

1 AN ACT regarding exclusive contracts for hospital
2 services.

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

5 Section 5. The Hospital Licensing Act is amended by
6 changing Section 10.4 and adding Section 10.5 as follows:

7 (210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

8 Sec. 10.4. Medical staff privileges.

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

1 the period for timely response to such requests.

2 No transmittal of information by the Director of
3 Professional Regulation, under this Section shall be to other
4 than the president, chief operating officer, chief
5 administrative officer, or chief of the medical staff of a
6 hospital licensed under this Act, a hospital organized under
7 the University of Illinois Hospital Act, or a hospital
8 operated by the United States, or any of its
9 instrumentalities. The information so transmitted shall be
10 afforded the same status as is information concerning medical
11 studies by Part 21 of Article VIII of the Code of Civil
12 Procedure, as now or hereafter amended.

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

24 (1) Minimum procedures for pre-applicants and
25 applicants for medical staff membership shall include the
26 following:

27 (A) Written procedures relating to the
28 acceptance and processing of pre-applicants or
29 applicants for medical staff membership, which
30 should be contained in medical staff bylaws.

31 (B) Written procedures to be followed in
32 determining a pre-applicant's or an applicant's
33 qualifications for being granted medical staff
34 membership and privileges.

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

4 (D) An evaluation of a pre-applicant's or an
5 applicant's current health status and current
6 license status in Illinois.

7 (E) A written response to each pre-applicant
8 or applicant that explains the reason or reasons for
9 any adverse decision (including all reasons based in
10 whole or in part on the applicant's medical
11 qualifications or any other basis, including
12 economic factors).

13 (2) Minimum procedures with respect to medical
14 staff and clinical privilege determinations concerning
15 current members of the medical staff shall include the
16 following:

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

18 (B) An explanation of the reasons for an
19 adverse decision including all reasons based on the
20 quality of medical care or any other basis,
21 including economic factors.

22 (C) A statement of the medical staff member's
23 right to request a fair hearing on the adverse
24 decision before a hearing panel whose membership is
25 mutually agreed upon by the medical staff and the
26 hospital governing board. The hearing panel shall
27 have independent authority to recommend action to
28 the hospital governing board. Upon the request of
29 the medical staff member or the hospital governing
30 board, the hearing panel shall make findings
31 concerning the nature of each basis for any adverse
32 decision recommended to and accepted by the hospital
33 governing board.

34 (i) Nothing in this subparagraph (C)

1 limits a hospital's or medical staff's right to
2 summarily suspend, without a prior hearing, a
3 person's medical staff membership or clinical
4 privileges if the continuation of practice of a
5 medical staff member constitutes an immediate
6 danger to the public, including patients,
7 visitors, and hospital employees and staff. A
8 fair hearing shall be commenced within 15 days
9 after the suspension and completed without
10 delay.

11 (ii) Nothing in this subparagraph (C)
12 limits a medical staff's right to permit, in
13 the medical staff bylaws, summary suspension of
14 membership or clinical privileges in designated
15 administrative circumstances as specifically
16 approved by the medical staff. This bylaw
17 provision must specifically describe both the
18 administrative circumstance that can result in
19 a summary suspension and the length of the
20 summary suspension. The opportunity for a fair
21 hearing is required for any administrative
22 summary suspension. Any requested hearing must
23 be commenced within 15 days after the summary
24 suspension and completed without delay. Adverse
25 decisions other than suspension or other
26 restrictions on the treatment or admission of
27 patients may be imposed summarily and without a
28 hearing under designated administrative
29 circumstances as specifically provided for in
30 the medical staff bylaws as approved by the
31 medical staff.

32 (iii) If a hospital exercises its option
33 to enter into an exclusive contract limited
34 under Section 10.5 and that contract results in

1 the total or partial termination or reduction
2 of medical staff membership or clinical
3 privileges of a current medical staff member,
4 the hospital shall provide the affected medical
5 staff member 60 days prior notice of the effect
6 on his or her medical staff membership or
7 privileges. An affected medical staff member
8 desiring a hearing under subparagraph (C) of
9 this paragraph (2) must request the hearing
10 within 14 days after the date he or she is so
11 notified. The requested hearing shall be
12 commenced and completed (with a report and
13 recommendation to the affected medical staff
14 member, hospital governing board, and medical
15 staff) within 30 days after the date of the
16 medical staff member's request. If agreed upon
17 by both the medical staff and the hospital
18 governing board, the medical staff bylaws may
19 provide for longer time periods.

20 (D) A statement of the member's right to
21 inspect all pertinent information in the hospital's
22 possession with respect to the decision.

23 (E) A statement of the member's right to
24 present witnesses and other evidence at the hearing
25 on the decision.

26 (F) A written notice and written explanation
27 of the decision resulting from the hearing.

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

30 (G) Notice given 15 days before implementation
31 of an adverse medical staff membership or clinical
32 privileges decision based substantially on economic
33 factors. This notice shall be given after the
34 medical staff member exhausts all applicable

1 procedures under this Section, including item (iii)
2 of subparagraph (C) of this paragraph (2), and under
3 the medical staff bylaws in order to allow
4 sufficient time for the orderly provision of patient
5 care.

6 (H) Nothing in this paragraph (2) of this
7 subsection (b) limits a medical staff member's right
8 to waive, in writing, the rights provided in
9 subparagraphs (A) through (G) of this paragraph (2)
10 of this subsection (b) upon being granted the
11 written exclusive right to provide particular
12 services at a hospital, either individually or as a
13 member of a group. If an exclusive contract is
14 signed by a representative of a group of physicians,
15 a waiver contained in the contract shall apply to
16 all members of the group unless stated otherwise in
17 the contract.

18 (3) Every adverse medical staff membership and
19 clinical privilege decision based substantially on
20 economic factors shall be reported to the Hospital
21 Licensing Board before the decision takes effect. These
22 reports shall not be disclosed in any form that reveals
23 the identity of any hospital or physician. These reports
24 shall be utilized to study the effects that hospital
25 medical staff membership and clinical privilege decisions
26 based upon economic factors have on access to care and
27 the availability of physician services. The Hospital
28 Licensing Board shall submit an initial study to the
29 Governor and the General Assembly by January 1, 1996, and
30 subsequent reports shall be submitted periodically
31 thereafter.

32 (4) As used in this Section:

33 "Adverse decision" means a decision reducing,
34 restricting, suspending, revoking, denying, or not

1 renewing medical staff membership or clinical privileges.

2 "Economic factor" means any information or reasons
3 for decisions unrelated to quality of care or
4 professional competency.

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

8 "Privilege" means permission to provide medical or
9 other patient care services and permission to use
10 hospital resources, including equipment, facilities and
11 personnel that are necessary to effectively provide
12 medical or other patient care services. This definition
13 shall not be construed to require a hospital to acquire
14 additional equipment, facilities, or personnel to
15 accommodate the granting of privileges.

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

19 (c) All hospitals shall consult with the medical staff
20 prior to closing membership in the entire or any portion of
21 the medical staff or a department. If the hospital closes
22 membership in the medical staff, any portion of the medical
23 staff, or the department over the objections of the medical
24 staff, then the hospital shall provide a detailed written
25 explanation for the decision to the medical staff 10 days
26 prior to the effective date of any closure. No applications
27 need to be provided when membership in the medical staff or
28 any relevant portion of the medical staff is closed.

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

31 (210 ILCS 85/10.5 new)

32 Sec. 10.5. Limitations on exclusive contracts.

33 (a) No person shall participate in offering or making an

1 exclusive contract for hospital services of a physician
2 licensed to practice medicine in all its branches practicing
3 other than emergency medicine, neonatology, pathology,
4 radiology, or anesthesiology. No exclusive contract is
5 permissible for pain management services performed by a
6 physician licensed to practice medicine in all its branches,
7 including but not limited to physicians practicing
8 anesthesiology.

9 (b) The hospital medical staff shall be permitted to
10 review and make recommendations to the governing body related
11 to exclusive contract arrangements prior to any of the
12 following decisions being made:

13 (1) the decision to execute an exclusive contract in
14 a previously open department service;

15 (2) the decision to initiate, renew, or otherwise
16 modify an exclusive contract in a particular department
17 or service; or

18 (3) the decision to terminate an exclusive contract
19 in a particular department or service.

20 In addition, prior to the initiation or termination of an
21 exclusive contract, a fair hearing, as defined by the medical
22 staff and hospital under item (C) of paragraph (2) of
23 subsection (b) of Section 10.4, shall be held to permit
24 interested parties to express their views on the hospital's
25 proposed action.

26 (c) This Section applies only to relationships entered
27 into or renewed on or after July 1, 2001.

28 (d) A violation of this Section is a business offense
29 punishable by a fine of up to \$1,000 for the first violation
30 and \$5,000 for a subsequent violation.

31 (e) A person aggrieved by a violation of this Section or
32 of a rule promulgated under this Section shall have a right
33 of action in circuit court and may recover the following for
34 each violation:

1 (1) against any person who negligently violates this
 2 Section or the rules promulgated under this Section,
 3 liquidated damages of \$1,000 or actual damages, whichever
 4 is greater;

5 (2) against any person who intentionally or
 6 recklessly violates a provision of this Section or the
 7 rules promulgated under this Section, liquidated damages
 8 of \$2,500 or actual damages, whichever is greater, for
 9 the first violation and liquidated damages of \$5,000 or
 10 actual damages, whichever is greater, for subsequent
 11 violations;

12 (3) reasonable attorney fees; and

13 (4) such other relief as the court may deem
 14 appropriate, including an injunction or reinstatement of
 15 medical staff membership or clinical privileges.

16 Section 10. The Medical Practice Act of 1987 is amended
 17 by adding Section 53.6 as follows:

18 (225 ILCS 60/53.6 new)

19 Sec. 53.6. Limitation on exclusive contracts.

20 (a) No person shall participate in offering or making an
 21 exclusive contract for hospital services of a physician
 22 licensed to practice medicine in all its branches practicing
 23 other than emergency medicine, neonatology, pathology,
 24 radiology, or anesthesiology. No exclusive contract is
 25 permissible for pain management services performed by a
 26 physician licensed to practice medicine in all its branches,
 27 including but not limited to physicians practicing
 28 anesthesiology.

29 (b) This Section applies only to relationships entered
 30 into or renewed on or after July 1, 2001.

31 (c) A violation of this Section is a business offense
 32 punishable by a fine of up to \$1,000 for the first violation

1 and \$5,000 for a subsequent violation.

2 (d) A person aggrieved by a violation of this Section or
3 of a rule promulgated under this Section shall have a right
4 of action in circuit court and may recover the following for
5 each violation:

6 (1) against any person who negligently violates this
7 Section or the rules promulgated under this Section,
8 liquidated damages of \$1,000 or actual damages, whichever
9 is greater;

10 (2) against any person who intentionally or
11 recklessly violates a provision of this Section or the
12 rules promulgated under this Section, liquidated damages
13 of \$2,500 or actual damages, whichever is greater, for
14 the first violation and liquidated damages of \$5,000 or
15 actual damages, whichever is greater, for subsequent
16 violations;

17 (3) reasonable attorney fees; and

18 (4) such other relief as the court may deem
19 appropriate, including an injunction or reinstatement of
20 medical staff membership or clinical privileges.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.