



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/05/04, by Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

210 ILCS 85/10.4
210 ILCS 85/10.8

from Ch. 111 1/2, par. 151.4

Amends the Hospital Licensing Act. Requires the Hospital Licensing Board to submit annual (instead of periodic) reports relating to the effects that hospital staff membership and clinical privilege decisions based on economic factors have on access to care. Requires that physicians be provided an opportunity to inspect and copy credentialing and other information, and authorizes a physician to use such information in any proceeding concerning medical staff membership or clinical privileges.

LRB093 14821 DRJ 46415 b

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 Hospital Licensing Act is amended by
5 changing Sections 10.4 and 10.8 as follows:

6 (210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

7 Sec. 10.4. Medical staff privileges.

8 (a) Any hospital licensed under this Act or any hospital
9 organized under the University of Illinois Hospital Act shall,
10 prior to the granting of any medical staff privileges to an
11 applicant, or renewing a current medical staff member's
12 privileges, request of the Director of Professional Regulation
13 information concerning the licensure status and any
14 disciplinary action taken against the applicant's or medical
15 staff member's license, except for medical personnel who enter
16 a hospital to obtain organs and tissues for transplant from a
17 deceased donor in accordance with the Uniform Anatomical Gift
18 Act. The Director of Professional Regulation shall transmit, in
19 writing and in a timely fashion, such information regarding the
20 license of the applicant or the medical staff member, including
21 the record of imposition of any periods of supervision or
22 monitoring as a result of alcohol or substance abuse, as
23 provided by Section 23 of the Medical Practice Act of 1987, and
24 such information as may have been submitted to the Department
25 indicating that the application or medical staff member has
26 been denied, or has surrendered, medical staff privileges at a
27 hospital licensed under this Act, or any equivalent facility in
28 another state or territory of the United States. The Director
29 of Professional Regulation shall define by rule the period for
30 timely response to such requests.

31 No transmittal of information by the Director of
32 Professional Regulation, under this Section shall be to other

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

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

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

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

27 (B) Written procedures to be followed in
28 determining a pre-applicant's or an applicant's
29 qualifications for being granted medical staff
30 membership and privileges.

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

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

36 (E) A written response to each pre-applicant or

1 applicant that explains the reason or reasons for any
2 adverse decision (including all reasons based in whole
3 or in part on the applicant's medical qualifications or
4 any other basis, including economic factors).

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

8 (A) A written notice of an adverse decision.

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

13 (C) A statement of the medical staff member's right
14 to request a fair hearing on the adverse decision
15 before a hearing panel whose membership is mutually
16 agreed upon by the medical staff and the hospital
17 governing board. The hearing panel shall have
18 independent authority to recommend action to the
19 hospital governing board. Upon the request of the
20 medical staff member or the hospital governing board,
21 the hearing panel shall make findings concerning the
22 nature of each basis for any adverse decision
23 recommended to and accepted by the hospital governing
24 board.

25 (i) Nothing in this subparagraph (C) limits a
26 hospital's or medical staff's right to summarily
27 suspend, without a prior hearing, a person's
28 medical staff membership or clinical privileges if
29 the continuation of practice of a medical staff
30 member constitutes an immediate danger to the
31 public, including patients, visitors, and hospital
32 employees and staff. A fair hearing shall be
33 commenced within 15 days after the suspension and
34 completed without delay.

35 (ii) Nothing in this subparagraph (C) limits a
36 medical staff's right to permit, in the medical

1 staff bylaws, summary suspension of membership or
2 clinical privileges in designated administrative
3 circumstances as specifically approved by the
4 medical staff. This bylaw provision must
5 specifically describe both the administrative
6 circumstance that can result in a summary
7 suspension and the length of the summary
8 suspension. The opportunity for a fair hearing is
9 required for any administrative summary
10 suspension. Any requested hearing must be
11 commenced within 15 days after the summary
12 suspension and completed without delay. Adverse
13 decisions other than suspension or other
14 restrictions on the treatment or admission of
15 patients may be imposed summarily and without a
16 hearing under designated administrative
17 circumstances as specifically provided for in the
18 medical staff bylaws as approved by the medical
19 staff.

20 (iii) If a hospital exercises its option to
21 enter into an exclusive contract and that contract
22 results in the total or partial termination or
23 reduction of medical staff membership or clinical
24 privileges of a current medical staff member, the
25 hospital shall provide the affected medical staff
26 member 60 days prior notice of the effect on his or
27 her medical staff membership or privileges. An
28 affected medical staff member desiring a hearing
29 under subparagraph (C) of this paragraph (2) must
30 request the hearing within 14 days after the date
31 he or she is so notified. The requested hearing
32 shall be commenced and completed (with a report and
33 recommendation to the affected medical staff
34 member, hospital governing board, and medical
35 staff) within 30 days after the date of the medical
36 staff member's request. If agreed upon by both the

1 medical staff and the hospital governing board,
2 the medical staff bylaws may provide for longer
3 time periods.

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

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

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

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

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

23 (H) Nothing in this paragraph (2) of this
24 subsection (b) limits a medical staff member's right to
25 waive, in writing, the rights provided in
26 subparagraphs (A) through (G) of this paragraph (2) of
27 this subsection (b) upon being granted the written
28 exclusive right to provide particular services at a
29 hospital, either individually or as a member of a
30 group. If an exclusive contract is signed by a
31 representative of a group of physicians, a waiver
32 contained in the contract shall apply to all members of
33 the group unless stated otherwise in the contract.

34 (3) Every adverse medical staff membership and
35 clinical privilege decision based substantially on
36 economic factors shall be reported to the Hospital

1 Licensing Board before the decision takes effect. These
2 reports shall not be disclosed in any form that reveals the
3 identity of any hospital or physician. These reports shall
4 be utilized to study the effects that hospital medical
5 staff membership and clinical privilege decisions based
6 upon economic factors have on access to care and the
7 availability of physician services. The Hospital Licensing
8 Board shall submit an annual ~~initial~~ study to the Governor
9 and the General Assembly by January 1 of each year, 1996,
10 ~~and subsequent reports shall be submitted periodically~~
11 ~~thereafter.~~

12 (4) As used in this Section:

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

16 "Economic factor" means any information or reasons for
17 decisions unrelated to quality of care or professional
18 competency.

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

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

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

33 (6) Every physician licensed to practice medicine in
34 all its branches shall be provided the opportunity to
35 inspect and copy all credentialing and other information,
36 including, but not limited to, credentialing files and

1 patient medical records, in the hospital's possession with
2 respect to any medical staff membership or clinical
3 privileges decision. This information may be used by the
4 physician in any proceeding concerning medical staff
5 membership or clinical privileges.

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

16 (Source: P.A. 90-14, eff. 7-1-97; 90-149, eff. 1-1-98; 90-655,
17 eff. 7-30-98; 91-166, eff. 1-1-00.)

18 (210 ILCS 85/10.8)

19 Sec. 10.8. Requirements for employment of physicians.

20 (a) Physician employment by hospitals and hospital
21 affiliates. Employing entities may employ physicians to
22 practice medicine in all of its branches provided that the
23 following requirements are met:

24 (1) The employed physician is a member of the medical
25 staff of either the hospital or hospital affiliate. If a
26 hospital affiliate decides to have a medical staff, its
27 medical staff shall be organized in accordance with written
28 bylaws where the affiliate medical staff is responsible for
29 making recommendations to the governing body of the
30 affiliate regarding all quality assurance activities and
31 safeguarding professional autonomy. The affiliate medical
32 staff bylaws may not be unilaterally changed by the
33 governing body of the affiliate. Nothing in this Section
34 requires hospital affiliates to have a medical staff.

35 (2) Independent physicians, who are not employed by an

1 employing entity, periodically review the quality of the
2 medical services provided by the employed physician to
3 continuously improve patient care.

4 (3) The employing entity and the employed physician
5 sign a statement acknowledging that the employer shall not
6 unreasonably exercise control, direct, or interfere with
7 the employed physician's exercise and execution of his or
8 her professional judgment in a manner that adversely
9 affects the employed physician's ability to provide
10 quality care to patients. This signed statement shall take
11 the form of a provision in the physician's employment
12 contract or a separate signed document from the employing
13 entity to the employed physician. This statement shall
14 state: "As the employer of a physician, (employer's name)
15 shall not unreasonably exercise control, direct, or
16 interfere with the employed physician's exercise and
17 execution of his or her professional judgment in a manner
18 that adversely affects the employed physician's ability to
19 provide quality care to patients."

20 (4) The employing entity shall establish a mutually
21 agreed upon independent review process with criteria under
22 which an employed physician may seek review of the alleged
23 violation of this Section by physicians who are not
24 employed by the employing entity. The affiliate may arrange
25 with the hospital medical staff to conduct these reviews.
26 The independent physicians shall make findings and
27 recommendations to the employing entity and the employed
28 physician within 30 days of the conclusion of the gathering
29 of the relevant information.

30 (b) Definitions. For the purpose of this Section:

31 "Employing entity" means a hospital licensed under the
32 Hospital Licensing Act or a hospital affiliate.

33 "Employed physician" means a physician who receives an IRS
34 W-2 form, or any successor federal income tax form, from an
35 employing entity.

36 "Hospital" means a hospital licensed under the Hospital

1 Licensing Act, except county hospitals as defined in subsection
2 (c) of Section 15-1 of the Public Aid Code.

3 "Hospital affiliate" means a corporation, partnership,
4 joint venture, limited liability company, or similar
5 organization, other than a hospital, that is devoted primarily
6 to the provision, management, or support of health care
7 services and that directly or indirectly controls, is
8 controlled by, or is under common control of the hospital.
9 "Control" means having at least an equal or a majority
10 ownership or membership interest. A hospital affiliate shall be
11 100% owned or controlled by any combination of hospitals, their
12 parent corporations, or physicians licensed to practice
13 medicine in all its branches in Illinois. "Hospital affiliate"
14 does not include a health maintenance organization regulated
15 under the Health Maintenance Organization Act.

16 "Physician" means an individual licensed to practice
17 medicine in all its branches in Illinois.

18 "Professional judgment" means the exercise of a
19 physician's independent clinical judgment in providing
20 medically appropriate diagnoses, care, and treatment to a
21 particular patient at a particular time. Situations in which an
22 employing entity does not interfere with an employed
23 physician's professional judgment include, without limitation,
24 the following:

25 (1) practice restrictions based upon peer review of the
26 physician's clinical practice to assess quality of care and
27 utilization of resources in accordance with applicable
28 bylaws;

29 (2) supervision of physicians by appropriately
30 licensed medical directors, medical school faculty,
31 department chairpersons or directors, or supervising
32 physicians;

33 (3) written statements of ethical or religious
34 directives; and

35 (4) reasonable referral restrictions that do not, in
36 the reasonable professional judgment of the physician,

1 adversely affect the health or welfare of the patient.

2 (c) Private enforcement. An employed physician aggrieved
3 by a violation of this Act may seek to obtain an injunction or
4 reinstatement of employment with the employing entity as the
5 court may deem appropriate. Nothing in this Section limits or
6 abrogates any common law cause of action. Nothing in this
7 Section shall be deemed to alter the law of negligence.

8 (d) Department enforcement. The Department may enforce the
9 provisions of this Section, but nothing in this Section shall
10 require or permit the Department to license, certify, or
11 otherwise investigate the activities of a hospital affiliate
12 not otherwise required to be licensed by the Department.

13 (e) Retaliation prohibited. No employing entity shall
14 retaliate against any employed physician for requesting a
15 hearing or review under this Section. No action may be taken
16 that affects the ability of a physician to practice during this
17 review, except in circumstances where the medical staff bylaws
18 authorize summary suspension.

19 (f) Physician collaboration. No employing entity shall
20 adopt or enforce, either formally or informally, any policy,
21 rule, regulation, or practice inconsistent with the provision
22 of adequate collaboration, including medical direction of
23 licensed advanced practice nurses or supervision of licensed
24 physician assistants and delegation to other personnel under
25 Section 54.5 of the Medical Practice Act of 1987.

26 (g) Physician disciplinary actions. Nothing in this
27 Section shall be construed to limit or prohibit the governing
28 body of an employing entity or its medical staff, if any, from
29 taking disciplinary actions against a physician as permitted by
30 law.

31 (h) Physician review. Nothing in this Section shall be
32 construed to prohibit a hospital or hospital affiliate from
33 making a determination not to pay for a particular health care
34 service or to prohibit a medical group, independent practice
35 association, hospital medical staff, or hospital governing
36 body from enforcing reasonable peer review or utilization

1 review protocols or determining whether the employed physician
2 complied with those protocols.

3 (i) Review. Nothing in this Section may be used or
4 construed to establish that any activity of a hospital or
5 hospital affiliate is subject to review under the Illinois
6 Health Facilities Planning Act.

7 (i-5) Every physician licensed to practice medicine in all
8 its branches shall be provided the opportunity to inspect and
9 copy all credentialing and other information, including, but
10 not limited to, credentialing files and patient medical
11 records, in the employing entity's possession with respect to
12 any medical staff membership or clinical privileges decision.
13 This information may be used by the physician in any proceeding
14 concerning medical staff membership or clinical privileges.

15 (j) Rules. The Department shall adopt any rules necessary
16 to implement this Section.

17 (Source: P.A. 92-455, eff. 9-30-01.)