

# CHAPTER 135B

## LICENSURE AND REGULATION OF HOSPITALS

Referred to in §8D.2, 8D.3, 8D.13, 10A.104, 105.11, 125.2, 125.13, 125.43A, 135.131, 135C.5, 135H.6, 142C.2, 144A.7A, 147.138, 147A.21, 157.13, 206.2, 231B.16, 231C.17, 231D.16, 235A.15, 235B.6, 235E.2, 237.1, 237.4, 237A.1, 249J.3, 249J.24A, 249L.2, 249M.2, 252A.2, 282.27, 331.382, 331.439, 423.3, 455B.133, 505.8, 505.27, 514C.13, 519.1, 519A.2, 582.1, 614.1, 622.31, 714H.4

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Abortion liability exculpation, chapter 146

[P] Psychiatric medical institutions for children, chapter 135H

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### DIVISION I

#### GENERAL PROVISIONS

#### **135B.1 Definitions.**

As used in this chapter:

1. “*Department*” means the department of inspections and appeals.
2. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.
3. “*Hospital*” means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that

furnish only food and lodging, or either, to their guests or to a freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418. "Hospital" shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Pub. L. No. 79-725, 60 Stat. 1040, approved August 13, 1946.

4. "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.1]

90 Acts, ch 1107, §1; 90 Acts, ch 1204, §2; 2006 Acts, ch 1010, §52

Referred to in §135.61, 135.154, 135C.33, 139A.2, 142D.2, 144A.2, 144C.2, 144D.1, 152B.4, 233.1, 235E.1, 249H.3, 427.1(14a)

### **135B.2 Purpose.**

The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards for the care and treatment of individuals in hospitals and for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in hospitals, in the interest of the health, welfare and safety of the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.2]

### **135B.3 Licensure.**

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.3]

### **135B.4 Application for license.**

Licenses shall be obtained from the department. Applications shall be upon forms and shall contain information as the department may reasonably require, which may include affirmative evidence of ability to comply with reasonable standards and rules prescribed under this chapter. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be deposited into the state treasury and credited to the general fund if the license is issued. Hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.4]

90 Acts, ch 1204, §3

### **135B.5 Issuance and renewal of license.**

1. Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant and hospital facilities comply with this chapter and the rules of the department. Each licensee shall receive annual reapproval upon payment of five hundred dollars and upon filing of an application form which is available from the department. The annual licensure fee shall be dedicated to support and provide educational programs on regulatory issues for hospitals licensed under this chapter in consultation with the hospital licensing board. Licenses shall be either general or restricted in form. Each license shall be issued only for the premises and persons or governmental units named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

2. The provisions of this section shall not in any way affect, change, deny or nullify any rights set forth in, or arising from the provisions of this chapter and particularly section 135B.7, arising before or after December 31, 1960.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.5]

90 Acts, ch 1204, §4; 2008 Acts, ch 1191, §48

**135B.6 Denial, suspension, or revocation of license — hearings and review.**

The department may deny, suspend, or revoke a license in any case where it finds that there has been a substantial failure to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter.

A denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail, or by personal service of, a notice setting forth the particular reasons for the action. A denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within the thirty-day period gives written notice to the department requesting a hearing, in which case the notice is suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to hearing, the department may rescind the notice of denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of a hearing or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of the decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, or served personally upon, the applicant or licensee.

The procedure governing hearings authorized by this section shall be in accordance with rules adopted by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135B.14. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.6]  
90 Acts, ch 1204, §5

**135B.7 Rules and enforcement.**

1. a. The department, with the advice and approval of the hospital licensing board and approval of the state board of health, shall adopt rules setting out the standards for the different types of hospitals to be licensed under this chapter. The department shall enforce the rules.

b. Rules or standards shall not be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians in the hospital, if the school or system of practice is recognized by the laws of this state.

2. a. The rules shall state that a hospital shall not deny clinical privileges to physicians and surgeons, podiatric physicians, osteopathic physicians and surgeons, dentists, certified health service providers in psychology, physician assistants, or advanced registered nurse practitioners licensed under chapter 148, 148C, 149, 152, or 153, or section 154B.7, solely by reason of the license held by the practitioner or solely by reason of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States department of education.

b. A hospital may establish procedures for interaction between a patient and a practitioner. The rules shall not prohibit a hospital from limiting, restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this paragraph, when applied in good faith and in a nondiscriminatory manner.

c. This subsection shall not require a hospital to expand the hospital's current scope of service delivery solely to offer the services of a class of providers not currently providing services at the hospital. This section shall not be construed to require a hospital to establish rules which are inconsistent with the scope of practice established for licensure of practitioners to whom this subsection applies.

d. This section shall not be construed to authorize the denial of clinical privileges to a

practitioner or class of practitioners solely because a hospital has as employees of the hospital identically licensed practitioners providing the same or similar services.

3. The rules shall require that a hospital establish and implement written criteria for the granting of clinical privileges. The written criteria shall include but are not limited to consideration of all of the following:

a. The ability of an applicant for privileges to provide patient care services independently and appropriately in the hospital.

b. The license held by the applicant to practice.

c. The training, experience, and competence of the applicant.

d. The relationship between the applicant's request for the granting of privileges and the hospital's current scope of patient care services, as well as the hospital's determination of the necessity to grant privileges to a practitioner authorized to provide comprehensive, appropriate, and cost-effective services.

4. The department shall also adopt rules requiring hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.7]

83 Acts, ch 101, §16; 85 Acts, ch 169, §1; 90 Acts, ch 1093, §1; 90 Acts, ch 1204, §6; 91 Acts, ch 218, §3; 93 Acts, ch 108, §1; 96 Acts, ch 1034, §68; 99 Acts, ch 42, §1; 2008 Acts, ch 1088, §88; 2009 Acts, ch 41, §45

Referred to in §135B.5

#### **135B.7A Procedures — orders.**

The department shall adopt rules that require hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed thirty days following a patient's discharge.

2001 Acts, ch 93, §1; 2007 Acts, ch 93, §1

#### **135B.8 Effective date of rules.**

Any hospital which is in operation at the time of promulgation of any applicable rules or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and minimum standards.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.8]

#### **135B.9 Inspections and qualifications for hospital inspectors — protection and advocacy agency investigations.**

1. The department shall make or cause to be made inspections as it deems necessary in order to determine compliance with applicable rules. Hospital inspectors shall meet the following qualifications:

a. Be free of conflicts of interest. A hospital inspector shall not participate in an inspection or complaint investigation of a hospital in which the inspector or a member of the inspector's immediate family works or has worked within the last two years. For purposes of this paragraph, "*immediate family member*" means a spouse; natural or adoptive parent, child, or sibling; or stepparent, stepchild, or stepsibling.

b. Complete a yearly conflict of interest disclosure statement.

c. Biennially, complete a minimum of ten hours of continuing education pertaining to hospital operations including but not limited to quality and process improvement standards, trauma system standards, and regulatory requirements.

2. In the state resource centers and state mental health institutes operated by the department of human services, the designated protection and advocacy agency as provided in section 135C.2, subsection 4, shall have the authority to investigate all complaints of abuse and neglect of persons with developmental disabilities or mental illnesses if the complaints are reported to the protection and advocacy agency or if there is probable cause to believe that the abuse has occurred. Such authority shall include the examination of all records pertaining to the care provided to the residents and contact or interview with any

resident, employee, or any other person who might have knowledge about the operation of the institution.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.9]

88 Acts, ch 1249, §1; 90 Acts, ch 1204, §7; 95 Acts, ch 51, §1; 2000 Acts, ch 1112, §51; 2010 Acts, ch 1177, §1

Referred to in §135C.37

#### **135B.10 Hospital licensing board.**

The governor shall appoint six individuals to serve as the hospital licensing board within the department.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.10]

86 Acts, ch 1245, §527; 90 Acts, ch 1204, §8; 2008 Acts, ch 1191, §49

#### **135B.11 Functions of hospital licensing board — compensation.**

1. The hospital licensing board shall have the following responsibilities and duties:

a. To consult with and advise the department in matters of policy affecting administration of this chapter, and in the development of rules and standards provided for under this chapter.

b. To review and approve rules and standards authorized under this chapter prior to their approval by the state board of health and adoption by the department.

2. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.11]

86 Acts, ch 1245, §528; 87 Acts, ch 8, §4; 90 Acts, ch 1204, §9; 2009 Acts, ch 41, §263

#### **135B.12 Confidentiality.**

The department's final findings or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association with respect to compliance by a hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall remain confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or agents involved in the investigation of the complaint.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.12]

88 Acts, ch 1249, §2; 90 Acts, ch 1204, §10; 91 Acts, ch 107, §2

#### **135B.13 Annual report of department.**

The department shall prepare and publish an annual report of its activities under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.13]

90 Acts, ch 1204, §11

#### **135B.14 Judicial review.**

Judicial review of the action of the department may be sought in accordance with chapter 17A. Notwithstanding the terms of chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hospital is located or to be located, and the status quo of the petitioner or licensee shall be preserved pending final disposition of the matter in the courts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.14]

90 Acts, ch 1204, §12

Referred to in §135B.6

**135B.15 Penalties.**

Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a serious misdemeanor, and each day of continuing violation after conviction shall be considered a separate offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.15]

**135B.16 Injunction.**

Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.16]

**135B.17 Construction.**

This chapter is in addition to and not in conflict with chapter 235.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.17]

83 Acts, ch 101, §17; 2004 Acts, ch 1086, §36

**135B.18 County care facilities exempted.**

The provisions of this chapter shall not apply to county care facilities established pursuant to chapter 347B and managed by the county board of supervisors.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.18]

**135B.18A Universal newborn and infant hearing screening.**

Beginning January 1, 2004, a birthing hospital as defined in section 135.131 shall comply with section 135.131 relating to universal newborn and infant hearing screening.

2003 Acts, ch 102, §2

## DIVISION II

## PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

**135B.19 Title of division.**

This division may be cited as the “*Pathology and Radiology Services in Hospitals Law*”.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.19]

2011 Acts, ch 34, §36

**135B.20 Definitions.**

Definitions as used in this division:

1. “*Doctor*” shall mean any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

2. “*Employees*” as used in section 135B.24, and “*employment*” as used in section 135B.25, shall include and pertain to members of the religious order operating the hospital even though the relationship of employer and employee does not exist between such members and the hospital.

3. “*Hospital*” shall mean all hospitals licensed under this chapter.

4. “*Joint conference committee*” shall mean the joint conference committee as required by the joint commission on accreditation of health care organizations or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

5. “Technician” shall mean technologist as well.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.20]

98 Acts, ch 1100, §16; 2008 Acts, ch 1088, §141; 2009 Acts, ch 133, §35

#### **135B.21 Functions of hospital.**

The ownership and maintenance of the laboratory and X-ray facilities and the operation of same under this division are proper functions of a hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.21]

#### **135B.22 Character of services.**

Pathology and radiology services performed in hospitals are the product of the joint contribution of hospitals, doctors and technicians but these services constitute medical services which must be performed by or under the direction and supervision of a doctor, and no hospital shall have the right, directly or indirectly, to direct, control or interfere with the professional medical acts and duties of the doctor in charge of the pathology or radiology facilities or of the technicians under the doctor’s supervision. Nothing herein contained shall affect the rights of third parties as a result of negligence in the operation or maintenance of the aforesaid pathology and radiology facilities.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.22]

#### **135B.23 Agreement with doctor.**

Each hospital shall arrange for such services and for the direction and supervision of its pathology or radiology department by entering into either an oral or written agreement with a doctor who is a member of or acceptable to the hospital medical staff. Such doctor may or may not be a specialist. The department may be supervised and directed by a qualified member of the staff and specific services may be referred to a specialist, or the specialist may also direct and supervise the department as may be desired. Any contract so entered into shall be in accordance with the provisions of this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.23]

#### **135B.24 Employees.**

Unless the department is leased or unless the hospital and doctor mutually agree otherwise, technicians and other personnel, not including doctors, shall be employees of the hospital, subject to the rules of the hospital applicable to employees generally, but under the direction and supervision of the doctor in charge of the department as set forth elsewhere in this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.24]

Referred to in §135B.20

#### **135B.25 Hiring and dismissal of technicians.**

The doctor and hospital shall mutually agree upon the employment of any technicians necessary for the proper operation of said department and no technicians shall be dismissed from said employment without the mutual consent of the parties, provided, however, that in the event the hospital and doctor are unable mutually to agree upon the hiring or discharge or disciplining of any employee of said department, the matter shall be promptly submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.25]

Referred to in §135B.20

#### **135B.26 Compensation.**

The contract between the hospital and doctor in charge of the laboratory or X-ray facilities may contain any provision for compensation of each upon which they mutually agree. The contract may create the relationship of employer and employee between the hospital and the radiologist or pathologist. A percentage arrangement or a relationship of employer and employee between the hospital and the radiologist or pathologist is not unprofessional

conduct on the part of the doctor or in violation of the statutes of this state upon the part of the hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.26]

83 Acts, ch 27, §8

Referred to in §514B.32

#### **135B.27 Admission agreement.**

The hospital admission agreement signed by the patient or the patient's legal representative shall contain the following statement:

Pathology and radiology services are medical services performed or supervised by doctors, and the personnel and facilities are or may be furnished by the hospital for said services. Charges for such services are or may be collected, however, by the hospital on behalf of said doctors pursuant to an agreement between said doctors and the hospital, and from said charges I consent that an agreed sum will be retained by the hospital in accordance with an existing agreement between the doctor and the hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.27]

#### **135B.28 Hospital bill.**

1. The hospital bill shall properly include the charges for pathology and radiology services as long as the name of the doctor is stated and it fairly appears that the charge is for medical services.

2. The hospital bill shall also contain a statement substantially in the following form:

The pathology and radiology charges are for medical services rendered by or under the direction of the doctor listed above and are collected by the hospital on behalf of the doctor, from which charges an agreed sum will be retained by the hospital in accordance with an existing agreement to which retention you consented at the time of your admission to the hospital.

3. Upon the effective date of regulations which may be adopted by the United States department of health and human services prohibiting combined billing by hospitals and hospital-based physicians under Tit. XVIII of the federal Social Security Act, the charges for all pathology and radiology services in a hospital, may upon the mutual agreement of the hospital, physician, and third-party payer, be billed separately, the hospital component of the charges being included in the hospital bill and the doctor component being billed by the doctor.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.28]

83 Acts, ch 27, §9; 2009 Acts, ch 41, §46

#### **135B.29 Fees.**

All fees to be charged by the doctors for pathology and radiology services shall be mutually agreed upon by the hospital and the doctor. In the event dispute shall arise between the parties the matter shall be submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.29]

#### **135B.30 Radiology and pathology fees.**

Fees for radiology and pathology services must be paid for as medical and not hospital services. In all cases where payment is to be made by a corporation organized pursuant to chapter 514, payment for radiology and pathology services shall be made by a medical service corporation and not by a hospital service corporation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.30]



**135B.31 Exceptions.**

This division is not intended and shall not affect in any way the obligation of public hospitals under chapter 347 or municipal hospitals to provide medical care or treatment to patients of certain entitlement, nor the operation by the state of mental or other hospitals authorized by law. This division shall not in any way affect or limit the practice of dentistry or the practice of oral surgery by a dentist.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.31]

87 Acts, ch 233, §427; 2005 Acts, ch 167, §44, 66

**135B.32 Construction.**

Nothing herein shall deprive any hospital of its tax exempt or nonprofit status.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.32]

## DIVISION III

## TECHNICAL PLANNING ASSISTANCE

**135B.33 Technical assistance — plan — grants.**

1. Subject to availability of funds, the Iowa department of public health shall provide technical planning assistance to local boards of health and hospital governing boards to ensure access to hospital services in rural areas. The department shall encourage the local boards of health and hospital governing boards to adopt a long-term community health services and developmental plan including the following:

a. An analysis of demographic trends in the health facility services area, affecting health facility and health-facility-related health care utilizations.

b. A review of inpatient services currently provided, by type of service and the frequency of provision of that service, and the cost-effectiveness of that service.

c. An analysis of resources available in proximate health facilities and services that might be provided through alternative arrangements with such health facilities.

d. An analysis of cooperative arrangements that could be developed with other health facilities in the area that could assist those health facilities in the provision of services.

e. An analysis of community health needs, including long-term care, nursing facility care, pediatric and maternity services, and the health facilities' potential role in facilitating the provision of services to meet these needs.

f. An analysis of alternative uses for existing health facility space and real property, including use for community health-related and human service-related purposes.

g. An analysis of mechanisms to meet indigent patient care needs and the responsibilities for the care of indigent patients.

h. An analysis of the existing tax levying of the health facilities for patient care, on a per capita basis and per hospital patient basis, and projections on future needs for tax levying to continue for the provision of care.

2. Providers may cooperatively coordinate to develop one long-term community health services and developmental plan for a geographic area, provided the plan addresses the issues enumerated in this section.

3. The health facilities may seek technical assistance or apply for matching grant funds for the plan development. The department shall require compliance with subsection 1, paragraphs "a" through "h" when the facility applies for matching grant funds.

86 Acts, ch 1200, §2; 90 Acts, ch 1039, §1; 2009 Acts, ch 41, §192

Referred to in §135.107

DIVISION IV  
EMPLOYEE RECORD CHECKS

**135B.34 Hospital employees — criminal history and abuse record checks — penalty.**

1. Prior to employment of a person in a hospital, the hospital shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A hospital shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A hospital shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

2. *a.* If it is determined that a person being considered for employment in a hospital has committed a crime, the department of public safety shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.

*b.* If a department of human services child or dependent adult abuse record check shows that the person has a record of founded child or dependent adult abuse, the department of human services shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person's employment in the hospital.

*c.* An evaluation performed under this subsection shall be performed in accordance with procedures adopted for this purpose by the department of human services.

*d.* (1) If a person owns or operates more than one hospital, and an employee of one of such hospitals is transferred to another such hospital without a lapse in employment, the hospital is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a hospital is transferred, at the time of transfer the record checks required by this section shall be performed for each employee for whom there is no documentation that such record checks have been performed. The hospital may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of this section, the department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. *a.* Except as provided in paragraph "b" and subsection 2, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital licensed under this chapter unless an evaluation has been performed by the department of human services.

*b.* A person with a criminal or abuse record who is employed by a hospital licensed under this chapter and is hired by another licensee without a lapse in employment shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. If an evaluation was previously performed by the department of human services concerning

the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee while the department of human services' evaluation of the latest record checks is pending. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment.

5. *a.* If a person employed by a hospital that is subject to this section is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the hospital of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The hospital shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued. The hospital may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

*b.* If a hospital receives credible information, as determined by the hospital, that a person employed by the hospital has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the hospital of such information within the period required under paragraph "a", the hospital shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued.

*c.* The hospital may notify the county attorney for the county where the hospital is located of any violation or failure by an employee to notify the hospital of a criminal conviction or entry of an abuse record within the period required under paragraph "a".

6. A hospital licensed in this state may access the single contact repository established by the department pursuant to section 135C.33 as necessary for the hospital to perform record checks of persons employed or being considered for employment by the hospital.

2002 Acts, ch 1034, §1; 2008 Acts, ch 1187, §111