff) within 30 days after the date of the medical staff member's request. If agreed upon by both the medical staff and the hospital governing board, the medical staff bylaws may provide for longer time periods.

(C-5) All peer review shall be conducted in accordance with the medical staff bylaws. Outside peer review shall be conducted and used in the medical staff credentialing and privileging process only when authorized by the medical staff's executive committee. No adverse decision may be based on external peer review not authorized by the medical staff's executive committee.

(C-10) All peer review shall be conducted in accordance with the medical staff bylaws. Any medical staff requirements for a minimum number of procedures or types of cases with acceptable outcomes may not require that all of a practitioner's experience be at the hospital. A practitioner must be allowed to submit

evidence of total experience across all settings of care to meet any such requirements.

(D) A statement of the member's right to inspect all pertinent information in the hospital's possession with respect to the decision.

(E) A statement of the member's right to present witnesses and other evidence at the hearing on the decision.

(F) A written notice and written explanation of the decision resulting from the hearing.

(F-5) A written notice of a final adverse decision by a hospital governing board.

(G) Notice given 15 days before implementation of an adverse medical staff membership or clinical privileges decision based substantially on economic factors. This notice shall be given after the medical staff member exhausts all applicable procedures under this Section, including item (iii) of subparagraph (C) of this paragraph (2), and under the medical staff bylaws in order to allow sufficient time for the orderly provision of patient care.

(H) Nothing in this paragraph (2) of this subsection (b) limits a medical staff member's right to waive, in writing, the rights provided in subparagraphs (A) through (G), excluding subparagraphs (C-5) and (C-10), of this paragraph (2) of this

subsection (b) upon being granted the written exclusive right to provide particular services at a hospital, either individually or as a member of a group. If an exclusive contract is signed by a representative of a group of physicians, a waiver contained in the contract shall apply to all members of the group unless stated otherwise in the contract.

(3) Every adverse medical staff membership and clinical privilege decision based substantially on economic factors shall be reported to the Hospital Licensing Board before the decision takes effect. These reports shall not be disclosed in any form that reveals the identity of any hospital or physician. These reports shall be utilized to study the effects that hospital medical staff membership and clinical privilege decisions based upon economic factors have on access to care and the availability of physician services. The Hospital Licensing Board shall submit an initial study to the Governor and the General Assembly by January 1, 1996, and subsequent reports shall be submitted periodically thereafter.

(4) As used in this Section:

"Adverse decision" means a decision reducing, restricting, suspending, revoking, denying, or not renewing medical staff membership or clinical privileges.

"Economic factor" means any information or reasons for decisions unrelated to quality of care or professional

competency.

"Pre-applicant" means a physician licensed to practice medicine in all its branches who requests an application for medical staff membership or privileges.

"Privilege" means permission to provide medical or other patient care services and permission to use hospital resources, including equipment, facilities and personnel that are necessary to effectively provide medical or other patient care services. This definition shall not be construed to require a hospital to acquire additional equipment, facilities, or personnel to accommodate the granting of privileges.

(5) Any amendment to medical staff bylaws required because of this amendatory Act of the 91st General Assembly shall be adopted on or before July 1, 2001.

(c) All hospitals shall consult with the medical staff prior to closing membership in the entire or any portion of the medical staff or a department. If the hospital closes membership in the medical staff, any portion of the medical staff, or the department over the objections of the medical staff, then the hospital shall provide a detailed written explanation for the decision to the medical staff 10 days prior to the effective date of any closure. No applications need to be provided when membership in the medical staff or any relevant portion of the medical staff is closed.

(Source: P.A. 95-331, eff. 8-21-07.)

(210 ILCS 85/10.5 new)

Sec. 10.5. Medical staff self-governance.

(a) The General Assembly finds and declares that providing quality medical care in hospitals depends on the mutual accountability, interdependence, and responsibility of the medical staff and the hospital governing board for the proper performance of their respective obligations.

The General Assembly further finds and declares that both the governing board and the medical staff of a hospital must act to protect the quality of medical care provided. Nothing in this Act shall be construed to undermine this authority. The final authority of the hospital governing board may be exercised for the responsible governance of the hospital or for the conduct of the business affairs of the hospital; that final authority may be exercised, however, only with a reasonable and good faith belief that the medical staff has failed to fulfill a substantive duty or responsibility in matters pertaining to the quality of patient care. It would be a violation of the medical staff's self-governance and independent rights for the hospital governing board to assume a duty or responsibility of the medical staff precipitously, unreasonably, or in bad faith.

Finally, the General Assembly finds and declares that the specific actions that would constitute bad faith or unreasonable action on the part of either the medical staff or the hospital governing board will always be fact-specific and

cannot be precisely described in statute. The provisions set forth in this Section do nothing more than provide for the basic independent rights and responsibilities of a self-governing medical staff. Ultimately, a successful relationship between a hospital's medical staff and governing board depends on the mutual respect of each for the rights and responsibilities of the other.

(b) The medical staff's right of self-governance includes, but is not limited to, all of the following:

(1) Establishing, in medical staff bylaws, rules, or regulations, criteria and requirements, consistent with Section 10.4 of this Act, for medical staff membership and privileges, and enforcing those criteria and requirements.

(2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and requirements to oversee and manage quality assurance, utilization review, and other medical staff activities, including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.

(3) Selecting and removing medical staff officers.

(4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(5) The ability to retain and be represented by independent legal counsel.

(6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld.

(c) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

(1) Selecting and removing medical staff officers.

(2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(3) The ability to retain and be presented by independent legal counsel.

(d) Neither the medical staff nor the hospital governing board may unilaterally amend, change, or otherwise alter adopted medical staff bylaws.

(e) With respect to any dispute arising under this Section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any act or practice that hinders, restricts, or otherwise obstructs the ability of the medical staff to exercise its rights, obligations, or responsibilities under this Section, the circuit court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the

medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandamus, or other appropriate order.

Section 99. Effective date. This Act takes effect January 1, 2009.