

# SB0244



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB0244

Introduced 2/7/2007, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3960/3

from Ch. 111 1/2, par. 1153

20 ILCS 3960/14.1

Amends the Illinois Health Facilities Planning Act. Provides that changes of ownership of facilities licensed under the Nursing Home Care Act must meet the requirements set forth in the Nursing Home Care Act. Provides that facilities that are licensed under the Nursing Home Care Act are exempt from a provision requiring a permit before discontinuing certain health care facilities or categories of service. Makes technical changes. Effective immediately.

LRB095 08444 HLH 28621 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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 and 14.1 as follows:

6 (20 ILCS 3960/3) (from Ch. 111 1/2, par. 1153)

7 (Section scheduled to be repealed on April 1, 2007)

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

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

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

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

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

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

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

1           5. Kidney disease treatment centers, including a  
2           free-standing hemodialysis unit required to be licensed  
3           under the End Stage Renal Disease Facility Act; and

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

8           No federally owned facility shall be subject to the  
9           provisions of this Act, nor facilities used solely for healing  
10          by prayer or spiritual means.

11          No facility licensed under the Supportive Residences  
12          Licensing Act or the Assisted Living and Shared Housing Act  
13          shall be subject to the provisions of this Act.

14          A facility designated as a supportive living facility that  
15          is in good standing with the program established under Section  
16          5-5.01a of the Illinois Public Aid Code shall not be subject to  
17          the provisions of this Act.

18          This Act does not apply to facilities granted waivers under  
19          Section 3-102.2 of the Nursing Home Care Act. However, if a  
20          demonstration project under that Act applies for a certificate  
21          of need to convert to a nursing facility, it shall meet the  
22          licensure and certificate of need requirements in effect as of  
23          the date of application.

24          This Act does not apply to a dialysis facility that  
25          provides only dialysis training, support, and related services  
26          to individuals with end stage renal disease who have elected to

1 receive home dialysis. This Act does not apply to a dialysis  
2 unit located in a licensed nursing home that offers or provides  
3 dialysis-related services to residents with end stage renal  
4 disease who have elected to receive home dialysis within the  
5 nursing home. The Board, however, may require these dialysis  
6 facilities and licensed nursing homes to report statistical  
7 information on a quarterly basis to the Board to be used by the  
8 Board to conduct analyses on the need for proposed kidney  
9 disease treatment centers.

10 This Act shall not apply to the closure of an entity or a  
11 portion of an entity licensed under the Nursing Home Care Act  
12 that elects to convert, in whole or in part, to an assisted  
13 living or shared housing establishment licensed under the  
14 Assisted Living and Shared Housing Act.

15 This Act does not apply to any change of ownership of a  
16 healthcare facility that is licensed under the Nursing Home  
17 Care Act. Changes of ownership of facilities licensed under the  
18 Nursing Home Care Act must meet the requirements set forth in  
19 Sections 3-101 through 3-119 of the Nursing Home Care 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

1 professional group. Further, this Act shall not apply to  
2 physicians or other licensed health care professional's  
3 practices where such practices are carried out in a portion of  
4 a health care facility under contract with such health care  
5 facility by a physician or by other licensed health care  
6 professionals, whether practicing in his individual capacity  
7 or within the legal structure of any partnership, medical or  
8 professional corporation, or unincorporated medical or  
9 professional groups. This Act shall apply to construction or  
10 modification and to establishment by such health care facility  
11 of such contracted portion which is subject to facility  
12 licensing requirements, irrespective of the party responsible  
13 for such action or attendant financial obligation.

14 "Person" means any one or more natural persons, legal  
15 entities, governmental bodies other than federal, or any  
16 combination thereof.

17 "Consumer" means any person other than a person (a) whose  
18 major occupation currently involves or whose official capacity  
19 within the last 12 months has involved the providing,  
20 administering or financing of any type of health care facility,  
21 (b) who is engaged in health research or the teaching of  
22 health, (c) who has a material financial interest in any  
23 activity which involves the providing, administering or  
24 financing of any type of health care facility, or (d) who is or  
25 ever has been a member of the immediate family of the person  
26 defined by (a), (b), or (c).

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

2 "Construction or modification" means the establishment,  
3 erection, building, alteration, reconstruction, modernization,  
4 improvement, extension, discontinuation, change of ownership,  
5 of or by a health care facility, or the purchase or acquisition  
6 by or through a health care facility of equipment or service  
7 for diagnostic or therapeutic purposes or for facility  
8 administration or operation, or any capital expenditure made by  
9 or on behalf of a health care facility which exceeds the  
10 capital expenditure minimum; however, any capital expenditure  
11 made by or on behalf of a health care facility for (i) the  
12 construction or modification of a facility licensed under the  
13 Assisted Living and Shared Housing Act or (ii) a conversion  
14 project undertaken in accordance with Section 30 of the Older  
15 Adult Services Act shall be excluded from any obligations under  
16 this Act.

17 "Establish" means the construction of a health care  
18 facility or the replacement of an existing facility on another  
19 site.

20 "Major medical equipment" means medical equipment which is  
21 used for the provision of medical and other health services and  
22 which costs in excess of the capital expenditure minimum,  
23 except that such term does not include medical equipment  
24 acquired by or on behalf of a clinical laboratory to provide  
25 clinical laboratory services if the clinical laboratory is  
26 independent of a physician's office and a hospital and it has

1 been determined under Title XVIII of the Social Security Act to  
2 meet the requirements of paragraphs (10) and (11) of Section  
3 1861(s) of such Act. In determining whether medical equipment  
4 has a value in excess of the capital expenditure minimum, the  
5 value of studies, surveys, designs, plans, working drawings,  
6 specifications, and other activities essential to the  
7 acquisition of such equipment shall be included.

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

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

1 a capital expenditure for purposes of this Act if a transfer of  
2 the equipment or facilities at fair market value would be  
3 subject to review.

4 "Capital expenditure minimum" means \$6,000,000, which  
5 shall be annually adjusted to reflect the increase in  
6 construction costs due to inflation, for major medical  
7 equipment and for all other capital expenditures; provided,  
8 however, that when a capital expenditure is for the  
9 construction or modification of a health and fitness center,  
10 "capital expenditure minimum" means the capital expenditure  
11 minimum for all other capital expenditures in effect on March  
12 1, 2000, which shall be annually adjusted to reflect the  
13 increase in construction costs due to inflation.

14 "Non-clinical service area" means an area (i) for the  
15 benefit of the patients, visitors, staff, or employees of a  
16 health care facility and (ii) not directly related to the  
17 diagnosis, treatment, or rehabilitation of persons receiving  
18 services from the health care facility. "Non-clinical service  
19 areas" include, but are not limited to, chapels; gift shops;  
20 news stands; computer systems; tunnels, walkways, and  
21 elevators; telephone systems; projects to comply with life  
22 safety codes; educational facilities; student housing;  
23 patient, employee, staff, and visitor dining areas;  
24 administration and volunteer offices; modernization of  
25 structural components (such as roof replacement and masonry  
26 work); boiler repair or replacement; vehicle maintenance and



1 storage facilities; parking facilities; mechanical systems for  
2 heating, ventilation, and air conditioning; loading docks; and  
3 repair or replacement of carpeting, tile, wall coverings,  
4 window coverings or treatments, or furniture. Solely for the  
5 purpose of this definition, "non-clinical service area" does  
6 not include health and fitness centers.

7 "Areawide" means a major area of the State delineated on a  
8 geographic, demographic, and functional basis for health  
9 planning and for health service and having within it one or  
10 more local areas for health planning and health service. The  
11 term "region", as contrasted with the term "subregion", and the  
12 word "area" may be used synonymously with the term "areawide".

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

17 "Areawide health planning organization" or "Comprehensive  
18 health planning organization" means the health systems agency  
19 designated by the Secretary, Department of Health and Human  
20 Services or any successor agency.

21 "Local health planning organization" means those local  
22 health planning organizations that are designated as such by  
23 the areawide health planning organization of the appropriate  
24 area.

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

1 "Licensed health care professional" means a person  
2 licensed to practice a health profession under pertinent  
3 licensing statutes of the State of Illinois.

4 "Director" means the Director of the Illinois Department of  
5 Public Health.

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

7 "Comprehensive health planning" means health planning  
8 concerned with the total population and all health and  
9 associated problems that affect the well-being of people and  
10 that encompasses health services, health manpower, and health  
11 facilities; and the coordination among these and with those  
12 social, economic, and environmental factors that affect  
13 health.

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

16 "Out-of-state facility" means a person that is both (i)  
17 licensed as a hospital or as an ambulatory surgery center under  
18 the laws of another state or that qualifies as a hospital or an  
19 ambulatory surgery center under regulations adopted pursuant  
20 to the Social Security Act and (ii) not licensed under the  
21 Ambulatory Surgical Treatment Center Act, the Hospital  
22 Licensing Act, or the Nursing Home Care Act. Affiliates of  
23 out-of-state facilities shall be considered out-of-state  
24 facilities. Affiliates of Illinois licensed health care  
25 facilities 100% owned by an Illinois licensed health care  
26 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 (Source: P.A. 93-41, eff. 6-27-03; 93-766, eff. 7-20-04;  
22 93-935, eff. 1-1-05; 93-1031, eff. 8-27-04; 94-342, eff.  
23 7-26-05; revised 8-21-06.)".

24 (20 ILCS 3960/14.1)

25 (Section scheduled to be repealed on April 1, 2007)

1           Sec. 14.1. Denial of permit; other sanctions.

2           (a) The State Board may deny an application for a permit or  
3 may revoke or take other action as permitted by this Act with  
4 regard to a permit as the State Board deems appropriate,  
5 including the imposition of fines as set forth in this Section,  
6 for any one or a combination of the following:

7           (1) The acquisition of major medical equipment without  
8 a permit or in violation of the terms of a permit.

9           (2) The establishment, construction, or modification  
10 of a health care facility without a permit or in violation  
11 of the terms of a permit.

12           (3) The violation of any provision of this Act or any  
13 rule adopted under this Act.

14           (4) The failure, by any person subject to this Act, to  
15 provide information requested by the State Board or Agency  
16 within 30 days after a formal written request for the  
17 information.

18           (5) The failure to pay any fine imposed under this  
19 Section within 30 days of its imposition.

20           (b) Persons shall be subject to fines as follows:

21           (1) A permit holder who fails to comply with the  
22 requirements of maintaining a valid permit shall be fined  
23 an amount not to exceed 1% of the approved permit amount  
24 plus an additional 1% of the approved permit amount for  
25 each 30-day period, or fraction thereof, that the violation

1 continues.

2 (2) A permit holder who alters the scope of an approved  
3 project or whose project costs exceed the allowable permit  
4 amount without first obtaining approval from the State  
5 Board shall be fined an amount not to exceed the sum of (i)  
6 the lesser of \$25,000 or 2% of the approved permit amount  
7 and (ii) in those cases where the approved permit amount is  
8 exceeded by more than \$1,000,000, an additional \$20,000 for  
9 each \$1,000,000, or fraction thereof, in excess of the  
10 approved permit amount.

11 (3) A person who acquires major medical equipment or  
12 who establishes a category of service without first  
13 obtaining a permit or exemption, as the case may be, shall  
14 be fined an amount not to exceed \$10,000 for each such  
15 acquisition or category of service established plus an  
16 additional \$10,000 for each 30-day period, or fraction  
17 thereof, that the violation continues.

18 (4) A person who constructs, modifies, or establishes a  
19 health care facility without first obtaining a permit shall  
20 be fined an amount not to exceed \$25,000 plus an additional  
21 \$25,000 for each 30-day period, or fraction thereof, that  
22 the violation continues.

23 (5) A person who discontinues a health care facility or  
24 a category of service without first obtaining a permit  
25 shall be fined an amount not to exceed \$10,000 plus an  
26 additional \$10,000 for each 30-day period, or fraction

1           thereof, that the violation continues. For purposes of this  
2           subparagraph (5), facilities licensed under the Nursing  
3           Home Care Act are exempt from this permit requirement.  
4           However, facilities licensed under the Nursing Home Care  
5           Act must comply with Section 3-423 of that Act (210 ILCS  
6           45/3-423) and must provide the Board with 30 days' written  
7           notice of its intent to close.

8           (6) A person subject to this Act who fails to provide  
9           information requested by the State Board or Agency within  
10          30 days of a formal written request shall be fined an  
11          amount not to exceed \$1,000 plus an additional \$1,000 for  
12          each 30-day period, or fraction thereof, that the  
13          information is not received by the State Board or Agency.

14          (c) Before imposing any fine authorized under this Section,  
15          the State Board shall afford the person or permit holder, as  
16          the case may be, an appearance before the State Board and an  
17          opportunity for a hearing before a hearing officer appointed by  
18          the State Board. The hearing shall be conducted in accordance  
19          with Section 10.

20          (d) All fines collected under this Act shall be transmitted  
21          to the State Treasurer, who shall deposit them into the  
22          Illinois Health Facilities Planning Fund.

23          (Source: P.A. 88-18.)

24          Section 99. Effective date. This Act takes effect upon  
25          becoming law.