

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Health Facilities Planning Act is amended by changing Section 8.5 as follows:

(20 ILCS 3960/8.5)

(Section scheduled to be repealed on December 31, 2029)

Sec. 8.5. Certificate of exemption for change of ownership of a health care facility; discontinuation of a category of service; public notice and public hearing.

(a) Upon a finding that an application for a change of ownership is complete, the State Board shall publish a legal notice on 3 consecutive days in a newspaper of general circulation in the area or community to be affected and afford the public an opportunity to request a hearing. If the application is for a facility located in a Metropolitan Statistical Area, an additional legal notice shall be published in a newspaper of limited circulation, if one exists, in the area in which the facility is located. If the newspaper of limited circulation is published on a daily basis, the additional legal notice shall be published on 3 consecutive days. The applicant shall pay the cost incurred by the Board in publishing the change of ownership notice in

newspapers as required under this subsection. The legal notice shall also be posted on the Health Facilities and Services Review Board's web site and sent to the State Representative and State Senator of the district in which the health care facility is located and to the Office of the Attorney General.

An application for change of ownership of a hospital shall not be deemed complete without a signed certification that for a period of 2 years after the change of ownership transaction is effective, the hospital will not adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction. An application for a change of ownership need not contain signed transaction documents so long as it includes the following key terms of the transaction: names and background of the parties; structure of the transaction; the person who will be the licensed or certified entity after the transaction; the ownership or membership interests in such licensed or certified entity both prior to and after the transaction; fair market value of assets to be transferred; and the purchase price or other form of consideration to be provided for those assets. The issuance of the certificate of exemption shall be contingent upon the applicant submitting a statement to the Board within 90 days after the closing date of the transaction, or such longer period as provided by the Board, certifying that the change of ownership has been completed in accordance with the key terms contained in the application. If such key terms of the

transaction change, a new application shall be required.

Where a change of ownership is among related persons, and there are no other changes being proposed at the health care facility that would otherwise require a permit or exemption under this Act, the applicant shall submit an application consisting of a standard notice in a form set forth by the Board briefly explaining the reasons for the proposed change of ownership. Once such an application is submitted to the Board and reviewed by the Board staff, the Board Chair shall take action on an application for an exemption for a change of ownership among related persons within 45 days after the application has been deemed complete, provided the application meets the applicable standards under this Section. If the Board Chair has a conflict of interest or for other good cause, the Chair may request review by the Board. Notwithstanding any other provision of this Act, for purposes of this Section, a change of ownership among related persons means a transaction where the parties to the transaction are under common control or ownership before and after the transaction is completed.

Nothing in this Act shall be construed as authorizing the Board to impose any conditions, obligations, or limitations, other than those required by this Section, with respect to the issuance of an exemption for a change of ownership, including, but not limited to, the time period before which a subsequent change of ownership of the health care facility could be sought, or the commitment to continue to offer for a specified

time period any services currently offered by the health care facility.

The changes made by this amendatory Act of the 103rd General Assembly are inoperative on and after January 1, 2027.

(a-3) (Blank).

(a-5) Upon a finding that an application to discontinue a category of service is complete and provides the requested information, as specified by the State Board, an exemption shall be issued. No later than 30 days after the issuance of the exemption, the health care facility must give written notice of the discontinuation of the category of service to the State Senator and State Representative serving the legislative district in which the health care facility is located. No later than 90 days after a discontinuation of a category of service, the applicant must submit a statement to the State Board certifying that the discontinuation is complete.

(b) If a public hearing is requested, it shall be held at least 15 days but no more than 30 days after the date of publication of the legal notice in the community in which the facility is located. The hearing shall be held in the affected area or community in a place of reasonable size and accessibility and a full and complete written transcript of the proceedings shall be made. All interested persons attending the hearing shall be given a reasonable opportunity to present their positions in writing or orally. The applicant

shall provide a summary or describe the proposed change of ownership at the public hearing.

(c) For the purposes of this Section "newspaper of limited circulation" means a newspaper intended to serve a particular or defined population of a specific geographic area within a Metropolitan Statistical Area such as a municipality, town, village, township, or community area, but does not include publications of professional and trade associations.

(d) The changes made to this Section by this amendatory Act of the 101st General Assembly shall apply to all applications submitted after the effective date of this amendatory Act of the 101st General Assembly.

(Source: P.A. 100-201, eff. 8-18-17; 101-83, eff. 7-15-19.)

Section 10. The State Finance Act is amended by adding Section 5.990 as follows:

(30 ILCS 105/5.990 new)

Sec. 5.990. The Antitrust Enforcement Fund. This Section is repealed on January 1, 2027.

Section 15. The Illinois Antitrust Act is amended by changing Section 7.2 and by adding Sections 7.2a and 13 as follows:

(740 ILCS 10/7.2) (from Ch. 38, par. 60-7.2)

Sec. 7.2. (1) Whenever it appears to the Attorney General that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited by this Act, or that any person has assisted or participated in any agreement or combination of the nature described herein, he may, in his discretion, conduct an investigation as he deems necessary in connection with the matter and has the authority prior to the commencement of any civil or criminal action as provided for in the Act to subpoena witnesses, and pursuant to a subpoena (i) compel their attendance for the purpose of examining them under oath, (ii) require the production of any books, documents, records, writings or tangible things hereafter referred to as "documentary material" which the Attorney General deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as hereafter set forth, (iii) require written answers under oath to written interrogatories, or (iv) require compliance with a combination of the foregoing. Any subpoena issued by the Attorney General shall contain the following information:

(a) The statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation.

(b) The date and place at which time the person is required to appear or produce documentary material in his possession, custody or control or submit answers to

interrogatories in the office of the Attorney General located in Springfield or Chicago. Said date shall not be less than 10 days from date of service of the subpoena.

(c) Where documentary material is required to be produced, the same shall be described by class so as to clearly indicate the material demanded.

The Attorney General is hereby authorized, and may so elect, to require the production, pursuant to this section, of documentary material or interrogatory answers prior to the taking of any testimony of the person subpoenaed. Said documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General. When documentary material is demanded by subpoena, said subpoena shall not:

(i) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or

(ii) require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

(2) The production of documentary material in response to a subpoena served pursuant to this Section shall be made under a sworn certificate, in such form as the subpoena designates,

by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian. Answers to interrogatories shall be accompanied by a statement under oath attesting to the accuracy of the answers.

While in the possession of the Attorney General and under such reasonable terms and conditions as the Attorney General shall prescribe: (A) documentary material shall be available for examination by the person who produced such material or by any duly authorized representative of such person, (B) transcript of oral testimony shall be available for examination by the person who produced such testimony, or his or her counsel and (C) answers to interrogatories shall be available for examination by the person who swore to their accuracy.

Except as otherwise provided in this Section, no documentary material, transcripts of oral testimony, or answers to interrogatories, or copies thereof, in the possession of the Attorney General shall be available for examination by any individual other than an authorized employee of the Attorney General or other law enforcement

officials, federal, State, or local, without the consent of the person who produced such material, transcripts, or interrogatory answers. Such documentary material, transcripts of oral testimony, or answers to interrogatories, or copies thereof may be used by the Attorney General in any administrative or judicial action or proceeding.

For purposes of this Section, all documentary materials, transcripts of oral testimony, ~~or~~ answers to interrogatories obtained by the Attorney General from other law enforcement officials, information voluntarily produced to the Attorney General for purposes of any investigation conducted under subsection (1), or information provided to the Attorney General pursuant to the notice requirement of Section 7.2a shall be treated as if produced pursuant to a subpoena served pursuant to this Section for purposes of maintaining the confidentiality of such information.

The changes made by this amendatory Act of the 103rd General Assembly are inoperative on and after January 1, 2027.

(3) No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General under this Act, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of such subpoena. A violation of this subsection is a Class A misdemeanor. The Attorney General, with such assistance as he may from time to

time require of the State's Attorneys in the several counties, shall investigate suspected violations of this subsection and shall commence and try all prosecutions under this subsection. (Source: P.A. 96-751, eff. 1-1-10; 96-1000, eff. 7-2-10.)

(740 ILCS 10/7.2a new)

Sec. 7.2a. Notification to the Attorney General.

(a) As used in this Section:

"Acquisition" means an agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person. "Acquisition" includes the acquisition of voting securities and noncorporate interests, such as assets, capital stock, membership interests, or equity interests.

"Contracting affiliation" means the formation of a relationship between 2 or more entities that permits the entities to negotiate jointly with health carriers or third-party administrators over rates for professional medical services, or for one entity to negotiate on behalf of the other entity with health carriers or third-party administrators over rates for professional medical services. "Contracting affiliation" does not include arrangements among entities under common ownership.

"Covered transaction" means any merger, acquisition, or contracting affiliation between 2 or more health care facilities or provider organizations not previously under

common ownership or contracting affiliation.

"Health care facility" means the following facilities, organizations, and related persons:

(1) An ambulatory surgical treatment center required to be licensed under the Ambulatory Surgical Treatment Center Act.

(2) An institution, place, building, or agency required to be licensed under the Hospital Licensing Act.

(3) A hospital, ambulatory surgical treatment center, or kidney disease treatment center maintained by the State or any department or agency thereof.

(4) A kidney disease treatment center, including a free-standing hemodialysis unit required to meet the requirements of 42 CFR 494 in order to be certified for participation in Medicare and Medicaid under Titles XVIII and XIX of the federal Social Security Act of 1935.

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

(6) An institution, place, building, or room used for provision of a health care category of service, as defined under the Illinois Health Facilities Planning Act, including, but not limited to, cardiac catheterization and open heart surgery.

With the exception of those health care facilities

specifically included in this Section, nothing in this Section shall be intended to include facilities operated as a part of the practice of a physician or other licensed health care professional, whether practicing in his or her individual capacity or within the legal structure of any partnership, medical or professional corporation, or unincorporated medical or professional group. Further, this Section shall not apply to physicians or other licensed health care professional's practices where such practices are carried out in a portion of a health care facility under contract with such health care facility by a physician or by other licensed health care professionals, whether practicing in his or her individual capacity or within the legal structure of any partnership, medical or professional corporation, or unincorporated medical or professional groups, unless the entity constructs, modifies, or establishes a health care facility as specifically defined in this Section.

"Health care services revenue" means the total revenue received for health care services in the previous 12 months.

"Health carriers" has the meaning given to that term in Section 10 of the Health Carrier External Review Act.

"Illinois health care entity" means a health care facility or provider organization that has an office in or is doing business in this State.

"Merger" means the consolidation of 2 or more organizations, including 2 or more organizations joining

through a common parent organization or 2 or more organizations forming a new organization, but does not include a corporate reorganization.

"Out-of-state health care entity" means a health care facility or provider organization that is not headquartered in this State and does not do business in this State.

"Provider organization" means a corporation, partnership, business trust, association, or organized group of persons, whether incorporated or not, which is in the business of health care delivery or management and that represents 20 or more health care providers in contracting with health carriers or third-party administrators for the payment of health care services. "Provider organization" includes physician organizations, physician-hospital organizations, independent practice associations, provider networks, and accountable care organizations.

"Third-party administrator" means an entity that administers payments for health care services on behalf of a client in exchange for an administrative fee.

(b) Health care facilities or provider organizations that are party to a covered transaction shall provide notice of such transaction to the Attorney General no later than 30 days prior to the transaction closing or effective date of the transaction.

Covered transactions between an Illinois health care entity and an out-of-state health care entity must provide

notice under this subsection where the out-of-state entity generates \$10,000,000 or more in annual revenue from patients residing in this State.

(c) The written notice provided by the parties under subsection (b) shall be provided as follows:

(1) For any health care facility or provider organization that is a party to a covered transaction and files a premerger notification with the Federal Trade Commission or the United States Department of Justice, in compliance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, the notice requirement is satisfied by providing a copy of such filing to the Attorney General at the same time as it is provided to the federal government.

(2) For any health care facility that is a party to a covered transaction that is not described in paragraph (1), the notice requirement is satisfied when the healthcare facility files an application for a change of ownership with the Health Facilities and Services Review Board, in compliance with the Illinois Health Facilities Planning Act. The Health Facilities and Services Review Board shall provide a copy of such filing to the Attorney General at the same time as it is provided to the applicable State legislators under subsection (a) of Section 8.5 of the Illinois Health Facilities Planning Act.

(3) For any health care facility or provider organization that is a party to a covered transaction that is not described in paragraph (1) or (2), written notice provided by the parties must include:

(A) the names of the parties and their current business address;

(B) identification of all locations where health care services are currently provided by each party;

(C) a brief description of the nature and purpose of the proposed transaction; and

(D) the anticipated effective date of the proposed transaction.

Nothing in this subsection prohibits the parties to a covered transaction from voluntarily providing additional information to the Attorney General.

(d) The Attorney General may make any requests for additional information from the parties that is relevant to its investigation of the covered transaction within 30 days of the date notice is received under subsections (b) and (c). If the Attorney General requests additional information, the covered transaction may not proceed until 30 days after the parties have substantially complied with the request. Any subsequent request for additional information by the Attorney General shall not further delay the covered transaction from proceeding. Nothing in this Section precludes the Attorney General from conducting an investigation or enforcing State or

federal antitrust laws at a later date.

(e) Any health care facility or provider organization that fails to comply with any provision of this Section is subject to a civil penalty of not more than \$500 per day for each day during which the health care facility or provider organization is in violation of this Section.

Whenever the Attorney General has reason to believe that a health care facility or provider organization has engaged in or is engaging in a covered transaction without complying with the provisions of this Section, the Attorney General may apply for and obtain, in an action in the Circuit Court of Sangamon or Cook County, a temporary restraining order or injunction, or both, prohibiting the health care facility or provider organization from continuing its noncompliance or doing any act in furtherance thereof. The court may make such further orders or judgments, at law or in equity, as may be necessary to remedy such noncompliance.

Before bringing such an action or seeking to recover a civil penalty, the Attorney General shall permit the health care facility or provider organization to come into compliance with this Section within 10 days of being notified of its alleged noncompliance. The right to cure noncompliance does not exist on or after the covered transaction's proposed or actual closing date of the covered transaction, whichever is sooner.

(f) This Section is repealed on January 1, 2027.

(740 ILCS 10/13 new)

Sec. 13. Antitrust Enforcement Fund. Any penalties collected from an entity for violations of this Act shall be deposited into the Antitrust Enforcement Fund, a special fund created in the State treasury that is dedicated to enforcing this Act.

This Section is repealed on January 1, 2027.

Section 99. Effective date. This Act takes effect January 1, 2024.