

House File 2273 - Introduced

HOUSE FILE 2273
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 521)

A BILL FOR

1 An Act relating to the licensure of ambulatory surgical
2 centers, providing fees and penalties, and including
3 effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135P.1 Definitions.

2 1. "*Ambulatory surgical center*" means a facility which as
3 its primary function provides, through an organized medical
4 staff and on an outpatient basis to patients who are generally
5 ambulatory, surgical procedures not ordinarily performed in a
6 private physician's office, but not requiring twenty-four-hour
7 hospitalization, and which is neither a part of a hospital nor
8 the private office of a health care provider who there engages
9 in the lawful practice of surgery. "Ambulatory surgical
10 center" includes a facility certified or seeking certification
11 as an ambulatory surgical center under the federal Medicare
12 program or under the medical assistance program established
13 pursuant to chapter 249A.

14 2. "*Department*" means the department of inspections and
15 appeals.

16 3. "*Governmental unit*" means the state, or any county,
17 municipality, or other political subdivision, or any
18 department, division, board, or other agency of any of the
19 foregoing.

20 Sec. 2. NEW SECTION. 135P.2 Purpose.

21 The purpose of this chapter is to protect the public
22 health, safety, and welfare by providing for the development,
23 establishment, and enforcement of basic standards for the
24 operation, construction, and maintenance of ambulatory surgical
25 centers.

26 Sec. 3. NEW SECTION. 135P.3 Licensure.

27 No person or governmental unit, acting severally or jointly
28 with any other person or governmental unit, shall establish,
29 operate, or maintain an ambulatory surgical center in this
30 state without obtaining a license as provided under this
31 chapter.

32 Sec. 4. NEW SECTION. 135P.4 Application for license — fee.

33 An ambulatory surgical center license shall be obtained from
34 the department. Applications for a license shall be upon such
35 forms and shall include such information as the department may

1 reasonably require, which may include affirmative evidence
2 of compliance with this chapter, other statutes, and rules
3 as may be applicable. Each application for license shall be
4 accompanied by the required license fee which shall be credited
5 to the general fund of the state. The initial and annual
6 license fee shall be five hundred dollars.

7 **Sec. 5. NEW SECTION. 135P.5 Issuance and renewal of**
8 **license.**

9 1. Upon receipt of an application for license and the
10 license fee, the department shall issue a license if the
11 applicant and the ambulatory surgical center comply with this
12 chapter and the rules of the department. The department shall
13 renew a license upon payment of the five hundred dollar annual
14 license fee and filing of an application form available from
15 the department.

16 2. A license shall be either general or restricted in form.
17 A license shall be issued only for the premises and persons
18 or governmental units named in the application and is not
19 transferable or assignable except with the written approval of
20 the department. A license shall be posted in a conspicuous
21 place on the licensed premises as prescribed by rule of the
22 department.

23 **Sec. 6. NEW SECTION. 135P.6 Denial, suspension, or**
24 **revocation of license — hearings and review.**

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

29 2. The procedure governing notice and hearing to deny
30 an application or suspend or revoke a license shall be in
31 accordance with the rules adopted by the department. A full
32 and complete record shall be kept of the proceedings and of
33 any testimony. The record of any proceeding pursuant to this
34 section need not be transcribed unless judicial review is
35 sought. A copy or copies of the transcript may be obtained by

1 an interested party on payment of the cost of preparing the
2 copy or copies.

3 Sec. 7. NEW SECTION. 135P.7 Rules.

4 1. The department shall adopt rules setting out the
5 standards for ambulatory surgical centers to be licensed under
6 this chapter. The rules shall be consistent with and not
7 exceed the requirements of this chapter and the conditions
8 for coverage in the federal Medicare program for ambulatory
9 surgical centers under 42 C.F.R. pt. 416.

10 2. The department shall adopt rules to govern the notice
11 and hearing procedure when a license is denied, suspended, or
12 revoked.

13 3. The rules shall require ambulatory surgical centers
14 to report ambulatory data to the department of public health
15 or the designated intermediary for the purpose of public
16 dissemination of health data as initially authorized in 1996
17 Iowa Acts, chapter 1212, section 5, subsection 1, paragraph "a",
18 subparagraph (4).

19 4. An ambulatory surgical center which is in operation at
20 the time of promulgation of any applicable rules or minimum
21 standards under this chapter shall be given a reasonable time,
22 not to exceed one year from the date of promulgation, within
23 which to comply with such rules and minimum standards.

24 5. The department shall enforce the rules.

25 Sec. 8. NEW SECTION. 135P.8 Inspections.

26 1. The department shall make or cause to be made inspections
27 or complaint investigations of ambulatory surgical centers as
28 the department deems necessary in order to determine compliance
29 with this chapter and applicable rules.

30 2. The department shall recognize, in lieu of its own
31 licensure inspection, the comparable inspection and inspection
32 findings of a Medicare conditions for coverage survey.

33 3. A department inspector shall not participate in an
34 inspection or complaint investigation of an ambulatory surgical
35 center in which the inspector or a member of the inspector's

1 immediate family works or has worked within the last two years
2 or in which the inspector or the inspector's immediate family
3 has a financial ownership interest. For the purposes of this
4 section, "*immediate family member*" means a spouse, natural or
5 adoptive parent or grandparent, child, grandchild, sibling,
6 stepparent, stepchild, or stepsibling.

7 Sec. 9. NEW SECTION. 135P.9 **Employee background checks.**

8 1. An ambulatory surgical center shall comply with child or
9 dependent adult abuse information and criminal record checks
10 and evaluations in the same manner as provided in section
11 135B.34.

12 2. An ambulatory surgical center licensed in this state
13 may access the single contact repository established by the
14 department pursuant to section 135C.33 as necessary for the
15 ambulatory surgical center to perform record checks of persons
16 employed or being considered for employment by the ambulatory
17 surgical center.

18 Sec. 10. NEW SECTION. 135P.10 **Confidentiality.**

19 The department's final inspection or investigation findings
20 or the final survey findings of an accrediting body, authorized
21 by the department in rule, with respect to compliance by an
22 ambulatory surgical center with requirements for licensing
23 or accreditation shall be made available to the public in a
24 readily available form and place. Other information relating
25 to an ambulatory surgical center obtained by the department
26 which does not constitute the department's findings from an
27 inspection or investigation of the ambulatory surgical center
28 or the final survey findings of the accrediting body shall
29 not be made available to the public, except in proceedings
30 involving the denial, suspension, or revocation of a license
31 under this chapter. The name of a person who files a complaint
32 with the department shall remain confidential and shall not
33 be subject to discovery, subpoena, or other means of legal
34 compulsion for its release to a person other than department
35 employees or agents involved in the investigation of the

1 complaint.

2 Sec. 11. NEW SECTION. 135P.11 **Judicial review.**

3 Judicial review of an action of the department may be sought
4 in accordance with chapter 17A. Notwithstanding the provisions
5 of chapter 17A, petitions for judicial review may be filed
6 in the district court of the county in which the ambulatory
7 surgical center is located or to be located and the status quo
8 of the petitioner or licensee shall be preserved pending final
9 disposition of the judicial review matter.

10 Sec. 12. NEW SECTION. 135P.12 **Penalty.**

11 Any person establishing, conducting, managing, or operating
12 any ambulatory surgical center without a license commits a
13 serious misdemeanor, and each day of continuing violation after
14 conviction shall be considered a separate offense.

15 Sec. 13. NEW SECTION. 135P.13 **Injunction.**

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

22 Sec. 14. WORKGROUP ESTABLISHED — RULES. The department
23 of public health shall convene a workgroup with stakeholders
24 and a designated intermediary to determine which fields of
25 information will be utilized in the data reporting requirement
26 pursuant to chapter 135P as enacted in this Act. Any rules
27 adopted by the department of public health regarding the
28 data reporting requirements pursuant to section 135P.7, as
29 enacted in this Act, shall reflect the recommendations of the
30 workgroup.

31 Sec. 15. EFFECTIVE DATE. This Act takes effect July 1,
32 2013.

33

EXPLANATION

34 This bill relates to ambulatory surgical centers. The
35 bill defines "ambulatory surgical center" as a facility which

1 primarily provides surgical outpatient procedures that are not
2 ordinarily performed in a private physician's office but do
3 not require 24-hour hospitalization. The bill provides that
4 an "ambulatory surgical center" includes a facility that is
5 certified or is seeking certification as an ambulatory surgical
6 center under the federal Medicare program or under the medical
7 assistance program established pursuant to Code chapter 249A.
8 The bill states the purpose of new Code chapter 135P is to
9 protect public health, safety, and welfare by providing basic
10 standards for operating, constructing, and maintaining an
11 ambulatory surgical center.

12 The bill requires that any person or governmental unit
13 acting separately or together that establishes, conducts, or
14 maintains an ambulatory surgical center must have a license as
15 provided under the Code chapter. The person or governmental
16 unit shall obtain a license from the department of inspections
17 and appeals (DIA). The application shall include information
18 that the DIA may reasonably require including affirmative
19 evidence of compliance with new Code chapter 135P, other
20 statutes, and rules. An application must be accompanied by the
21 required initial license fee of \$500. An annual license fee is
22 also \$500. The license fees are to be credited to the state's
23 general fund. The bill also provides that the DIA shall issue
24 a license upon receiving an application if the applicant
25 and the ambulatory surgical center comply with Code chapter
26 135P and the rules of the department. A licensee receives
27 reapproval upon payment of the \$500 license fee and filing
28 an application form available from the DIA. Licenses are
29 general or restricted in form. A license will be issued only
30 for a premises and persons or governmental units named in the
31 application and the license is not transferable or assignable
32 without written approval of the DIA. The bill requires that
33 a license be posted in a conspicuous place on the licensed
34 premises as prescribed by department rules.

35 The bill states that the DIA may deny, suspend, or revoke a

1 license when it finds the licensee or applicant substantially
2 failed to comply with Code chapter 135P or rules or minimum
3 standards adopted pursuant to the Code chapter. The bill
4 states that the DIA rules will govern the procedure for notice
5 and hearing to deny an application for a license or to revoke
6 or suspend a license. The bill states a full and complete
7 record of the proceedings shall be kept, but the record does
8 not need to be transcribed unless judicial review is sought. A
9 transcript of the proceeding may be obtained by an interested
10 party on payment of the cost of preparing the copy or copies.

11 The bill provides that the DIA shall adopt rules setting
12 the standards for an ambulatory surgical center to be licensed
13 under the Code chapter. The rules must be consistent with
14 and cannot exceed the requirements of Code chapter 135P or
15 the federal requirements for conditions of participation in
16 the federal Medicare program for ambulatory surgical centers
17 under 42 C.F.R. pt. 416. The DIA must also establish, by
18 rule, the notice and hearing procedure if a license is denied,
19 revoked, or suspended. The DIA must also enforce the rules.
20 The rules established by the DIA shall require ambulatory
21 surgical centers to report ambulatory data to the department of
22 public health or the designated intermediary for purposes of
23 public health dissemination of health data. The bill states
24 that an ambulatory surgical center in operation at the time
25 of promulgation of applicable rules or standards under Code
26 chapter 135P shall be given a reasonable time, not to exceed
27 one year, to comply with the rules and minimum standards.

28 The bill provides for inspections of ambulatory surgical
29 centers. The bill requires the DIA to make, or cause to be
30 made, inspections or complaint investigations as the DIA deems
31 necessary to determine compliance with Code chapter 135P and
32 the applicable rules. The DIA must recognize the comparable
33 inspection and findings of a Medicare conditions for coverage
34 survey in lieu of the DIA's own licensure inspection.

35 The DIA inspectors must not participate in an inspection or

1 complaint investigation of an ambulatory surgical center if the
2 inspector or a member of the inspector's immediate family works
3 or has worked at the ambulatory surgical center within the last
4 two years. A DIA inspector also must not participate in an
5 inspection or complaint investigation of an ambulatory surgical
6 center in which the inspector or the inspector's immediate
7 family has a financial or ownership interest.

8 The bill provides that an ambulatory surgical center shall
9 comply with abuse and criminal background checks in the same
10 manner as provided in Code section 135B.34. The bill also
11 states that a licensed ambulatory surgical center is allowed to
12 access the single contact repository as is necessary to perform
13 record checks of employees or potential employees.

14 The bill provides for the confidentiality of the DIA records
15 of ambulatory surgical centers. The bill states that the DIA's
16 final inspection or investigation findings, or survey findings
17 of an accredited body authorized by the DIA rules, regarding
18 an ambulatory surgical center's compliance with requirements
19 for licensing or accreditation must be made available to the
20 public in a readily available form and place. The bill states
21 that other information acquired by the DIA relating to an
22 ambulatory surgical center shall not be made available to the
23 public except in proceedings involving denial, suspension,
24 or revocation of a license. The bill also provides that the
25 name of a person who files a complaint with the DIA shall
26 remain confidential regardless of means of legal compulsion
27 for its release, other than the release of the name to the DIA
28 employees or agents involved in investigating a complaint.

29 The bill provides that judicial review may be sought
30 pursuant to Code chapter 17A, but petitions for judicial review
31 may be filed in the district court of the county in which the
32 ambulatory surgical center is located or is to be located,
33 notwithstanding the terms of Code chapter 17A. The bill
34 provides that the status quo of the petitioner or licensee is
35 preserved pending final disposition in court.

1 The bill establishes a penalty for any person establishing,
2 conducting, managing, or operating an ambulatory surgical
3 center without a license. The person is guilty of a serious
4 misdemeanor and each day of the continuing violation after a
5 conviction is a separate offense.

6 The bill provides that the DIA may maintain an action in
7 the name of the state for an injunction or other process
8 against a person or governmental unit to restrain or prevent
9 the establishment, conduct, management, or operation of an
10 unlicensed ambulatory surgical center.

11 The bill establishes a workgroup to recommend which
12 fields of information will be utilized for the data reporting
13 requirement provided in Code chapter 135P. The department of
14 public health shall convene the workgroup with stakeholders
15 and a designated intermediary. The bill requires that any
16 rules adopted by the department of public health regarding
17 the data reporting requirement shall reflect the workgroup's
18 recommendations.

19 The bill provides that the Act takes effect July 1, 2013.