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HUMAN RESOURCES

SENATE FILE 2074

BY VILSACK

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to health care facilities, providing penalties,
2 providing for an appropriation, and providing for a repeal.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2074

1 Section 1. NEW SECTION. 135C.20A REPORT CARDS --
2 FACILITY INSPECTIONS -- COMPLAINT PROCEDURES -- AVAILABILITY
3 TO PUBLIC -- ELECTRONIC ACCESS.

4 1. The department shall develop and utilize a report card
5 system for the recording of the findings of any inspection of
6 a health care facility. The report card shall include but is
7 not limited to a summary of the findings of the inspection,
8 any violation found, any enforcement action taken including
9 any citations issued and penalties assessed, any actions taken
10 to correct violations or deficiencies, and the nature and
11 status of any action taken with respect to any uncorrected
12 violation for which a citation is outstanding.

13 2. The report card form shall be developed by the
14 department in cooperation with representatives of the
15 department of elder affairs, the state long-term care
16 resident's advocate, representatives of care review
17 committees, representatives of protection and advocacy
18 entities, consumers, and other interested persons.

19 3. The department shall make any completed report cards
20 electronically accessible to the public, on a monthly basis,
21 and shall compile the report cards on an annual basis and make
22 the compilation electronically accessible to the public. The
23 annual compilation shall also be available at the office of
24 the department at the seat of government.

25 4. The department shall make a continuing effort to inform
26 the public of the appropriate procedure to be followed by any
27 person who believes that a complaint against a health care
28 facility is justified and should be made under section
29 135C.37. The electronically accessible site which provides
30 public access to completed report cards shall also include
31 information regarding the appropriate procedures to be
32 followed in registering a complaint against a health care
33 facility.

34 Sec. 2. Section 135C.36, Code 1997, is amended to read as
35 follows:

1 135C.36 VIOLATIONS CLASSIFIED -- PENALTIES.

2 Every violation by a health care facility of any provision
3 of this chapter or of the rules adopted pursuant to it shall
4 be classified by the department in accordance with this
5 section. The department shall adopt and may from time to time
6 modify, in accordance with chapter 17A rules setting forth so
7 far as feasible the specific violations included in each
8 classification and stating criteria for the classification of
9 any violation not so listed. The rules adopted relating to
10 the criteria used in determining which class of violation will
11 be designated in a citation, when more than one class is
12 specified in the notation following the rule, shall be in the
13 form of a grid and points system which is based on the
14 consideration of four factors: the harm resulting from the
15 violation, the frequency of the violation, the history of the
16 facility, and the duration of the violation.

17 1. A Class I violation is one which presents an imminent
18 danger or a substantial probability of resultant death or
19 physical harm to the residents of the facility in which the
20 violation occurs. A physical condition or one or more
21 practices in a facility may constitute a Class I violation. A
22 Class I violation shall be abated or eliminated immediately
23 unless the department determines that a stated period of time,
24 specified in the citation issued under section 135C.40, is
25 required to correct the violation. A licensee is subject to a
26 penalty of not less than two thousand nor more than ten
27 thousand dollars for each Class I violation for which the
28 licensee's facility is cited. However, if the violation
29 results in the death of a resident, the licensee is subject to
30 a penalty of not less than five thousand dollars nor more than
31 ten thousand dollars for each such class I violation for which
32 the licensee's facility is cited.

33 2. A Class II violation is one which has a direct or
34 immediate relationship to the health, safety or security of
35 residents of a health care facility, but which presents no

1 imminent danger nor substantial probability of death or
2 physical harm to them. A physical condition or one or more
3 practices within a facility, including either physical abuse
4 of any resident or failure to treat any resident with
5 consideration, respect and full recognition of the resident's
6 dignity and individuality, in violation of a specific rule
7 adopted by the department, may constitute a Class II
8 violation. A violation of section 135C.14, subsection 8, or
9 section 135C.31 and rules adopted under those sections shall
10 be at least a Class II violation and may be a Class I
11 violation. A Class II violation shall be corrected within a
12 stated period of time determined by the department and
13 specified in the citation issued under section 135C.40. The
14 stated period of time specified in the citation may
15 subsequently be modified by the department for good cause
16 shown. A licensee is subject to a penalty of not less than
17 one five hundred nor more than five one thousand nine hundred
18 ninety-nine dollars for each Class II violation for which the
19 licensee's facility is cited, however the director may waive
20 the penalty if the violation is corrected within the time
21 specified in the citation.

22 3. A Class III violation is any violation of this chapter
23 or of the rules adopted pursuant to it which violation is not
24 classified in the department's rules nor classifiable under
25 the criteria stated in those rules as a Class I or a Class II
26 violation. A licensee ~~shall not be~~ is subject to a penalty of
27 not less than one hundred nor more than four hundred ninety-
28 nine dollars for a each Class III violation, except as
29 provided by section 135C.40, subsection 1 for failure to
30 correct the violation within a reasonable time specified by
31 the department in the notice of the violation for which the
32 licensee's facility is cited. However, the director may waive
33 the penalty if the violation is corrected within the time
34 specified in the citation.

35 Sec. 3. Section 135C.40, subsection 1, Code 1997, is

1 amended to read as follows:

2 1. If the director determines, based on the findings of an
3 inspection or investigation of a health care facility, that
4 the facility is in violation of this chapter or rules adopted
5 under this chapter, the director within five working days
6 after making the determination, may issue a written citation
7 to the facility. The citation shall be served upon the
8 facility personally or by certified mail, ~~except that a~~
9 ~~citation for a Class III violation may be sent by ordinary~~
10 ~~mail~~. Each citation shall specifically describe the nature of
11 the violation, identifying the Code section or subsection or
12 the rule or standard violated, and the classification of the
13 violation under section 135C.36. Where appropriate, the
14 citation shall also state the period of time allowed for
15 correction of the violation, which shall in each case be the
16 shortest period of time the department deems feasible.
17 Failure to correct a violation within the time specified,
18 unless the licensee shows that the failure was due to
19 circumstances beyond the licensee's control, shall subject the
20 facility to a further penalty of fifty dollars for each day
21 that the violation continues after the time specified for
22 correction.

23 Sec. 4. Section 135C.41, subsection 1, Code 1997, is
24 amended to read as follows:

25 1. If it does not desire to contest the citation, do one
26 of the following:

27 a. Remit to the department the amount specified by the
28 department pursuant to section 135C.36 as a penalty for each
29 Class I, violation cited, and for each Class II, or Class III
30 violation, unless the citation specifically waives the
31 penalty, which funds shall be paid by the department into the
32 state treasury and credited to the general fund, ~~or~~.

33 b. In the case of a Class II or a Class III violation for
34 which the penalty has been waived in accordance with the
35 standards prescribed in section 135C.36, subsection 2 or 3, or

1 ~~a-Class-III-violation~~, send to the department a written
2 response acknowledging that the citation has been received and
3 stating that the violation will be corrected within the
4 specific period of time allowed by the citation, ~~or~~.

5 Sec. 5. Section 135C.44, Code 1997, is amended to read as
6 follows:

7 135C.44 TREBLE FINES FOR REPEATED VIOLATIONS.

8 The penalties authorized by section 135C.36 shall be
9 trebled for a second or subsequent Class I, or Class II, or
10 Class III violation occurring within any twelve-month period
11 if a citation was issued for the same Class I, or Class II, or
12 Class III violation occurring within that period and a penalty
13 was assessed ~~therefor~~ for the violation.

14 Sec. 6. GOVERNOR'S AWARD FOR QUALITY CARE. The office of
15 the governor shall establish a process for determining the
16 recipient of an award for quality care to be awarded to a
17 health care facility in the state, annually, which
18 demonstrates the provision of the highest quality care to the
19 facility's residents. The process may include the receipt of
20 nominations from residents, residents' advocates, facility
21 staff, consumers, or other interested parties. In determining
22 the recipient of the award, the record of the facility in
23 complying with the requirements of this chapter shall also be
24 considered.

25 Sec. 7. APPROPRIATION. There is appropriated from the
26 general fund of the state for the fiscal year beginning July
27 1, 1998, and ending June 30, 1999, the following amount, or so
28 much thereof as is necessary, for the following purpose:

29 To the department of inspections and appeals for additional
30 full-time equivalent positions, development, and training for
31 health facility regulation and inspection:

32 \$ 5,000,000

33 Sec. 8. Sections 135C.47 and 135C.48, Code 1997, are
34 repealed.

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EXPLANATION

1 This bill provides changes in the law relating to the
2 regulation of health care facilities.

3 The bill directs the department of inspections and appeals
4 to establish a report card system for the recording of the
5 results of inspections of health care facilities including a
6 summary of the findings of the inspection, any violation
7 found, any enforcement action taken including any citations
8 issued and penalties assessed, any actions taken to correct
9 violations or deficiencies, and the nature and status of any
10 action taken with respect to any uncorrected violation for
11 which a citation is outstanding. The report card form is to
12 be developed by the department of inspections and appeals in
13 cooperation with various interested persons. The completed
14 report cards are to be made electronically accessible to the
15 public on a monthly basis and the department is directed to
16 compile the report cards on an annual basis and make the
17 compilation available in its office at the seat of government
18 and also electronically. The department is also directed to
19 make continuing efforts to inform the public of procedures for
20 registering a complaint against a health care facility and
21 this information is also to be made electronically accessible
22 to the public.

23 The bill increases or changes the application of the
24 penalties for the three levels of violations by a health care
25 facility. The penalty for a Class I violation, which is one
26 which presents an imminent danger or a substantial probability
27 of resultant death or physical harm to the residents, is
28 changed to provide that if the violation results in the death
29 of a resident, the penalty is a minimum of \$5,000 and not more
30 than \$10,000 per violation. The current provision provides
31 for a penalty of a minimum of \$2,000 and a maximum of \$10,000.
32 The penalty for a Class II violation, which is one which has a
33 direct or immediate relationship to the health, safety, or
34 security of residents of a health care facility but which
35 presents no imminent danger nor substantial probability of

1 death or physical harm to them, is increased from a minimum of
2 \$100 and a maximum of \$500 to a minimum of \$500 and a maximum
3 of \$1,999. For a Class III violation, for which a monetary
4 penalty is not currently imposed unless a violation goes
5 uncorrected, a penalty of a minimum of \$100 and a maximum of
6 \$499 is imposed. The bill makes conforming changes in other
7 sections of the Code to reflect the imposition of a fine for a
8 Class III violation. The bill also provides for the imposing
9 of treble fines for Class III violations as well as Class I
10 and Class II violations when a second or subsequent violation
11 occurs within any 12-month period if the citation is issued
12 for the same violation and a penalty was assessed.

13 The bill establishes a governor's award for quality care to
14 be awarded to a health care facility, annually, which
15 demonstrates the provision of the highest quality care to the
16 facility's residents, and provides for an appropriation of \$5
17 million to the department of inspections and appeals for
18 staffing, development, and training relating to health care
19 facility regulation. The bill repeals two Code sections, the
20 substance of which are incorporated into the bill in the
21 portion relating to public access to information and report
22 cards.

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