

# House File 307 - Introduced

HOUSE FILE \_\_\_\_\_  
BY MASCHER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act concerning disclosures of information regarding patient  
2 safety by health care workers and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 2211YH 83  
5 ec/nh/5

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1 1 Section 1. NEW SECTION. 147.97 PATIENT PROTECTION ==  
1 2 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.  
1 3 1. As used in this section, unless the context otherwise  
1 4 requires:  
1 5 a. "Direct care worker" means a trained and supervised  
1 6 individual who provides services, care, and emotional support  
1 7 to patients and health care recipients.  
1 8 b. "Established guidelines for certified individuals and  
1 9 direct care workers" includes written protocols and procedures  
1 10 as defined by the department for direct care workers,  
1 11 emergency medical care providers as defined in chapter 147A,  
1 12 and substance abuse counselors as certified by the Iowa board  
1 13 of certification.  
1 14 c. "Health care worker" means any individual employed by  
1 15 or under contract with a hospital, health care provider, or  
1 16 health care agency to provide health care services.  
1 17 d. "Professional standards of care" means authoritative  
1 18 statements that describe a level of care or performance common  
1 19 to the profession by which the quality of professional  
1 20 practice can be judged and which reflect the values and  
1 21 priorities of the profession.  
1 22 2. A health care worker, who reasonably believes a  
1 23 particular practice the health care worker has observed  
1 24 occurring at the health care worker's place of employment or  
1 25 at the health care entity where the health care worker is  
1 26 rendering health care services, based on the health care  
1 27 worker's professional standards of care, professional code of  
1 28 ethics, or established guidelines for certified individuals  
1 29 and direct care workers, is a material violation of health and  
1 30 safety laws or a breach of public safety that has caused  
1 31 serious harm to or creates a significant probability of  
1 32 serious harm to patients or health care recipients, may report  
1 33 the information relating to the violation or breach within  
1 34 fourteen calendar days of its occurrence to the health care  
1 35 worker's supervisor, employer, or member of management or  
2 1 administration, in order that investigation can be undertaken  
2 2 and, if appropriate, corrective action be initiated. The  
2 3 report shall be made in writing according to the business  
2 4 operational procedures of the health care entity as outlined  
2 5 in the personnel manual or other similar business arrangement  
2 6 document applicable to employees of the health care entity.  
2 7 The health care worker shall be protected against reprisals or  
2 8 retaliatory or punitive action by the individual or  
2 9 institution receiving such a report. The health care entity  
2 10 shall respond, in writing, to the health care worker within  
2 11 fourteen calendar days of receipt of the report outlining any  
2 12 investigation or corrective action initiated by the health  
2 13 care entity.  
2 14 3. If after fourteen calendar days following the written  
2 15 report of a material violation or breach made by the health  
2 16 care worker pursuant to subsection 2, the health care worker  
2 17 continues to see the particular practice occurring in the  
2 18 workplace giving rise to the written report, the health care  
2 19 worker may report information to the appropriate licensing  
2 20 board, the department, the department of inspections and

2 21 appeals, the department of human services, the Iowa healthcare  
2 22 collaborative, the division of insurance in the department of  
2 23 commerce, a member or employee of the general assembly, the  
2 24 attorney general, a state-mandated health information  
2 25 collection agency, any other public official or law  
2 26 enforcement agency, federal government agency or program, the  
2 27 governing board of the health care worker's employer or  
2 28 institution, or the health care worker's professional  
2 29 association, and shall be protected against reprisals or  
2 30 retaliatory or punitive actions by the individual or employing  
2 31 health care entity if disclosure of the information is not  
2 32 otherwise prohibited by statute and if the information meets  
2 33 any of the following requirements:

2 34 a. Constitutes state-mandated health data required to be  
2 35 submitted to state agencies.

3 1 b. Informs state agencies or entities of violations of  
3 2 state health, safety, occupational health, licensure, or  
3 3 insurance laws.

3 4 c. Is reasonably believed by the health care worker to be  
3 5 a material violation of health and safety laws or a breach of  
3 6 public safety that has caused serious harm to or creates a  
3 7 significant probability of serious harm to patients or health  
3 8 care recipients, based upon the health care worker's  
3 9 professional standards of care, professional code of ethics,  
3 10 or established guidelines for certified individuals and direct  
3 11 care workers.

3 12 A health care worker making a disclosure which violates any  
3 13 provision of the federal Health Insurance Portability and  
3 14 Accountability Act, Pub. L. No. 104-191, shall not be entitled  
3 15 to protection pursuant to this section nor entitled to civil  
3 16 remedies which might otherwise be available pursuant to  
3 17 subsection 6 or 7.

3 18 4. A health care worker who, in good faith, makes a  
3 19 written report of a material violation or breach pursuant to  
3 20 subsection 2 or reports information described in subsection 3  
3 21 shall be presumed to have established a prima facie case  
3 22 showing a violation of subsection 2 or 3 by the health care  
3 23 worker's employer if the individual or institution employing  
3 24 the health care worker knows or has reason to know of the  
3 25 disclosure, and if subsequent to the disclosure, one or more  
3 26 of the following actions were initiated by the employer:

3 27 a. Discharge of the health care worker from employment.

3 28 b. Failure by the employer to take action regarding a  
3 29 health care worker's appointment to, promotion or proposed  
3 30 promotion to, or receipt of any advantage or benefit in the  
3 31 health care worker's position of employment.

3 32 c. Any adverse change to the health care worker's terms or  
3 33 conditions of employment or any administrative, civil, or  
3 34 criminal action or other effort that diminished the  
3 35 professional competence, reputation, stature, or marketability  
4 1 of the health care worker.

4 2 An employer shall have the burden of proof regarding any  
4 3 attempt to show that actions taken pursuant to this subsection  
4 4 were for a legitimate business purpose or were required by law  
4 5 or administrative rule, which if proven is a complete defense.

4 6 5. If an individual or institution employing a health care  
4 7 worker is determined to have violated state health, safety, or  
4 8 occupational health and health licensure laws or regulations,  
4 9 or professional standards of care, professional code of  
4 10 ethics, or established guidelines for certified individuals  
4 11 and direct care workers, after a disclosure pursuant to  
4 12 subsection 2 or 3 results in an action as described in  
4 13 subsection 4, such a determination shall create a presumption  
4 14 of retaliation or reprisal against the health care worker in  
4 15 violation of this section. Disclosure of a reasonable belief  
4 16 that material violations of health and safety laws or breaches  
4 17 of public safety have occurred that have caused or create a  
4 18 significant probability of serious harm to patients and health  
4 19 care recipients shall immediately trigger the protection  
4 20 afforded by this section.

4 21 6. A person who violates this section is subject to a  
4 22 civil action as follows:

4 23 a. A person who violates this section is liable to an  
4 24 aggrieved health care worker for affirmative relief.

4 25 b. A person or entity who prevails in a civil action based  
4 26 on this section is entitled to equitable relief the court  
4 27 deems appropriate.

4 28 c. When a person commits, is committing, or proposes to  
4 29 commit an act in violation of this section, an injunction may  
4 30 be granted through an action in district court to prohibit the  
4 31 person from continuing such acts. The action for injunctive

4 32 relief may be brought by an aggrieved health care worker or by  
4 33 the county attorney.

4 34 d. A civil action brought pursuant to this subsection  
4 35 shall be filed within six months from the date of the alleged  
5 1 violation.

5 2 7. a. In addition to any other penalties applicable to a  
5 3 person who violates this section, an individual, institution,  
5 4 or organization employing a person who violates this section  
5 5 shall be subject to a civil penalty in the amount of one  
5 6 thousand dollars per violation.

5 7 b. A health care worker found to bring a frivolous,  
5 8 malicious, or nuisance cause of action against a health care  
5 9 employer under this section shall be subject to a civil  
5 10 penalty in the amount of one thousand dollars per violation  
5 11 and up to four thousand dollars of reasonable attorney fees.

5 12 8. It is the intent of this section to protect public  
5 13 safety and not to protect incompetent or unprofessional health  
5 14 care workers.

#### 5 15 EXPLANATION

5 16 This bill creates new Code section 147.97 to provide  
5 17 protection for health care workers against retaliation or  
5 18 reprisals resulting from the disclosure of certain patient  
5 19 safety information.

5 20 The new Code section provides that a health care worker who  
5 21 discloses information to a state or federal board, department,  
5 22 or agency, including the attorney general and law enforcement  
5 23 personnel, as described in the bill, after 14 days have  
5 24 transpired following a written report to the employer and  
5 25 opportunity to take corrective action has transpired on the  
5 26 part of the individual or institution which employs the health  
5 27 care worker and which is the subject of the disclosure, shall  
5 28 be protected against reprisals or retaliatory or punitive  
5 29 actions by the employer if disclosure of the information is  
5 30 not otherwise prohibited by statute. The bill requires that  
5 31 the health care entity respond to the health care worker  
5 32 within 14 days. The bill provides that for this provision to  
5 33 apply, the information disclosed must constitute  
5 34 state-mandated health data required to be submitted to a state  
5 35 agency, or inform a state agency or entity of a violation of  
6 1 state health, safety, occupational health, licensure, and  
6 2 insurance laws, or is reasonably believed by the health care  
6 3 worker to be a violation of health and safety laws or a breach  
6 4 of public safety that has caused or creates a significant  
6 5 probability of serious harm to patients or health care  
6 6 recipients, based upon the health care worker's professional  
6 7 standards of care, professional code of ethics, or established  
6 8 guidelines for health care workers. The bill provides that  
6 9 this provision shall not be applicable to a disclosure which  
6 10 constitutes a violation of the federal Health Insurance  
6 11 Portability and Accountability Act.

6 12 The new Code section provides that a health care worker  
6 13 disclosing in good faith this information shall be presumed to  
6 14 have established a prima facie case if the employer knows or  
6 15 has reason to know of the disclosure, and if following the  
6 16 disclosure the health care worker was discharged from  
6 17 employment, or there was a failure by the employer to take  
6 18 action regarding a health care worker's appointment or  
6 19 promotion, or any adverse change to the health care worker's  
6 20 terms or conditions of employment as well as any  
6 21 administrative, civil, or criminal action or other effort that  
6 22 diminishes the professional competence, reputation, stature,  
6 23 or marketability of the health care worker. The bill provides  
6 24 that the employer shall have the burden of proof regarding any  
6 25 attempt to show that these actions were undertaken for a  
6 26 legitimate business purpose.

6 27 The new Code section provides that if an employer is  
6 28 determined to have violated state health, safety, or  
6 29 occupational health or health licensure laws or regulations,  
6 30 or professional standards of care or a professional code of  
6 31 ethics, or certain guidelines, after a disclosure by a health  
6 32 care worker resulting in an action taken against the worker as  
6 33 described in the bill, this creates a presumption of  
6 34 retaliation or reprisal. The bill provides that violations of  
6 35 health and safety laws or breaches of public safety that have  
7 1 caused or create a significant probability of serious harm to  
7 2 patients and health care recipients immediately trigger  
7 3 protection.

7 4 The new Code section provides that violations may be  
7 5 grounds for a civil action. The bill provides that in such an  
7 6 action, an employer may be liable to an aggrieved health care  
7 7 worker for affirmative relief, and other equitable relief the

7 8 court deems appropriate. The bill also provides for  
7 9 injunctive relief. The bill provides that in addition to  
7 10 other penalties, an individual, institution, or organization  
7 11 employing a person found to be in violation of the bill's  
7 12 provisions shall be subject to a civil penalty in the amount  
7 13 of \$1,000 per violation. In addition, the bill provides that  
7 14 a health care worker found to have brought a frivolous claim  
7 15 under this new Code section is subject to a civil penalty of  
7 16 up to \$1,000 per violation and up to \$4,000 of reasonable  
7 17 attorney fees.  
7 18 LSB 2211YH 83  
7 19 ec/nh/5