



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1885

Introduced 2/23/2007, by Rep. Michael P. McAuliffe

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.675 new

Creates the Retail Health Care Facility Permit Act and amends the State Finance Act. Defines "retail health care facility" as any institution, place, or building, or any portion thereof, devoted to the maintenance and operation of facilities for the performance of health care services and located within a retail store or pharmacy; requires a permit for the operation of such a facility, issued by the Department of Public Health, and sets forth requirements for obtaining a permit. Sets forth operating requirements for a retail health care facility. Provides for denial, suspension, revocation, or nonrenewal of a permit for certain reasons. Provides for monetary penalties for violations of the Act. Restricts advertising by a retail health care facility. Creates the Retail Health Care Facility Permit Fund, to be used by the Department in administering the Act. Effective July 1, 2007.

LRB095 08479 DRJ 31078 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

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 1. Short title. This Act may be cited as the Retail  
5 Health Care Facility Permit Act.

6 Section 5. Legislative purpose. It is declared to be the  
7 public policy that the State has a legitimate interest in  
8 assuring that health care services are performed under  
9 circumstances that ensure maximum safety. Therefore, the  
10 purpose of this Act is to provide for the better protection of  
11 the public health through the development, establishment, and  
12 enforcement of standards (i) for the care of individuals in  
13 retail health care facilities and (ii) for the construction,  
14 maintenance, and operation of retail health care facilities,  
15 which, in light of advancing knowledge, will promote safe and  
16 adequate treatment of individuals in retail health care  
17 facilities.

18 Section 10. Definitions. In this Act:

19 "Department" means the Illinois Department of Public  
20 Health or other health authority designated as its agent.

21 "Director" means the Director of Public Health or his or  
22 her designee.

1 "Operator" means the person designated by a permit holder  
2 to operate the facility.

3 "Retail health care facility" or "facility" means any  
4 institution, place, or building, or any portion thereof,  
5 devoted to the maintenance and operation of facilities for the  
6 performance of health care services and located within a retail  
7 store or pharmacy. The facility may not provide surgical  
8 services or any form of general anesthesia. Such facility shall  
9 not provide beds or other accommodations for either long term  
10 or overnight stay of patients, and individual patients shall be  
11 discharged in an ambulatory condition without danger to the  
12 continued well-being of the patients or shall be transferred to  
13 a hospital. Hospitals, long term care facilities, ambulatory  
14 treatment centers, blood banks, clinical laboratories, and  
15 offices of physicians, advanced practices nurses, and  
16 physician assistants as well as pharmacies that provide  
17 pharmaceutical services, are not to be construed to be retail  
18 health care facilities.

19 Section 15. Permit; fees; application.

20 (a) A permit issued by the Department shall be required  
21 prior to the operation of any facility. The owner of the  
22 facility shall file an application for a permit with the  
23 Department on a form prescribed by the Department that shall  
24 include at least the following information:

25 (1) Applicant's (owner) name, address, telephone

1 number.

2 (2) Name of the facility, address telephone number.

3 (3) Nature of services to be provided at the facility.

4 (4) Primary function of the business in which the  
5 facility is located.

6 (5) Operating procedures to be used in the facility.

7 (b) A fee of \$2,500 shall be submitted with the application  
8 to the Department.

9 (c) If the owner owns or operates more than one facility,  
10 the owner shall file a separate application for each facility  
11 owned or operated.

12 (d) Within 90 days after receipt of an application, the  
13 Department's personnel shall complete the initial inspection  
14 of the premises of the facility and ensure that the premises  
15 and the facilities are or will be operated in accordance with  
16 this Act.

17 (e) Upon submission of the application and the required  
18 fee, and if the initial inspection of the premises indicates  
19 that the premises and the facilities are or will be operated in  
20 accordance with this Act, the Department shall issue a permit  
21 to the owner.

22 (f) The permit issued by the Department shall be effective  
23 for one year following the date of issuance. The Department may  
24 stagger permit renewal dates on a quarterly basis with an  
25 initial permit being effective from 9 months to 15 months. The  
26 permit is valid only for the location and owner stated on the

1 permit and is not transferable.

2 (g) The permit shall be displayed in a place within sight  
3 of the public when entering the premises of the facility.

4 (h) In the event of a change of ownership, the new owner  
5 must apply for a permit to own and operate a facility prior to  
6 taking possession of the property. A provisional permit may be  
7 issued by the Department until an initial inspection for a  
8 permit can be performed by the Department.

9 Section 20. Permit renewal procedures; inspections.

10 (a) All permits issued by the Department under this Act  
11 shall expire on a specified date and may be renewed by  
12 submitting to the Department, at least 30 days before the  
13 expiration date, a permit renewal application and the annual  
14 renewal fee of \$1,250.

15 (b) The Department may refuse to renew the permit of any  
16 owner who has been found to be in violation of this Act for the  
17 safe operation of facilities.

18 (c) Each facility shall be inspected at least once each  
19 year after the initial year in which the facility was granted a  
20 permit.

21 Section 25. Requirements for a permit.

22 (a) All retail health care facilities shall have policies  
23 that ensure the following:

24 (1) All health care services provided must be in

1           accordance with a limited scope of services as determined  
2           by the facilities' medical director and approved by the  
3           Department.

4           (2) No health care services may be provided unless a  
5           physician licensed to practice medicine in all its  
6           branches, an advanced practice nurse, or a physician  
7           assistant is on the premises at the time the services are  
8           provided.

9           (3) All health care services provided by an advanced  
10          practice nurse (APN) shall be in accordance with the APN's  
11          collaborative agreement with a physician as required by  
12          Section 25 of the Nursing and Advanced Practice Nursing  
13          Act. A copy of the collaborative agreement shall be  
14          maintained at the facility. No physician may collaborate  
15          with more than 2 advanced practice nurses practicing in  
16          retail health care facilities. All health care services  
17          provided by a physician assistant (PA) shall be in  
18          accordance with the written guidelines established by the  
19          supervising physician or physician/physician assistant  
20          team as required by Section 4 of the Physician Assistant  
21          Practice Act of 1987. A copy of the written guidelines  
22          shall be maintained at the facility.

23          (4) The facility must have a medical director who is a  
24          physician licensed to practice medicine in all its branches  
25          with active medical staff privileges to admit patients to a  
26          local licensed hospital. A physician may be a medical

1 director of no more than 2 facilities.

2 (5) The facility must have a referral system to  
3 physician practices or other health care entities  
4 appropriate to the patient's symptoms outside the limited  
5 scope of services provided by the facility.

6 (6) Collaboration of APNs or supervision of PAs shall  
7 not be construed to necessarily require the presence of a  
8 collaborating or supervising physician as long as methods  
9 of communication are available for consultation with the  
10 physician in person or by telecommunications in accordance  
11 with written protocols.

12 (7) The facility shall maintain medical records for all  
13 patients for the period required of a licensed hospital  
14 under the Hospital Licensing Act.

15 (8) The facility shall provide notification of any  
16 patient visits and outcomes to the patient's designated  
17 physician.

18 (9) Patients must be provided the opportunity to  
19 purchase any medications, fill any prescriptions, or seek  
20 any services from any provider not affiliated with the  
21 facility or the store or pharmacy in which it is located.

22 (b) All facility policies must meet the requirements of  
23 this Act and the rules adopted under this Act.

24 Section 30. Standards for issuance of permit. The Director  
25 shall issue a permit under this Act only if he or she finds

1 that the applicant complies with this Act and the rules and  
2 regulations adopted pursuant thereto and (i) is under the  
3 medical direction of one or more physicians and (ii) permits  
4 only a limited scope of covered services.

5 Section 35. Operating requirements. Each facility shall  
6 have on hand at all times an operator adequately trained in the  
7 correct operation of the facility. The facility shall comply  
8 with the requirements of Section 25 of this Act and the  
9 following:

10 (1) The facility must be operated by a physician  
11 licensed to practice medicine in all its branches, an  
12 advanced practice nurse, or physician assistant.

13 (2) Every personnel member shall wear on his or her  
14 person a clearly visible identification indicating his or  
15 her professional licensure status while acting in the  
16 course of his or her duties. The facility must clearly  
17 display a notice informing potential patients when a  
18 physician is not on the premises.

19 (3) The facility shall establish appropriate  
20 sanitation and hygienic protocols and facilities,  
21 including but not limited to refrigeration, hazardous  
22 waste disposal, separate restrooms, and handwashing  
23 stations with running hot water, as determined by rule.

24 (4) The facility shall operate under written protocols  
25 approved by the medical director and the advanced practice



1 nurses or the physician assistants providing services at  
2 the facility.

3 Section 40. Department standards; rules; regulations. The  
4 Department shall issues rules and regulations deemed necessary  
5 for the proper regulation of retail health care facilities. At  
6 a minimum, the rules and regulations shall include, but need  
7 not be limited to:

8 (1) Construction of the facility, including, but not  
9 limited to, plumbing, heating, lighting, and ventilation  
10 that will ensure the health, safety, comfort, and privacy  
11 of patients and protection from fire hazards.

12 (2) Number and qualifications of all personnel,  
13 including administrative and nursing personnel, having  
14 responsibility for any part of the care provided to the  
15 patients.

16 (3) Equipment essential to the health, welfare, and  
17 safety of the patients.

18 (4) Facilities, programs, and services to be provided  
19 in connection with the care of patients in the facility.

20 Section 45. Denial, suspension, revocation, or nonrenewal  
21 of permits. A permit may be denied, suspended, or revoked, or  
22 the renewal of a permit may be denied, for any of the following  
23 reasons:

24 (1) Violation of any of the provisions of this Act or

1 the rules and regulations adopted by the Department  
2 hereunder.

3 (2) Conviction of an applicant or permit holder of an  
4 offense arising from false, fraudulent, deceptive, or  
5 misleading advertising. The record of conviction or a  
6 certified copy shall be conclusive evidence of the  
7 conviction.

8 (3) Revocation of a permit during the previous 5 years,  
9 or surrender or expiration of a permit during the pendency  
10 of an action by the Department to revoke or suspend a  
11 permit during the previous 5 years. A controlling owner or  
12 controlling combination of owners of the applicant; or any  
13 affiliate of the individual applicant or controlling owner  
14 of the applicant or affiliate of the applicant was a  
15 controlling owner of the prior permit.

16 Section 50. Administration; enforcement.

17 (a) The Department may establish a training program for the  
18 Department's agents for administration and enforcement of this  
19 Act.

20 (b) In the administration and enforcement of this Act, the  
21 Department may designate and use full-time municipal,  
22 district, county, or multi-county health departments as its  
23 agents in the administration and enforcement of this Act and  
24 the rules adopted under this Act.

1 Section 55. Investigation; hearing; notice. The Department  
2 may investigate an applicant or permit holder upon its own  
3 motion, and shall investigate an applicant or permit holder  
4 upon the verified complaint in writing of any person setting  
5 forth facts that if proven would constitute grounds for the  
6 denial of an application for a permit, or refusal to renew a  
7 permit, or revocation of a permit, or suspension of a permit.  
8 The Department, after notice and opportunity for hearing, may  
9 deny any application for, or suspend or revoke, a permit or may  
10 refuse to renew a permit. Before denying an application, or  
11 refusing to renew a permit or suspending or revoking a permit,  
12 the Department shall notify the applicant in writing. The  
13 notice shall specify the reasons for the Department's  
14 contemplated action. The applicant or permit holder must  
15 request a hearing within 10 days after receipt of the notice.  
16 Failure to request a hearing within 10 days shall constitute a  
17 waiver of the right to a hearing.

18 Section 60. Conduct of hearing.

19 (a) The hearing shall be conducted by the Director or by an  
20 individual designated in writing by the Director as a hearing  
21 officer. The Director or hearing officer may compel by subpoena  
22 or subpoena duces tecum the attendance and testimony of  
23 witnesses and the production of books and papers and may  
24 administer oaths to witnesses. The hearing shall be conducted  
25 at a place designated by the Department. The procedures

1 governing hearings and the issuance of final orders under this  
2 Act shall be in accordance with rules adopted by the  
3 Department.

4 (b) All subpoenas issued by the Director or hearing officer  
5 may be served as provided for in civil actions. The fees of  
6 witnesses for attendance and travel shall be the same as the  
7 fees for witnesses before the circuit court and shall be paid  
8 by the party to the proceeding at whose request the subpoena is  
9 issued. If a subpoena is issued at the request of the  
10 Department, the witness fee shall be paid as an administrative  
11 expense.

12 (c) In cases of refusal of a witness to attend or testify,  
13 or to produce books or papers, concerning any matter upon which  
14 he or she might be lawfully examined, the circuit court of the  
15 county in which the hearing is held, upon application of any  
16 party to the proceeding, may compel obedience by proceeding as  
17 for contempt as in cases of a like refusal to obey a similar  
18 order of the court.

19 Section 65. Findings of fact; conclusions of law; decision.  
20 The Director or hearing officer shall make findings of fact and  
21 conclusions of law following the hearing, and the Director  
22 shall render his or her decision, or the hearing officer his or  
23 her proposal for decision, within 45 days after the termination  
24 of the hearing unless additional time is required by the  
25 Director or hearing officer for a proper disposition of the

1 matter. A copy of the final decision of the Director shall be  
2 served upon the applicant or permit holder in person or by  
3 certified mail.

4 Section 70. Surrender of permit. Upon the revocation of a  
5 permit, a permit holder shall be required to surrender the  
6 permit to the Department, and upon his failure or refusal to do  
7 so, the Department shall have the right to seize the same.

8 Section 75. Review under Administrative Review law; venue;  
9 costs. All final administrative decisions of the Department  
10 under this Act shall be subject to judicial review under the  
11 provisions of Article III of the Code of Civil Procedure. The  
12 term "administrative decision" is defined as under Section  
13 3-101 of the Code of Civil Procedure. Proceedings for judicial  
14 review shall be commenced in the circuit court of the county in  
15 which the party applying for review resides; provided, that if  
16 the party is not a resident of this State, the venue shall be  
17 in Sangamon County. The Department shall not be required to  
18 certify any record or file any answer or otherwise appear in  
19 any proceeding for judicial review unless the party filing the  
20 complaint deposits with the clerk of the court the sum of \$0.95  
21 per page, representing the costs of certification of the record  
22 or file. Failure on the part of the plaintiff to make the  
23 deposit shall be grounds for dismissal of the action.

1           Section 80. Administrative Procedure Act; application. The  
2 provisions of the Illinois Administrative Procedure Act are  
3 hereby expressly adopted and shall apply to all administrative  
4 rules and procedures of the Department under this Act, except  
5 that in the case of a conflict between the Illinois  
6 Administrative Procedure Act and this Act, the provisions of  
7 this Act shall control, and except that Section 5 of the  
8 Illinois Administrative Procedure Act relating to procedures  
9 for rulemaking does not apply to the adoption of any rules  
10 required by federal law in connection with which the Department  
11 is precluded by law from exercising any discretion.

12           Section 85. Penalties. The Department may establish and  
13 assess civil monetary penalties against a permit holder for  
14 violations of this Act or regulations adopted under this Act.  
15 In no circumstance may any such penalty exceed \$1,000 per day  
16 for each day the permit holder remains in violation.

17           Section 90. Public nuisance.

18           (a) Any facility operating without a valid permit or  
19 operating on a revoked permit is guilty of committing a public  
20 nuisance.

21           (b) A person convicted of knowingly maintaining a public  
22 nuisance under this Section commits a Class A misdemeanor. Each  
23 subsequent offense under this Section is a Class 4 felony.

24           (c) The Attorney General of this State or the State's

1 Attorney of the county in which the nuisance exists may  
2 commence an action to abate the nuisance. The court, without  
3 notice or bond, may enter a temporary restraining order or a  
4 preliminary injunction to enjoin the defendant from operating  
5 in violation of this Act.

6 Section 95. Advertising.

7 (a) Any facility may advertise the availability of  
8 professional services in the public media or on the premises  
9 where such professional services are rendered. Such  
10 advertising shall be limited to the following information:

11 (1) Publication of the facility's name, office hours,  
12 address, and telephone number.

13 (2) Information pertaining to the professionals  
14 providing services at the facility.

15 (3) Information on usual and customary fees for routine  
16 professional services offered.

17 (4) Announcement of the opening of, change of, absence  
18 from, or return to business.

19 (5) Announcement of additions to or deletions from  
20 professional licensed staff.

21 (6) The issuance of business or appointment cards.

22 (b) It is unlawful for any facility licensed under this Act  
23 to use testimonials or claims of superior quality of care to  
24 entice the public. It is unlawful to advertise fee comparisons  
25 of available services with those of other persons licensed

1 under this Act or any other Illinois law.

2 (c) This Act does not authorize the advertising of  
3 professional services that a facility is not licensed to  
4 render, nor shall an advertiser use statements that contain  
5 false, fraudulent, deceptive, or misleading material or  
6 guarantees of success, statements that play upon the vanity or  
7 fears of the public, or statements that promote or produce  
8 unfair competition.

9 (d) It is unlawful and punishable under Section 85 for any  
10 facility licensed under this Act to knowingly advertise that  
11 the facility will accept as payment for services rendered by  
12 assignment from any third party payor the amount the third  
13 party payor covers as payment in full, if the effect is to give  
14 the impression of eliminating the need of payment by the  
15 patient of any required deductible or copayment applicable in  
16 the patient's health benefit plan.

17 (e) As used in this Section, "advertise" means solicitation  
18 by the permit holder or through another by means of handbills,  
19 posters, circulars, motion pictures, radio, newspapers,  
20 television, the Internet, or the World Wide Web, or in any  
21 other manner.

22 Section 100. Retail Health Care Facility Permit Fund. There  
23 is created in the State Treasury a special fund to be known as  
24 the Retail Health Care Facility Permit Fund. All fees and  
25 penalties collected by the Department under this Act, and any



1 federal funds collected pursuant to the administration of this  
2 Act, shall be deposited into the Fund. The amount deposited  
3 shall be appropriated by the General Assembly to the Department  
4 for the purpose of conducting activities relating to retail  
5 health care facilities under this Act.

6 Section 190. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 900. The State Finance Act is amended by adding  
9 Section 5.675 as follows:

10 (30 ILCS 105/5.675 new)

11 Sec. 5.675. The Retail Health Care Facility Permit Fund.

12 Section 999. Effective date. This Act takes effect July 1,  
13 2007.