

HB1391



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB1391

by Rep. Michael J. Madigan

SYNOPSIS AS INTRODUCED:

225 ILCS 47/20

Amends the Health Care Worker Self-Referral Act. Makes a technical change in a Section concerning prohibited referrals and claims for payment.

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A BILL FOR

1 AN ACT concerning 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 shall not refer a patient for
9 health services to an entity outside the ~~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 referred
14 patient.

15 (b) Pursuant to Board determination that the following
16 exception is applicable, a health care worker may invest in and
17 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 of

1 existing facilities is onerous or creates too great a hardship
2 for patients, (3) the entity is formed to own or lease medical
3 equipment which replaces obsolete or otherwise inadequate
4 equipment in or under the control of a hospital located in a
5 federally designated health manpower shortage area, or (4) such
6 other standards as established, by rule, by the Board.
7 "Community" shall be defined as a metropolitan area for a city,
8 and a county for a rural area. In addition, the following
9 provisions must be met to be exempt under this Section:

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

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

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

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

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

1 (6) Any investment contract between the entity and the
2 health care worker shall not include any covenant or
3 non-competition clause that prevents a health care worker
4 from investing in other entities; and

5 (7) When making a referral, a health care worker must
6 disclose his investment interest in an entity to the
7 patient being referred to such entity. If alternative
8 facilities are reasonably available, the health care
9 worker must provide the patient with a list of alternative
10 facilities. The health care worker shall inform the patient
11 that they have the option to use an alternative facility
12 other than one in which the health care worker has an
13 investment interest and the patient will not be treated
14 differently by the health care worker if the patient
15 chooses to use another entity. This shall be applicable to
16 all health care worker investors, including those who
17 provide direct care or services for their patients in
18 entities outside their office practices; and

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

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

25 (10) If a health care worker's financial interest in an
26 entity is incompatible with a referred patient's interest,

1 the health care worker shall make alternative arrangements
2 for the patient's care.

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

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

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

17 (2) the entity had, at the end of the corporation's
18 most recent fiscal year, total net assets of at least
19 \$30,000,000 related to the furnishing of health services;
20 and

21 (3) any investment interest obtained after the
22 effective date of this Act is traded on the exchanges
23 listed in paragraph 1 of subsection (c) of this Section
24 after the entity became a publicly traded corporation; and

25 (4) the entity markets or furnishes its services to
26 referring health care worker investors and other health

1 care workers on equal terms; and

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

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

9 (7) the income on the health care worker's investment
10 is tied to the health care worker's equity in the entity
11 rather than to the volume of referrals made; and

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

14 (d) Any hospital licensed under the Hospital Licensing Act
15 shall not discriminate against or otherwise penalize a health
16 care worker for compliance with this Act.

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

24 (f) If compliance with the need and alternative investor
25 criteria is not practical, the health care worker shall
26 identify to the patient reasonably available alternative

1 facilities. The Board shall, by rule, designate when compliance
2 is "not practical".

3 (g) Health care workers may request from the Board that it
4 render an advisory opinion that a referral to an existing or
5 proposed entity under specified circumstances does or does not
6 violate the provisions of this Act. The Board's opinion shall
7 be presumptively correct. Failure to render such an advisory
8 opinion within 90 days of a completed written request pursuant
9 to this Section shall create a rebuttable presumption that a
10 referral described in the completed written request is not or
11 will not be a violation of this Act.

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

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