



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3133

by Rep. William Davis

SYNOPSIS AS INTRODUCED:

20 ILCS 3960/6.2
20 ILCS 3960/12
20 ILCS 3960/14.1

from Ch. 111 1/2, par. 1162

Amends the Illinois Health Facilities Planning Act. Removes a provision requiring the State Board to prescribe and provide the forms upon which the State Board Staff Report shall be made. Provides that the State Board shall provide its rationale when voting on an item before it at a meeting in order to comply with the Code of Civil Procedure. Requires the transcript of the meeting to be incorporated into the Board's final decision. Provides that the State Board may require in-kind services instead of or in combination with the imposition of a fine. Limits this authorization to cases where the non-compliant individual or entity has waived the right to an administrative hearing or opportunity to appear before the Board. Provides that fines shall continue to accrue until the date that the matter is referred by the State Board to the Board's legal counsel. Effective immediately.

LRB099 09158 JLK 29356 b

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 6.2, 12, and 14.1 as follows:

6 (20 ILCS 3960/6.2)

7 (Section scheduled to be repealed on December 31, 2019)

8 Sec. 6.2. Review of permits; State Board Staff Reports.

9 Upon receipt of an application for a permit to establish,
10 construct, or modify a health care facility, the State Board
11 staff shall notify the applicant in writing within 10 working
12 days either that the application is or is not complete. If the
13 application is complete, the State Board staff shall notify the
14 applicant of the beginning of the review process. If the
15 application is not complete, the Board staff shall explain
16 within the 10-day period why the application is incomplete.

17 The State Board staff shall afford a reasonable amount of
18 time as established by the State Board, but not to exceed 120
19 days, for the review of the application. The 120-day period
20 begins on the day the application is found to be substantially
21 complete, as that term is defined by the State Board. During
22 the 120-day period, the applicant may request an extension. An
23 applicant may modify the application at any time before a final

1 administrative decision has been made on the application.

2 ~~The State Board shall prescribe and provide the forms upon~~
3 ~~which the State Board Staff Report shall be made.~~ The State
4 Board staff shall submit its State Board Staff Report to the
5 State Board for its decision-making regarding approval or
6 denial of the permit.

7 When an application for a permit is initially reviewed by
8 State Board staff, as provided in this Section, the State Board
9 shall, upon request by the applicant or an interested person,
10 afford an opportunity for a public hearing within a reasonable
11 amount of time after receipt of the complete application, but
12 not to exceed 90 days after receipt of the complete
13 application. Notice of the hearing shall be made promptly, not
14 less than 10 days before the hearing, by certified mail to the
15 applicant and, not less than 10 days before the hearing, by
16 publication in a newspaper of general circulation in the area
17 or community to be affected. The hearing shall be held in the
18 area or community in which the proposed project is to be
19 located and shall be for the purpose of allowing the applicant
20 and any interested person to present public testimony
21 concerning the approval, denial, renewal, or revocation of the
22 permit. All interested persons attending the hearing shall be
23 given a reasonable opportunity to present their views or
24 arguments in writing or orally, and a record of all of the
25 testimony shall accompany any findings of the State Board
26 staff. The State Board shall adopt reasonable rules and

1 regulations governing the procedure and conduct of the
2 hearings.

3 (Source: P.A. 97-1115, eff. 8-27-12; 98-1086, eff. 8-26-14.)

4 (20 ILCS 3960/12) (from Ch. 111 1/2, par. 1162)

5 (Section scheduled to be repealed on December 31, 2019)

6 Sec. 12. Powers and duties of State Board. For purposes of
7 this Act, the State Board shall exercise the following powers
8 and duties:

9 (1) Prescribe rules, regulations, standards, criteria,
10 procedures or reviews which may vary according to the purpose
11 for which a particular review is being conducted or the type of
12 project reviewed and which are required to carry out the
13 provisions and purposes of this Act. Policies and procedures of
14 the State Board shall take into consideration the priorities
15 and needs of medically underserved areas and other health care
16 services identified through the comprehensive health planning
17 process, giving special consideration to the impact of projects
18 on access to safety net services.

19 (2) Adopt procedures for public notice and hearing on all
20 proposed rules, regulations, standards, criteria, and plans
21 required to carry out the provisions of this Act.

22 (3) (Blank).

23 (4) Develop criteria and standards for health care
24 facilities planning, conduct statewide inventories of health
25 care facilities, maintain an updated inventory on the Board's

1 web site reflecting the most recent bed and service changes and
2 updated need determinations when new census data become
3 available or new need formulae are adopted, and develop health
4 care facility plans which shall be utilized in the review of
5 applications for permit under this Act. Such health facility
6 plans shall be coordinated by the Board with pertinent State
7 Plans. Inventories pursuant to this Section of skilled or
8 intermediate care facilities licensed under the Nursing Home
9 Care Act, skilled or intermediate care facilities licensed
10 under the ID/DD Community Care Act, facilities licensed under
11 the Specialized Mental Health Rehabilitation Act, or nursing
12 homes licensed under the Hospital Licensing Act shall be
13 conducted on an annual basis no later than July 1 of each year
14 and shall include among the information requested a list of all
15 services provided by a facility to its residents and to the
16 community at large and differentiate between active and
17 inactive beds.

18 In developing health care facility plans, the State Board
19 shall consider, but shall not be limited to, the following:

20 (a) The size, composition and growth of the population
21 of the area to be served;

22 (b) The number of existing and planned facilities
23 offering similar programs;

24 (c) The extent of utilization of existing facilities;

25 (d) The availability of facilities which may serve as
26 alternatives or substitutes;

1 (e) The availability of personnel necessary to the
2 operation of the facility;

3 (f) Multi-institutional planning and the establishment
4 of multi-institutional systems where feasible;

5 (g) The financial and economic feasibility of proposed
6 construction or modification; and

7 (h) In the case of health care facilities established
8 by a religious body or denomination, the needs of the
9 members of such religious body or denomination may be
10 considered to be public need.

11 The health care facility plans which are developed and
12 adopted in accordance with this Section shall form the basis
13 for the plan of the State to deal most effectively with
14 statewide health needs in regard to health care facilities.

15 (5) Coordinate with the Center for Comprehensive Health
16 Planning and other state agencies having responsibilities
17 affecting health care facilities, including those of licensure
18 and cost reporting. Beginning no later than January 1, 2013,
19 the Department of Public Health shall produce a written annual
20 report to the Governor and the General Assembly regarding the
21 development of the Center for Comprehensive Health Planning.
22 The Chairman of the State Board and the State Board
23 Administrator shall also receive a copy of the annual report.

24 (6) Solicit, accept, hold and administer on behalf of the
25 State any grants or bequests of money, securities or property
26 for use by the State Board or Center for Comprehensive Health

1 Planning in the administration of this Act; and enter into
2 contracts consistent with the appropriations for purposes
3 enumerated in this Act.

4 (7) The State Board shall prescribe procedures for review,
5 standards, and criteria which shall be utilized to make
6 periodic reviews and determinations of the appropriateness of
7 any existing health services being rendered by health care
8 facilities subject to the Act. The State Board shall consider
9 recommendations of the Board in making its determinations.

10 (8) Prescribe, in consultation with the Center for
11 Comprehensive Health Planning, rules, regulations, standards,
12 and criteria for the conduct of an expeditious review of
13 applications for permits for projects of construction or
14 modification of a health care facility, which projects are
15 classified as emergency, substantive, or non-substantive in
16 nature.

17 Six months after June 30, 2009 (the effective date of
18 Public Act 96-31), substantive projects shall include no more
19 than the following:

20 (a) Projects to construct (1) a new or replacement
21 facility located on a new site or (2) a replacement
22 facility located on the same site as the original facility
23 and the cost of the replacement facility exceeds the
24 capital expenditure minimum, which shall be reviewed by the
25 Board within 120 days;

26 (b) Projects proposing a (1) new service within an

1 existing healthcare facility or (2) discontinuation of a
2 service within an existing healthcare facility, which
3 shall be reviewed by the Board within 60 days; or

4 (c) Projects proposing a change in the bed capacity of
5 a health care facility by an increase in the total number
6 of beds or by a redistribution of beds among various
7 categories of service or by a relocation of beds from one
8 physical facility or site to another by more than 20 beds
9 or more than 10% of total bed capacity, as defined by the
10 State Board, whichever is less, over a 2-year period.

11 The Chairman may approve applications for exemption that
12 meet the criteria set forth in rules or refer them to the full
13 Board. The Chairman may approve any unopposed application that
14 meets all of the review criteria or refer them to the full
15 Board.

16 Such rules shall not abridge the right of the Center for
17 Comprehensive Health Planning to make recommendations on the
18 classification and approval of projects, nor shall such rules
19 prevent the conduct of a public hearing upon the timely request
20 of an interested party. Such reviews shall not exceed 60 days
21 from the date the application is declared to be complete.

22 (9) Prescribe rules, regulations, standards, and criteria
23 pertaining to the granting of permits for construction and
24 modifications which are emergent in nature and must be
25 undertaken immediately to prevent or correct structural
26 deficiencies or hazardous conditions that may harm or injure

1 persons using the facility, as defined in the rules and
2 regulations of the State Board. This procedure is exempt from
3 public hearing requirements of this Act.

4 (10) Prescribe rules, regulations, standards and criteria
5 for the conduct of an expeditious review, not exceeding 60
6 days, of applications for permits for projects to construct or
7 modify health care facilities which are needed for the care and
8 treatment of persons who have acquired immunodeficiency
9 syndrome (AIDS) or related conditions.

10 (10.5) Provide its rationale when voting on an item before
11 it at a State Board meeting in order to comply with subsection
12 (b) of Section 3-108 of the Code of Civil Procedure. The
13 transcript of the meeting shall be incorporated into the
14 Board's final decision.

15 (11) Issue written decisions upon request of the applicant
16 or an adversely affected party to the Board. Requests for a
17 written decision shall be made within 15 days after the Board
18 meeting in which a final decision has been made. A "final
19 decision" for purposes of this Act is the decision to approve
20 or deny an application, or take other actions permitted under
21 this Act, at the time and date of the meeting that such action
22 is scheduled by the Board. State Board members shall provide
23 their rationale when voting on an item before the State Board
24 at a State Board meeting in order to comply with subsection (b)
25 of Section 3-108 of the Administrative Review Law of the Code
26 of Civil Procedure. The transcript of the State Board meeting

1 shall be incorporated into the Board's final decision. The
2 staff of the Board shall prepare a written copy of the final
3 decision and the Board shall approve a final copy for inclusion
4 in the formal record. The Board shall consider, for approval,
5 the written draft of the final decision no later than the next
6 scheduled Board meeting. The written decision shall identify
7 the applicable criteria and factors listed in this Act and the
8 Board's regulations that were taken into consideration by the
9 Board when coming to a final decision. If the Board denies or
10 fails to approve an application for permit or exemption, the
11 Board shall include in the final decision a detailed
12 explanation as to why the application was denied and identify
13 what specific criteria or standards the applicant did not
14 fulfill.

15 (12) Require at least one of its members to participate in
16 any public hearing, after the appointment of a majority of the
17 members to the Board.

18 (13) Provide a mechanism for the public to comment on, and
19 request changes to, draft rules and standards.

20 (14) Implement public information campaigns to regularly
21 inform the general public about the opportunity for public
22 hearings and public hearing procedures.

23 (15) Establish a separate set of rules and guidelines for
24 long-term care that recognizes that nursing homes are a
25 different business line and service model from other regulated
26 facilities. An open and transparent process shall be developed

1 that considers the following: how skilled nursing fits in the
2 continuum of care with other care providers, modernization of
3 nursing homes, establishment of more private rooms,
4 development of alternative services, and current trends in
5 long-term care services. The Chairman of the Board shall
6 appoint a permanent Health Services Review Board Long-term Care
7 Facility Advisory Subcommittee that shall develop and
8 recommend to the Board the rules to be established by the Board
9 under this paragraph (15). The Subcommittee shall also provide
10 continuous review and commentary on policies and procedures
11 relative to long-term care and the review of related projects.
12 In consultation with other experts from the health field of
13 long-term care, the Board and the Subcommittee shall study new
14 approaches to the current bed need formula and Health Service
15 Area boundaries to encourage flexibility and innovation in
16 design models reflective of the changing long-term care
17 marketplace and consumer preferences. The Subcommittee shall
18 evaluate, and make recommendations to the State Board
19 regarding, the buying, selling, and exchange of beds between
20 long-term care facilities within a specified geographic area or
21 drive time. The Board shall file the proposed related
22 administrative rules for the separate rules and guidelines for
23 long-term care required by this paragraph (15) by no later than
24 September 30, 2011. The Subcommittee shall be provided a
25 reasonable and timely opportunity to review and comment on any
26 review, revision, or updating of the criteria, standards,

1 procedures, and rules used to evaluate project applications as
2 provided under Section 12.3 of this Act.

3 (16) Prescribe the format of ~~and provide forms pertaining~~
4 ~~to~~ the State Board Staff Report. A State Board Staff Report
5 shall pertain to applications that include, but are not limited
6 to, applications for permit or exemption, applications for
7 permit renewal, applications for extension of the obligation
8 period, applications requesting a declaratory ruling, or
9 applications under the Health Care Worker Self-Referral ~~Self~~
10 ~~Referral~~ Act. State Board Staff Reports shall compare
11 applications to the relevant review criteria under the Board's
12 rules.

13 (17) ~~(16)~~ Establish a separate set of rules and guidelines
14 for facilities licensed under the Specialized Mental Health
15 Rehabilitation Act of 2013. An application for the
16 re-establishment of a facility in connection with the
17 relocation of the facility shall not be granted unless the
18 applicant has a contractual relationship with at least one
19 hospital to provide emergency and inpatient mental health
20 services required by facility consumers, and at least one
21 community mental health agency to provide oversight and
22 assistance to facility consumers while living in the facility,
23 and appropriate services, including case management, to assist
24 them to prepare for discharge and reside stably in the
25 community thereafter. No new facilities licensed under the
26 Specialized Mental Health Rehabilitation Act of 2013 shall be

1 established after June 16, 2014 (the effective date of Public
2 Act 98-651) ~~this amendatory Act of the 98th General Assembly~~
3 except in connection with the relocation of an existing
4 facility to a new location. An application for a new location
5 shall not be approved unless there are adequate community
6 services accessible to the consumers within a reasonable
7 distance, or by use of public transportation, so as to
8 facilitate the goal of achieving maximum individual self-care
9 and independence. At no time shall the total number of
10 authorized beds under this Act in facilities licensed under the
11 Specialized Mental Health Rehabilitation Act of 2013 exceed the
12 number of authorized beds on June 16, 2014 (the effective date
13 of Public Act 98-651) ~~this amendatory Act of the 98th General~~
14 ~~Assembly.~~

15 (Source: P.A. 97-38, eff. 6-28-11; 97-227, eff. 1-1-12; 97-813,
16 eff. 7-13-12; 97-1045, eff. 8-21-13; 97-1115, eff. 8-27-12;
17 98-414, eff. 1-1-14; 98-463, eff. 8-16-13; 98-651, eff.
18 6-16-14; 98-1086, eff. 8-26-14; revised 10-1-14.)

19 (20 ILCS 3960/14.1)

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

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

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

3 (2) The establishment, construction, or modification
4 of a health care facility without a permit or in violation
5 of the terms of a permit.

6 (3) The violation of any provision of this Act or any
7 rule adopted under this Act.

8 (4) The failure, by any person subject to this Act, to
9 provide information requested by the State Board or Agency
10 within 30 days after a formal written request for the
11 information.

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

14 (a-5) For facilities licensed under the ID/DD Community
15 Care Act, no permit shall be denied on the basis of prior
16 operator history, other than for actions specified under item
17 (2), (4), or (5) of Section 3-117 of the ID/DD Community Care
18 Act. For facilities licensed under the Specialized Mental
19 Health Rehabilitation Act, no permit shall be denied on the
20 basis of prior operator history, other than for actions
21 specified under item (2), (4), or (5) of Section 3-117 of the
22 Specialized Mental Health Rehabilitation Act. For facilities
23 licensed under the Nursing Home Care Act, no permit shall be
24 denied on the basis of prior operator history, other than for:
25 (i) actions specified under item (2), (3), (4), (5), or (6) of
26 Section 3-117 of the Nursing Home Care Act; (ii) actions

1 specified under item (a)(6) of Section 3-119 of the Nursing
2 Home Care Act; or (iii) actions within the preceding 5 years
3 constituting a substantial and repeated failure to comply with
4 the Nursing Home Care Act or the rules and regulations adopted
5 by the Department under that Act. The State Board shall not
6 deny a permit on account of any action described in this
7 subsection (a-5) without also considering all such actions in
8 the light of all relevant information available to the State
9 Board, including whether the permit is sought to substantially
10 comply with a mandatory or voluntary plan of correction
11 associated with any action described in this subsection (a-5).

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

13 (1) A permit holder who fails to comply with the
14 requirements of maintaining a valid permit shall be fined
15 an amount not to exceed 1% of the approved permit amount
16 plus an additional 1% of the approved permit amount for
17 each 30-day period, or fraction thereof, that the violation
18 continues.

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

1 approved permit amount.

2 (2.5) A permit holder who fails to comply with the
3 post-permit and reporting requirements set forth in
4 Section 5 shall be fined an amount not to exceed \$10,000
5 plus an additional \$10,000 for each 30-day period, or
6 fraction thereof, that the violation continues. This fine
7 shall continue to accrue until the date that (i) the
8 post-permit requirements are met and the post-permit
9 reports are received by the State Board or (ii) the matter
10 is referred by the State Board to the State Board's legal
11 counsel. The accrued fine is not waived by the permit
12 holder submitting the required information and reports.
13 Prior to any fine beginning to accrue, the Board shall
14 notify, in writing, a permit holder of the due date for the
15 post-permit and reporting requirements no later than 30
16 days before the due date for the requirements. This
17 paragraph (2.5) takes effect 6 months after August 27, 2012
18 (the effective date of Public Act 97-1115).

19 (3) A person who acquires major medical equipment or
20 who establishes a category of service without first
21 obtaining a permit or exemption, as the case may be, shall
22 be fined an amount not to exceed \$10,000 for each such
23 acquisition or category of service established plus an
24 additional \$10,000 for each 30-day period, or fraction
25 thereof, that the violation continues.

26 (4) A person who constructs, modifies, or establishes a

1 health care facility without first obtaining a permit shall
2 be fined an amount not to exceed \$25,000 plus an additional
3 \$25,000 for each 30-day period, or fraction thereof, that
4 the violation continues.

5 (5) A person who discontinues a health care facility or
6 a category of service without first obtaining a permit
7 shall be fined an amount not to exceed \$10,000 plus an
8 additional \$10,000 for each 30-day period, or fraction
9 thereof, that the violation continues. For purposes of this
10 subparagraph (5), facilities licensed under the Nursing
11 Home Care Act or the ID/DD Community Care Act, with the
12 exceptions of facilities operated by a county or Illinois
13 Veterans Homes, are exempt from this permit requirement.
14 However, facilities licensed under the Nursing Home Care
15 Act or the ID/DD Community Care Act must comply with
16 Section 3-423 of the Nursing Home Care Act or Section 3-423
17 of the ID/DD Community Care Act and must provide the Board
18 and the Department of Human Services with 30 days' written
19 notice of its intent to close. Facilities licensed under
20 the ID/DD Community Care Act also must provide the Board
21 and the Department of Human Services with 30 days' written
22 notice of its intent to reduce the number of beds for a
23 facility.

24 (6) A person subject to this Act who fails to provide
25 information requested by the State Board or Agency within
26 30 days of a formal written request shall be fined an

1 amount not to exceed \$1,000 plus an additional \$1,000 for
2 each 30-day period, or fraction thereof, that the
3 information is not received by the State Board or Agency.

4 (b-5) The State Board may require in-kind services instead
5 of or in combination with the imposition of a fine. This
6 authorization is limited to cases where the non-compliant
7 individual or entity has waived the right to an administrative
8 hearing or opportunity to appear before the Board regarding the
9 non-compliant matter.

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

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

19 (e) Fines imposed under this Section shall continue to
20 accrue until the date that the matter is referred by the State
21 Board to the State Board's legal counsel.

22 (Source: P.A. 97-38, eff. 6-28-11; 97-227, eff. 1-1-12; 97-813,
23 eff. 7-13-12; 97-980, eff. 8-17-12; 97-1115, eff. 8-27-12;
24 98-463, eff. 8-16-13.)

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