July 29, 2015

ILLINOIS HOSPITAL ASSOCIATION
MEMORANDUM

TO: Chief Executive Officers, Member Hospitals & Health Systems
    Chief Financial Officers
    Vice Presidents of Planning
    Government Relations Officers
    General Counsel

FROM: Maryjane A. Wurth, President and CEO
      Barbara Haller, Senior Director, Health Policy & Regulation

SUBJECT: Legislative Changes to the Health Facilities Planning Act:
         HB3504/PA99-0154 and HB3133/PA99-0114

This memo describes the changes in two bills that were recently signed into law:
PA99-0154 (formerly HB3504) an IHA initiative, and PA99-0114 (formerly HB3133), an
initiative of the Health Facilities and Services Review Board. This memo summarizes the
main provisions of each bill. IHA will also host a webinar on PA99-0154 in a few weeks.

I. PA99-0154 - Effective Immediately

(For a quick view of the main provisions of PA 99-0154, please refer to the table at the end
of this memo, “PA99-0154 at a Glance.”)

As the pace of health care transformation accelerates, health care facilities need increased
flexibility to consolidate affiliations and improve efficiencies. To that end, the Illinois
Hospital Association (IHA) developed a legislative initiative to streamline Section 8.5 of
the Health Facilities Planning Act (Act) dealing with change of ownership of a health care
facility, closure of a health care facility, and discontinuation of a category of service, other
than a health care facility maintained by the State or a county nursing home. IHA worked
with the Health Facilities and Services Review Board to come to agreement on HB3504,
which is effective immediately and is now PA99-0154.

A. CHANGE OF OWNERSHIP (CHOW)

General Provisions. Previously, to initiate an application for a Certificate of Exemption
(COE) for a change of ownership, an applicant was required to submit completed and
signed transaction documents before the Board’s review process could even begin. This
unnecessarily delayed the progress of the transaction. PA99-0154 instead allows the
applicant to submit to the Board “key terms” of the transaction in lieu of completed and
signed transaction documents. The COE is then contingent upon the applicant submitting a statement to the Board within 90 days after the closing date of the transaction, certifying that the change of ownership has been completed in accordance with the key terms. If such key terms change, a new application is required. Key terms include the following:

- 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.
- Purchase price or other form of consideration to be provided for those assets.

The applicant will pay the Board’s cost to publish notice of the application in the newspaper for one day (rather than the previous 3 days) and the public will continue to have the opportunity to request a public hearing on the application.

**Change of Ownership Among Related Persons.** Under PA99-0154, the process is even more streamlined for changes of ownership among related persons, i.e., where the parties to the transaction are under common control or ownership before and after the transaction is completed. Where there are no other changes proposed that would otherwise require a permit or exemption, the applicant must 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 submitted to the Board and reviewed by the Board staff, the Board Chair shall take action within 45 days after the application has been deemed complete, provided the application meets the applicable standards. If the Chair has a conflict of interest or for other good cause, the Chair may request review by the Board.

**Limitations Imposed on a Change of Ownership.** Applicants seeking a change of ownership for a hospital must still certify that for a period of two years, the hospital shall not adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction. However, PA99-0154 restricts the Board from imposing additional conditions, obligations or limitations when issuing a COE for a change of ownership. For example, the Board may no longer limit the time period before which a subsequent change of ownership of the health care facility could be sought, or require the commitment to continue to offer for a specified time period any services currently offered by the health care facility. This new provision should remove the Board’s imposing time barriers on new owners who wish to create efficiencies by eliminating a service or more rapidly effecting further consolidation. However, while such limitations may no longer be imposed as a condition of a COE for a change of ownership, any action that would otherwise require a CON, regardless of timing, will still require one.
B. CLOSURE OF A HEALTH CARE FACILITY

With respect to the proposed closure of a health care facility, the requirement for the Board to publish a legal notice on three consecutive days has not changed and the public maintains the opportunity to request a public hearing on a proposed health care facility closure. However, under PA99-0154, an applicant proposing to close a health care facility may obtain a Certificate of Exemption (COE) rather than a Certificate of Need (CON). Current law requires the Board to establish by regulation the procedures and requirements regarding issuance of exemptions and to approve a COE when information required by the Board by rule is submitted. (20 ILCS 3960/6.) Therefore, the specific information that the Board will require for a COE to close a facility may be developed by rule.

C. DISCONTINUATION OF A CATEGORY OF SERVICE

PA99-0154 provides, “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.” Because the procedures and requirements regarding issuance of exemptions must be established by regulation, the specific information that the Board will require for a COE to discontinue a category of service may be developed by rule.

NOTE: To view the main features of PA99-0154, see “PA99-0154 at a Glance” at the end of this memo.

II. PA99-0114-Effective Immediately

The Health Facilities and Services Review Board worked with IHA to come to agreement on HB3133 (now PA99-0114), which addresses certain administrative and procedural requirements of the Health Facilities Planning Act:

A. Review Board Form. PA99-0114 requires the Board to provide the format of the State Board Staff Report rather than to provide the forms upon which the Report is made. (Sec. 6.2 and Sec. 12).

B. Procedure for Board Votes. PA99-0114 requires the Board to provide its rationale when voting on an item at a State Board meeting. (Sec. 12).

C. Denials and Other Sanctions. “Change of ownership of a health care facility” is added to the list of items for which the Board may issue a denial or a sanction for failure to obtain a permit or an exemption. (Sec. 14.1).
• **Fines for Unauthorized Changes.** Although change of ownership was included as a “modification” subject to fines if carried out without a permit, the provision clarifies that a person who changes ownership of a health care facility without first obtaining a permit or exemption shall be fined an amount not to exceed $25,000 plus an additional $25,000 for each additional 30-day period, or fraction thereof, that the violation continues.

“Exemption” was added to the provision at Sec. 14.1 (b)(5) to provide that a person who discontinues a health care facility or a category of service without first obtaining a permit or exemption shall be fined an amount not to exceed $10,000 plus an additional $10,000 for each 30-day period, or fraction thereof, that the violation continues.

• **In-Kind Services.** The Board may accept in-kind services instead of or in combination with the imposition of a fine. This authorization is limited to cases where the non-compliant individual or entity has waived the right to an administrative hearing or opportunity to appear before the Board regarding the non-compliant matter.

• **Requests for Appearance Before the Board.** Requests for an appearance before the State Board must be made within 30 days after receiving notice that a fine will be imposed.

• **Fines Accrual Period.** Fines imposed under Sec.14.1 shall continue to accrue until (1) the date that the matter is referred by the Board to the Board’s legal counsel; or (2) the date that the health care facility becomes compliant with the Act, whichever is earlier.

**CONCLUSION**

Where rulemaking is needed to implement provisions of the law, the Board must introduce Proposed Rules for public comment before they can be adopted and implemented. IHA will host a webinar to review the changes in these new Public Acts. Information on the webinar will be available soon.

Please contact Barb Haller at bhaller@ihastaff.org or 630-276-5474 if you have questions.
### PA 99-0154 PROVISIONS AT A GLANCE

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<tr>
<th>CHANGE OF OWNERSHIP (CHOW)</th>
<th>OLD</th>
<th>NEW</th>
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| **Notice Requirements**   | • Publication for 3 days  
   • Board pays for publication  
   • Opportunity for public hearing  
   • Notify State Senator; Rep. | • 1 day  
   • Applicant pays for publication  
   • Opportunity for public hearing  
   • Notify State Senator; Representative |
| **Application Components** | • Complete and signed transaction documents | • “Key terms” of CHOW transaction  
   • Certification w/in 90 days of closing that CHOW was completed in accordance with Key Terms  
   • If Key Terms change, new application is required |
| **Limitations** | • Board may impose limitations via affirmations at 1130.520 | • Review Board may not impose limitations other than those required by this Section, including, but not limited to: time period for subsequent CHOW; commitment to continue to offer current services |
| **CHOWS Among Related Persons** | • CHOW application  
   • Chair may approve unopposed applications for exemption that meet criteria w/in 60 days of being declared complete/ hearing transcripts rec’d; or refer them to the full Board | • Standard notice explaining reasons  
   • Board Chair shall take action w/in 45 days after application is deemed complete and standards met, unless conflict of interest or other good cause, then Chair may send to Board |

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<tr>
<th>CLOSURE OF HEALTHCARE FACILITY</th>
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<th>NEW</th>
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| **Publication of Notice**      | • 3 days  
   • Board pays for notice  
   • Opportunity for public hearing | • No change |
<p>| <strong>Required Document</strong>          | • Certificate of Need | • Certificate of Exemption, except for State facility, county nursing home |</p>
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<th>DISCONTINUATION OF A CATEGORY OF SERVICE</th>
<th>OLD</th>
<th>NEW</th>
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<tbody>
<tr>
<td>Notice</td>
<td>• Required as above</td>
<td>• Not Required</td>
</tr>
<tr>
<td>Req’d. Document</td>
<td>• Certificate of Need</td>
<td>• COE, except for State facilities and county nursing homes</td>
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<tr>
<td>Notice to State Legislators</td>
<td>• Within 30 days of reduction in service of 50% or more</td>
<td>• Within 30 days after issuance of the COE</td>
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