

House File 2066 - Introduced

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BY BRINK

A BILL FOR

1 An Act relating to the licensure of ambulatory surgical
2 centers, providing for fees to be considered repayment
3 receipts, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135Q.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Ambulatory surgical center*" means a distinct facility
5 that operates exclusively for the purpose of providing surgical
6 services to patients not requiring hospitalization and in which
7 the expected duration of services does not exceed twenty-four
8 hours following an admission. "*Ambulatory surgical center*" does
9 not include individual or group practice offices of private
10 physicians or podiatrists that do not contain a distinct area
11 used for outpatient surgical treatment on a regular basis, or
12 that only provide surgery routinely provided in a physician's
13 or podiatrist's office using local anesthesia or conscious
14 sedation; individual or group practice offices of private
15 dentists; or a portion of a licensed hospital designated for
16 outpatient surgical treatment.

17 2. "*Department*" means the department of inspections and
18 appeals.

19 Sec. 2. NEW SECTION. 135Q.2 Licenses — application — fees
20 — expiration and renewal.

21 1. A person, acting severally or jointly with any other
22 person shall not establish, operate, or maintain an ambulatory
23 surgical center in this state without first meeting the
24 requirements and obtaining a license as provided in this
25 chapter.

26 2. a. An application for a license shall be on a form
27 prescribed by the department and shall require information the
28 department deems necessary. Each application for a license
29 shall be accompanied by a nonrefundable annual license fee as
30 determined by the department. The fees collected under this
31 section shall be considered repayment receipts as defined in
32 section 8.2 and shall be used by the department to administer
33 this chapter.

34 b. The ambulatory surgical center shall meet the criteria
35 adopted by rule of the department pursuant to section 135Q.4

1 before a license is issued. The department is responsible
2 to provide the necessary personnel to inspect the ambulatory
3 surgical center to determine if the ambulatory surgical center
4 complies with necessary standards before a license is issued.

5 3. An ambulatory surgical center certified under the
6 Medicare program or accredited by an accrediting organization
7 authorized by the centers for Medicare and Medicaid services
8 with deeming authority, shall be licensed without inspection by
9 the department as provided in section 135Q.5.

10 4. A license shall be issued only for the premises and
11 persons named in the application.

12 5. A license is not transferable or assignable except with
13 the written approval of the department.

14 6. Separate licenses are not required for ambulatory
15 surgical center facilities that are maintained on the same
16 physical site and that have the same ownership or control.
17 Multiple buildings located on the same physical site under the
18 same ownership or control shall be considered one ambulatory
19 surgical center facility for purposes of this chapter and
20 section 135.61, subsection 1A, and may operate under one
21 license.

22 7. A license, unless sooner suspended or revoked, shall
23 expire on June 30 of each year and shall be renewed annually.
24 The department shall renew a license upon payment of a five
25 hundred dollar annual license renewal fee and filing of an
26 application for renewal at least thirty days prior to the
27 expiration of the existing license. The annual licensure fee
28 shall be considered a repayment receipt as defined in section
29 8.2 and dedicated to support the staffing necessary to conduct
30 the inspections and investigations provided in section 135Q.5.

31 **Sec. 3. NEW SECTION. 135Q.3 Denial, suspension, or**
32 **revocation of license — hearings and review.**

33 1. The department may deny, suspend, or revoke a license in
34 any case where it finds there has been a substantial failure
35 to comply with this chapter or the rules and standards adopted

1 under this chapter.

2 2. The denial, suspension, or revocation of a license by
3 the department and appeal from that action are governed by the
4 procedures for a contested case hearing under chapter 17A.

5 3. *a.* If the department finds, after providing notice of
6 noncompliance and a reasonable time for corrective action, that
7 an ambulatory surgical center is in repeated noncompliance with
8 this chapter or the department's rules but that noncompliance
9 does not endanger public health or safety, the department may
10 issue a conditional license to the ambulatory surgical center
11 as an alternative to suspending or revoking the ambulatory
12 surgical center's license.

13 *b.* The department shall provide notice of its intent to
14 issue a conditional license to the ambulatory surgical center
15 and of the items of noncompliance not less than ten days before
16 the date the conditional license is issued.

17 *c.* The department shall designate a period of not more
18 than one year during which the ambulatory surgical center may
19 operate under a conditional license.

20 *d.* During the period an ambulatory surgical center is
21 operating under a conditional license, the ambulatory surgical
22 center shall correct the items that are in noncompliance and
23 report the corrections to the department for approval.

24 4. The department may suspend or revoke the license of an
25 ambulatory surgical center that does not correct items that
26 are in noncompliance or that does not comply with this chapter
27 or the rules adopted under this chapter within the applicable
28 period.

29 5. The department may issue an emergency order to suspend
30 a license issued under this chapter if the department has
31 reasonable cause to believe that the conduct of the ambulatory
32 surgical center creates an immediate danger to the public
33 health and safety. An emergency suspension is effective
34 immediately without a hearing or notice to the licensee. On
35 written request of the licensee, the department shall conduct

1 a hearing not earlier than the tenth day or later than the
2 thirtieth day after the date the hearing request is received
3 to determine if the emergency suspension is to be continued,
4 modified, or rescinded. The hearing and any appeal are
5 governed by the department's rules for a contested case hearing
6 and chapter 17A.

7 Sec. 4. NEW SECTION. 135Q.4 Rules.

8 1. The department, with the advice and approval of the state
9 board of health, shall adopt rules specifying the standards
10 for ambulatory surgical centers to be licensed under this
11 chapter. The rules and standards shall be consistent with the
12 requirements of this chapter and the conditions for coverage
13 in the federal Medicare program for ambulatory surgical
14 centers under 42 C.F.R. pt. 416 including those related to
15 the administration of anesthesia and to a safe and sanitary
16 environment in which to perform surgical procedures.

17 2. The department shall adopt rules as the department deems
18 necessary to implement the provisions of this chapter relating
19 to the issuance, renewal, denial, suspension, and revocation
20 of a license to establish, operate, and maintain an ambulatory
21 surgical center.

22 3. An ambulatory surgical center which is in operation at
23 the time of adoption of any applicable rules or standards under
24 this chapter shall be given a reasonable time, not to exceed
25 one year from the date of adoption, within which to comply with
26 such rules and standards.

27 Sec. 5. NEW SECTION. 135Q.5 Inspections or investigations.

28 1. The department shall make or cause to be made inspections
29 or investigations of ambulatory surgical centers to determine
30 compliance with this chapter and applicable rules and
31 standards. The department shall perform inspections on a
32 schedule that is of the same frequency required for inspections
33 of Medicare-certified ambulatory surgical centers.

34 2. The department shall recognize, in lieu of its own
35 licensure inspection, the comparable inspection and inspection

1 findings of a Medicare conditions for coverage survey completed
2 by the department, the joint commission, the health care
3 facilities accreditation program, or det norske veritas
4 healthcare, inc.

5 3. A department inspector shall not participate in an
6 inspection or investigation of an ambulatory surgical center in
7 which the inspector or a member of the inspector's immediate
8 family works or has worked within the last two years or in
9 which the inspector or the inspector's immediate family has
10 a financial ownership interest. For the purposes of this
11 section, "*immediate family member*" means a spouse, natural or
12 adoptive parent or grandparent, child, grandchild, sibling,
13 stepparent, stepchild, or stepsibling.

14 Sec. 6. NEW SECTION. 135Q.6 Confidentiality.

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

29 Sec. 7. NEW SECTION. 135Q.7 Injunction.

30 Notwithstanding the existence or pursuit of any other
31 remedy, the department may, in the manner provided by law,
32 maintain an action in the name of the state for injunction
33 or other process against any person to restrain or prevent
34 the establishment, operation, or maintenance of an ambulatory
35 surgical center without a license.

1 regular basis, or that only provide surgery routinely provided
2 in a physician's or podiatrist's office using local anesthesia
3 or conscious sedation; individual or group practice offices of
4 dentists; or a portion of a licensed hospital designated for
5 outpatient surgical treatment. The department of inspections
6 and appeals (DIA) is designated to enforce the Code chapter.

7 The bill prohibits the establishment, operation, or
8 maintenance of an ambulatory surgical center in the state
9 without obtaining a license.

10 The bill provides for the application for licensure, the
11 issuance and renewal of a license, and the denial, suspension,
12 or revocation of a license, and the associated processes, and
13 for the imposition and payment of associated fees.

14 The bill directs DIA to adopt rules with the advice and
15 approval of the state board of health to specify the standards
16 for ambulatory surgical centers. The rules and standards are
17 required to be consistent with the requirements of the Code
18 chapter and the conditions for coverage in the federal Medicare
19 program for ambulatory surgical centers. DIA is also directed
20 to adopt rules relating to the issuance, renewal, denial,
21 suspension, and revocation of a license to establish, operate,
22 and maintain an ambulatory surgical center. If an ambulatory
23 surgical center is in operation at the time of adoption of
24 any applicable rules or standards, the center is to be given
25 a reasonable time, not to exceed one year from the date of
26 adoption, within which to comply with such rules and standards.

27 The bill provides for inspections or investigations of
28 ambulatory surgical centers, and directs that the DIA shall
29 perform inspections on a schedule that is of the same frequency
30 required for inspections of Medicare-certified ambulatory
31 surgical centers. The bill also requires the DIA to recognize,
32 in lieu of its own licensure inspection, the comparable
33 inspection and inspection findings of a Medicare conditions
34 for coverage survey completed by the department or a specified
35 national accreditation agency.

1 The bill prohibits a DIA inspector from participating in an
2 inspection or investigation of an ambulatory surgical center in
3 which the inspector or a member of the inspector's immediate
4 family works or has worked within the last two years or in
5 which the inspector or the inspector's immediate family has a
6 financial ownership interest.

7 The bill provides confidentiality provisions relating to
8 ambulatory surgical center information. The final findings
9 with respect to compliance by an ambulatory surgical center
10 are to be made available to the public in a readily available
11 form and place. Other information relating to an ambulatory
12 surgical center shall not be made available to the public,
13 except in proceedings involving the denial, suspension, or
14 revocation of a license. The name of a person who files a
15 complaint with the DIA is required to remain confidential and
16 not be subject to discovery, subpoena, or other means of legal
17 compulsion.

18 The bill provides for injunctive relief and judicial review.

19 The bill provides that any person establishing, operating,
20 or maintaining an ambulatory surgical center without a license
21 commits a serious misdemeanor, and each day of continuing
22 violation after conviction shall be considered a separate
23 offense. A serious misdemeanor is punishable by confinement
24 for no more than one year and a fine of at least \$315 but not
25 more than \$1,875.

26 The bill makes conforming changes in the Code to reflect the
27 terminology of "ambulatory surgical center".