

House Study Bill 521 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON COWNIE)

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. Section 135C.33, subsection 5, paragraph a, Code
2 2011, is amended by adding the following new subparagraph:
3 NEW SUBPARAGRAPH. (6) An employee of an ambulatory surgical
4 center licensed under chapter 135P.

5 Sec. 2. NEW SECTION. 135P.1 **Definitions.**

6 1. "*Ambulatory surgical center*" means any distinct facility
7 that operates exclusively for the purpose of providing surgical
8 services to patients not requiring hospitalization and in which
9 the expected duration of services would not exceed twenty-four
10 hours following an admission.

11 2. "*Department*" means the department of inspections and
12 appeals.

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

17 Sec. 3. NEW SECTION. 135P.2 **Purpose.**

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

23 Sec. 4. NEW SECTION. 135P.3 **Licensure.**

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

29 Sec. 5. NEW SECTION. 135P.4 **Application for license — fee.**

30 An ambulatory surgical center license shall be obtained from
31 the department. Applications for a license shall be upon such
32 forms and shall include such information as the department may
33 reasonably require, which may include affirmative evidence
34 of compliance with this chapter, other statutes, and rules
35 as may be applicable. Each application for license shall be

1 accompanied by the required license fee which shall be credited
2 to the general fund of the state. The initial and annual
3 license fee shall be five hundred dollars.

4 Sec. 6. NEW SECTION. 135P.5 **Issuance and renewal of**
5 **license.**

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

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

20 Sec. 7. NEW SECTION. 135P.6 **Denial, suspension, or**
21 **revocation of license — hearings and review.**

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

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

35 Sec. 8. NEW SECTION. 135P.7 **Rules.**

1 1. The department shall adopt rules setting out the
2 standards for ambulatory surgical centers to be licensed under
3 this chapter. The rules shall state, at a minimum, that an
4 ambulatory surgical center shall meet the federal requirements
5 for conditions of participation in the federal Medicare program
6 for ambulatory surgical centers under 42 C.F.R. pt. 416.

7 2. The department shall adopt rules to govern the notice
8 and hearing procedure when a license is denied, suspended, or
9 revoked.

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

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

21 5. The department shall enforce the rules.

22 Sec. 9. NEW SECTION. 135P.8 **Inspections.**

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

27 2. A department inspector shall not participate in an
28 inspection or complaint investigation of an ambulatory surgical
29 center in which the inspector or a member of the inspector's
30 immediate family works or has worked within the last two years
31 or in which the inspector or the inspector's immediate family
32 has a financial ownership interest. For the purposes of this
33 section, "*immediate family member*" means a spouse, natural or
34 adoptive parent or grandparent, child, grandchild, sibling,
35 stepparent, stepchild, or stepsibling.

1 Sec. 10. NEW SECTION. 135P.9 **Employee background checks.**

2 1. An ambulatory surgical center shall comply with child or
3 dependent adult abuse information and criminal record checks
4 and evaluations as provided in section 135C.33.

5 2. An ambulatory surgical center licensed in this state
6 may access the single contact repository established by the
7 department pursuant to section 135C.33 as necessary for the
8 ambulatory surgical center to perform record checks of persons
9 employed or being considered for employment by the ambulatory
10 surgical center.

11 Sec. 11. NEW SECTION. 135P.10 **Confidentiality.**

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

30 Sec. 12. NEW SECTION. 135P.11 **Judicial review.**

31 Judicial review of an action of the department may be sought
32 in accordance with chapter 17A. Notwithstanding the provisions
33 of chapter 17A, petitions for judicial review may be filed
34 in the district court of the county in which the ambulatory
35 surgical center is located or to be located and the status quo

1 of the petitioner or licensee shall be preserved pending final
2 disposition of the judicial review matter.

3 Sec. 13. NEW SECTION. 135P.12 **Penalty.**

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

8 Sec. 14. NEW SECTION. 135P.13 **Injunction.**

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

15 Sec. 15. EFFECTIVE DATE. This Act takes effect July 1,
16 2013.

17 **EXPLANATION**

18 This bill relates to ambulatory surgical centers. The bill
19 defines "ambulatory surgical center" using the definition
20 provided by Medicare. The bill states the purpose of new Code
21 chapter 135P is to protect public health, safety, and welfare
22 by providing basic standards for operating, constructing, and
23 maintaining an ambulatory surgical center.

24 The bill requires that any person or governmental unit
25 acting separately or together that establishes, conducts, or
26 maintains an ambulatory surgical center must have a license as
27 provided under the Code chapter. The person or governmental
28 unit shall obtain a license from the department of inspections
29 and appeals (DIA). The application shall include information
30 that the DIA may reasonably require including affirmative
31 evidence of compliance with new Code chapter 135P, other
32 statutes, and rules. An application must be accompanied by the
33 required initial license fee of \$500. An annual license fee is
34 also \$500. The license fees are to be credited to the state's
35 general fund. The bill also provides that the DIA shall issue

1 a license upon receiving an application if the applicant
2 and the ambulatory surgical center comply with Code chapter
3 135P and the rules of the department. A licensee receives
4 reapproval upon payment of the \$500 license fee and filing
5 an application form available from the DIA. Licenses are
6 general or restricted in form. A license will be issued only
7 for a premises and persons or governmental units named in the
8 application and the license is not transferable or assignable
9 without written approval of the DIA. The bill requires that
10 a license be posted in a conspicuous place on the licensed
11 premises as prescribed by department rules.

12 The bill states that the DIA may deny, suspend, or revoke a
13 license when it finds the licensee or applicant substantially
14 failed to comply with Code chapter 135P or rules or minimum
15 standards adopted pursuant to the Code chapter. The bill
16 states that the DIA rules will govern the procedure for notice
17 and hearing to deny an application for a license or to revoke
18 or suspend a license. The bill states a full and complete
19 record of the proceedings shall be kept, but the record does
20 not need to be transcribed unless judicial review is sought. A
21 transcript of the proceeding may be obtained by an interested
22 party on payment of the cost of preparing the copy or copies.

23 The bill provides that the DIA shall adopt rules setting
24 the standards for an ambulatory surgical center to be licensed
25 under the Code chapter. The rules must require that an
26 ambulatory surgical center shall meet the federal requirements
27 for conditions of participation in the federal Medicare
28 program for ambulatory surgical centers under 42 C.F.R.
29 pt. 416. The DIA must also establish, by rule, the notice
30 and hearing procedure if a license is denied, revoked, or
31 suspended. The DIA must also enforce the rules. The rules
32 established by the DIA shall require ambulatory surgical
33 centers to report ambulatory data to the department of public
34 health or the designated intermediary for purposes of public
35 health dissemination of health data. The bill states that

1 an ambulatory surgical center in operation at the time of
2 promulgation of applicable rules or standards under Code
3 chapter 135P shall be given a reasonable time, not to exceed
4 one year, to comply with the rules and minimum standards.

5 The bill provides for inspections of ambulatory surgical
6 centers. The bill requires the DIA to make, or cause to be
7 made, inspections or complaint investigations as the DIA deems
8 necessary to determine compliance with Code chapter 135P and
9 the applicable rules. The DIA inspectors must not participate
10 in an inspection or complaint investigation of an ambulatory
11 surgical center if the inspector or a member of the inspector's
12 immediate family works or has worked at the ambulatory surgical
13 center within the last two years. A DIA inspector also must
14 not participate in an inspection or complaint investigation
15 of an ambulatory surgical center in which the inspector or
16 the inspector's immediate family has a financial or ownership
17 interest.

18 The bill provides that an ambulatory surgical center shall
19 comply with abuse and criminal background checks as provided
20 in Code section 135C.33. The bill also states that a licensed
21 ambulatory surgical center is allowed to access the single
22 contact repository as is necessary to perform record checks of
23 employees or potential employees.

24 The bill provides for the confidentiality of the DIA records
25 of ambulatory surgical centers. The bill states that the DIA's
26 final inspection or investigation findings, or survey findings
27 of an accredited body authorized by the DIA rules, regarding
28 an ambulatory surgical center's compliance with requirements
29 for licensing or accreditation must be made available to the
30 public in a readily available form and place. The bill states
31 that other information acquired by the DIA relating to an
32 ambulatory surgical center shall not be made available to the
33 public except in proceedings involving denial, suspension,
34 or revocation of a license. The bill also provides that the
35 name of a person who files a complaint with the DIA shall

1 remain confidential regardless of means of legal compulsion
2 for its release, other than the release of the name to the DIA
3 employees or agents involved in investigating a complaint.

4 The bill provides that judicial review may be sought
5 pursuant to Code chapter 17A, but petitions for judicial review
6 may be filed in the district court of the county in which the
7 ambulatory surgical center is located or is to be located,
8 notwithstanding the terms of Code chapter 17A. The bill
9 provides that the status quo of the petitioner or licensee is
10 preserved pending final disposition in court.

11 The bill establishes a penalty for any person establishing,
12 conducting, managing, or operating an ambulatory surgical
13 center without a license. The person is guilty of a serious
14 misdemeanor and each day of the continuing violation after a
15 conviction is a separate offense.

16 The bill provides that the DIA may maintain an action in
17 the name of the state for an injunction or other process
18 against a person or governmental unit to restrain or prevent
19 the establishment, conduct, management, or operation of an
20 unlicensed ambulatory surgical center.

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