

## CHAPTER 1113

### REGULATION OF PUBLIC HEALTH — MISCELLANEOUS CHANGES

H.F. 2464

**AN ACT** relating to department of public health programs and activities, providing for a penalty, and including effective and applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I NURSING HOME ADMINISTRATORS

Section 1. Section 155.1, unnumbered paragraph 1, Code 2011, is amended to read as follows:

For the purposes of this chapter, ~~and as used herein:~~

Sec. 2. Section 155.3, subsections 2 and 3, Code 2011, are amended to read as follows:

2. The applicant has ~~satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; knowledge of the laws governing the operation of nursing homes and the protection of the interests of patients therein; and knowledge of the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a nursing home.~~

3. The applicant has passed an examination administered prescribed by the board ~~and designed to test for competence in the subject matter referred to in subsection 2 of this section pursuant to section 147.34.~~

Sec. 3. Section 155.4, Code 2011, is amended to read as follows:

#### **155.4 Licensing function.**

The board shall license nursing home administrators in accordance with this chapter, chapter 147, and rules issued, ~~and from time to time revised, by it by the board.~~ A nursing home administrator's license shall not be transferable and, ~~if not inactive,~~ shall be valid until revoked pursuant to section 147.55 or voluntarily surrendered for cancellation or suspended or revoked for violation of this chapter or any other laws or regulations relating to the proper administration and management of a nursing home. ~~Any denial of issuance or renewal, suspension, or revocation under any section of this chapter shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.~~

Sec. 4. Section 155.5, Code 2011, is amended to read as follows:

#### **155.5 License fees.**

Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. The license shall expire in multiyear intervals determined by the board and be renewable ~~and upon payment of the license a renewal fee.~~ A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

Sec. 5. Section 155.9, Code 2011, is amended to read as follows:

#### **155.9 Duties of the board.**

~~The~~ In addition to the duties and responsibilities provided in chapters 147 and 272C, the board shall have the duty and responsibility to:

1. ~~Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.~~

2. ~~Develop and apply appropriate techniques, including examination and investigations, for determining whether an individual meets such standards. The board may administer as~~

many examinations per year as are necessary, but shall administer at least one examination per year. Any written examination may be given by representatives of the board. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

~~3. Issue licenses to individuals who, after application of such techniques, are found to have met such standards; and for cause and after due notice and hearing, revoke or suspend licenses previously issued by such board in any case where the individual holding such license is found to have failed substantially to conform to the requirements of such standards.~~

~~The board may also accept the voluntary surrender of such license without necessity of a hearing. In adopt rules for granting a provisional license to an administrator appointed on a temporary basis by a nursing home's owner or owners in the event of the inability of the regular administrator of a the nursing home is unable to perform the administrator's duties or through death or other cause the nursing home is without a licensed administrator, a provisional administrator may be appointed on a temporary basis by the nursing home owner or owners to perform such duties for a period not to exceed one year because of death or other cause. Such provisional license shall allow the provisional licensee to perform the duties of a nursing home administrator. An individual shall not hold a provisional license for more than twelve total combined months, and the board may revoke or otherwise discipline a provisional licensee for cause after due notice and a hearing on a charge or complaint filed with the board.~~

~~4. Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.~~

~~5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards. Such appropriate action may include revocation of a license, if necessary, or placing the licensee on probation for a period not exceeding six months, and shall be taken only for cause after due notice and a hearing on the charge or complaint.~~

~~6. Conduct a continuing study and investigation of nursing homes, and administrators of nursing homes, in this state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.~~

~~7. Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this chapter, and make provisions for such courses and their accessibility to residents of this state unless it finds that there are, and approves, a sufficient number of courses, which courses are conducted by others within this state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this chapter.~~

Sec. 6. Section 155.10, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

**155.10 Continuing education.**

Each person licensed as a nursing home administrator shall be required to complete continuing education as a condition of license renewal. Such continuing education requirements shall be determined by the board.

Sec. 7. Section 155.14, Code 2011, is amended to read as follows:

**155.14 Applications.**

Applications for licensure and for license renewal shall be on forms in the format prescribed and furnished by the board and shall not contain a recent photograph of the applicant. An

~~applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of nursing home administration. Character references may be required, but shall not be obtained from licensed nursing home administrators.~~

Sec. 8. NEW SECTION. 155.19 Voluntary surrender.

The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. The voluntary surrender, when accepted, shall have the same force and effect as an order of revocation.

Sec. 9. REPEAL. Sections 155.2, 155.15, and 155.16, Code 2011, are repealed.

DIVISION II  
HEARING AID DISPENSERS

Sec. 10. Section 154A.7, Code 2011, is amended to read as follows:

**154A.7 Meetings and expenses Board meetings.**

~~The members of the board shall receive actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The board shall meet at least one time per year at the seat of government and may hold additional meetings as deemed necessary. Additional meetings shall be held at the call of the chairperson or a majority of the members of the board. At any meeting of the board, a majority of the members shall constitute a quorum.~~

Sec. 11. Section 154A.10, Code 2011, is amended to read as follows:

**154A.10 Issuance of licenses.**

~~After January 1, 1975, an~~ An applicant may obtain a license, if the applicant:

1. Successfully passes the qualifying examination prescribed in section 154A.12.
2. Is free of contagious or infectious disease.
3. Pays the necessary fees set by the board pursuant to ~~section 154A.17.~~

Sec. 12. Section 154A.12, subsection 1, paragraph a, Code 2011, is amended to read as follows:

~~a. Written tests~~ Evidence of knowledge in areas such as physics of sound, anatomy and physiology of hearing, and the function of hearing aids, as these areas pertain to the fitting or selection and sale of hearing aids.

Sec. 13. Section 154A.13, Code 2011, is amended to read as follows:

**154A.13 Temporary permit.**

A person who has not been ~~employed~~ licensed as a hearing aid dispenser ~~prior to January 1, 1975,~~ may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dispenser. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board pursuant to ~~section 154A.17~~ in accordance with the provisions for establishment of fees in section 147.80. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license.

Sec. 14. Section 154A.23, Code 2011, is amended to read as follows:

**154A.23 Complaints Disciplinary orders — attorney general.**

Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or the permit of the holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained

~~against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel. The licensee or holder of a temporary permit and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board. The board shall issue such subpoenas at the request of a licensee or holder of a temporary permit. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel, if desired, and cross-examine.~~

~~If the board determines from the evidence and proofs submitted that the licensee or holder of a temporary permit is guilty of violating any of the provisions of this chapter, or any of the regulations promulgated by the board pursuant to this chapter, the department shall, within thirty days after the hearing, issue an order refusing to issue or renew, or revoking or suspending, as the case may be, the hearing aid dispenser's license or temporary permit. The order shall include the findings of fact and the conclusions of law made by the board and counsel. A copy of the order shall be sent to the licensee or holder of a temporary permit by registered mail. The records of the department shall reflect the action taken by the board on the charges, and the department shall preserve a record of the proceedings in a manner similar to that used by courts of record in this state.~~

~~The final order of the board in the proceedings may be appealed to the district court of the county where the licensee or holder of a temporary permit resides, or in which the licensed hearing aid dispenser's principal place of business is located.~~

~~The department shall send a copy of the complaint and a copy of the board's final order to the attorney general for purposes of information in the event the licensee or holder of a temporary permit pursues a court appeal and for consideration as to whether the violations are flagrant enough to justify prosecution. The board shall forward a copy of all final disciplinary orders, with associated complaints, to the attorney general for consideration for prosecution or enforcement when warranted. The attorney general and all county attorneys shall assist the board and the department in the enforcement of the provisions of this chapter.~~

Sec. 15. REPEAL. Sections 154A.2, 154A.3, 154A.4, 154A.5, 154A.6, 154A.8, 154A.9, 154A.11, 154A.14, 154A.15, 154A.17, and 154A.18, Code 2011, are repealed.

### DIVISION III LOCAL BOARDS OF HEALTH

Sec. 16. Section 135.1, subsection 6, Code 2011, is amended by striking the subsection.

Sec. 17. Section 137.112, Code 2011, is amended by adding the following new subsection:  
NEW SUBSECTION. 4. This section does not apply to any district board of health or district health department in existence prior to July 1, 2010.

Sec. 18. Section 331.502, subsection 8, Code 2011, is amended by striking the subsection.

Sec. 19. REPEAL. Section 135.32, Code 2011, is repealed.

Sec. 20. EFFECTIVE UPON ENACTMENT. The following provision or provisions of this division of this Act, being deemed of immediate importance, take effect upon enactment:

1. The section of this Act amending section 137.112.

Sec. 21. RETROACTIVE APPLICABILITY. The following provision or provisions of this division of this Act apply retroactively to July 1, 2010:

1. The section of this Act amending section 137.112.

DIVISION IV  
FEDERAL GRANTS REPORTING

Sec. 22. Section 135.11, Code Supplement 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 31. Report to the chairpersons and ranking members of the joint appropriations subcommittee on health and human services, the legislative services agency, the legislative caucus staffs, and the department of management within sixty calendar days of applying for or renewing a federal grant which requires a state match or maintenance of effort and has a value of over one hundred thousand dollars. The report shall list the federal funding source and address the potential need for the commitment of state funding in order to match or continue the funding provided by the federal grant in the present or future.

DIVISION V  
HIV CONFIDENTIALITY

Sec. 23. Section 141A.9, Code Supplement 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Medical information secured pursuant to subsection 1 may be shared with other state or federal agencies, with employees or agents of the department, or with local units of government that have a need for the information in the performance of their duties related to HIV prevention, disease surveillance, or care of persons with HIV, only as necessary to administer the program for which the information is collected or to administer a program within the other agency. Confidential information transferred to other persons or entities under this subsection shall continue to maintain its confidential status and shall not be rereleased by the receiving person or entity.

DIVISION VI  
REPEAL OF REPORTING REQUIREMENTS

Sec. 24. REPEAL. Section 135.165, Code 2011, is repealed.

DIVISION VII  
RADIOLOGICAL HEALTH

Sec. 25. Section 136C.3, subsection 5, Code 2011, is amended to read as follows:

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials and the operators or users thereof.

Sec. 26. Section 136C.8, Code 2011, is amended to read as follows:

**136C.8 Inspections.**

The department ~~shall~~ may inspect ~~all~~ radiation machines and radioactive materials located in this state, for the purpose of detecting, abating, or eliminating excessive radiation exposure hazards. The inspection shall include but shall not be limited to an evaluation of the radiation machine or radioactive material as well as the immediate environment to ensure that in using the machines or materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the machine or materials are avoided. ~~The inspection shall also include an evaluation of electrical hazards as well as the adequacy of mechanical supporting and restraining devices.~~ All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection. The department shall establish rules prescribing operating procedures for radiation machines and radioactive materials which ensure minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

Sec. 27. Section 136C.14, subsection 2, Code 2011, is amended to read as follows:

2. A person, other than a licensed professional, who operates a radiation machine or uses radioactive materials for medical treatment or diagnostic purposes shall ~~display~~ make available upon request the credentials which indicate that person's qualification to operate

~~the machine or use the materials in the immediate vicinity of the machine or where the materials are stored. A person who owns or controls the machine or materials is also responsible for the proper display of credentials of those who operate the machine or use the materials and shall not employ a person to operate the machine or use the materials for medical treatment or diagnostic purposes except as provided in this section.~~

Sec. 28. Section 136D.2, subsections 4 and 5, Code 2011, are amended to read as follows:

4. *“Tanning device”* means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, such as sunlamps, tanning booths, or tanning beds. ~~The term also includes any accompanying equipment such as protective eyewear, timers, and handrails.~~

5. *“Tanning facility”* means a ~~place that provides access to tanning devices for compensation~~ location, place, area, structure, or business, or a part thereof, which provides access to a tanning device for compensation. *“Tanning facility”* may include but is not limited to a tanning salon, health club, apartment, and condominium.

Sec. 29. Section 136D.8, subsection 2, Code 2011, is amended by striking the subsection.

Sec. 30. **NEW SECTION. 136D.9 Penalties.**

1. The department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter, a rule adopted or order issued under this chapter, or a term, condition, or limitation of a registration certificate issued pursuant to this chapter, or who commits a violation for which a registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty. However, the maximum civil penalty for a continuing violation shall not exceed five thousand dollars.

2. The department shall notify a person of the intent to impose a civil penalty against the person. The department shall establish the notification process to include an opportunity for the person to respond in writing, within a reasonable time as the department shall establish by rule, regarding reasons why the civil penalty should not be imposed.

3. The department may compromise, mitigate, or refund a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of the state who shall deposit the moneys in the general fund of the state.

#### DIVISION VIII PHARMACY RESEARCH PROJECTS

Sec. 31. 2011 Iowa Acts, chapter 63, section 36, subsection 1, is amended to read as follows:

1. Notwithstanding any provision of section 147.107, subsection 2, or section 155A.33 to the contrary, the board of pharmacy may approve a pilot or demonstration research project of innovative applications in the practice of pharmacy relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care.

Approved May 2, 2012