

House File 246 - Introduced

HOUSE FILE 246

BY SHIPLEY

A BILL FOR

1 An Act establishing the immunization informed consent Act, and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135Q.1 Short title.

2 This chapter shall be known and may be cited as the
3 *“Immunization Informed Consent Protection Act”*.

4 Sec. 2. NEW SECTION. 135Q.2 Definitions.

5 As used in this chapter, unless the content otherwise
6 requires:

7 1. *“Department”* means the department of public health.

8 2. *“Health care facility”* means the same as defined in
9 section 135C.1.

10 3. *“Health care provider”* means a person licensed or
11 certified by and subject to the authority of a board as defined
12 in section 147.2 who provides professional health care services
13 to a patient during that patient’s medical care, treatment, or
14 confinement.

15 4. *“Hospital”* means the same as defined in section 135B.1.

16 5. *“Informed consent”* means the right of a patient to
17 be fully informed about the risks and benefits of a medical
18 intervention and to make a voluntary decision regarding the
19 intervention without being coerced, threatened, or punished for
20 the decision.

21 6. *“Insurer”* means an entity providing a plan of health
22 insurance, health care benefits, or health care services, or
23 an entity subject to the jurisdiction of the commissioner
24 of insurance performing utilization review, including an
25 insurance company offering sickness and accident plans, a
26 health maintenance organization, a nonprofit health service
27 corporation, a plan established pursuant to chapter 509A
28 for public employees, or any other entity providing a plan
29 of health insurance, health care benefits, or health care
30 services.

31 7. *“Patient”* means a person who has received or is receiving
32 professional health care services from a health care facility,
33 health care provider, or hospital.

34 Sec. 3. NEW SECTION. 135Q.3 Immunizations — prohibited
35 discrimination — civil remedies.

1 1. A hospital or health care facility shall not do any of
2 the following:

3 a. Discriminate against or terminate the employment or
4 contract of a health care provider, staff member, employee,
5 contractor, subcontractor, or applicant for one of these
6 positions based on the person's refusal to receive an
7 immunization.

8 b. Discriminate against or terminate the employment or
9 contract of a health care provider, staff member, employee,
10 contractor or subcontractor based on the person's willingness
11 to participate in the immunization of patients.

12 c. Discriminate against or prohibit or terminate
13 participation by a volunteer based upon the person's refusal
14 to receive an immunization or the person's willingness to
15 participate in the immunization of patients.

16 2. A hospital, health care facility, or educational
17 institution providing clinical experience to satisfy the
18 professional degree requirements of a student, intern, or
19 resident shall not discriminate against the student, intern, or
20 resident, or prohibit admission, enrollment, or employment as a
21 student, intern, or resident based on the immunization status
22 of the student, intern, or resident.

23 3. A person aggrieved under this section may petition the
24 district court in the county where the hospital, health care
25 facility, or educational institution is located for any of the
26 following, as applicable:

27 a. Injunctive relief against any further violation.

28 b. Affirmative relief, including reinstatement of employment
29 with back pay and interest, or any other equitable relief the
30 court deems appropriate.

31 c. Other appropriate relief necessary to ensure compliance
32 with this section.

33 Sec. 4. NEW SECTION. 135Q.4 Immunization — health care
34 provider licensing authorities.

35 1. The licensing authority for a health care provider shall

1 not deny an applicant for a license or suspend, revoke, or
2 refuse to renew a license, and shall not take disciplinary
3 action against a licensee based on the applicant's or
4 licensee's immunization history or refusal to submit to or
5 administer an immunization.

6 2. The licensing authority for a health care provider may
7 deny an applicant a license or suspend, revoke, or refuse to
8 renew a license, and may take disciplinary action against a
9 licensee based on the applicant or licensee having three or
10 more verified failures to comply in one calendar year with the
11 applicable health care provider requirements pursuant to 42
12 U.S.C. §300aa-25 and 42 U.S.C. §300aa-26.

13 **Sec. 5. NEW SECTION. 135Q.5 Immunizations — prohibited**
14 **actions — insurers and insurer ratings — cease and desist**
15 **orders and penalties.**

16 1. An insurer providing a group policy, contract, or plan
17 for health insurance shall not use the immunization status of
18 a person as a basis to reject; deny; limit; cancel; refuse to
19 renew; increase the premiums for; limit the amount, extent, or
20 kind of coverage available to; or otherwise adversely affect
21 eligibility or coverage for the group health policy, contract,
22 or plan for health insurance.

23 2. An insurer providing a group policy, contract, or plan
24 for health insurance shall not use the immunization status of a
25 patient as a qualification or requirement for contracting with
26 the patient's provider or as a basis for terminating a contract
27 with the patient's provider.

28 3. The immunization status of a person covered by a group
29 policy, contract, or plan for health insurance shall not be
30 used as a factor in the rating of a group policy, contract, or
31 plan for health insurance in this state.

32 4. An insurer issuing a group policy, contract, or plan
33 for health insurance shall not deny a health care facility,
34 health care provider, or hospital's participation or decrease
35 reimbursement based on low patient immunization rates or as the

1 result of a health care facility's, health care provider's, or
2 hospital's decision not to immunize a patient.

3 5. An insurer issuing a group policy, contract, or plan for
4 health insurance who violates this section is subject to the
5 summary cease and desist order, cease and desist order, and
6 penalty provisions pursuant to chapter 507B.

7 **Sec. 6. NEW SECTION. 135Q.6 Prohibited activities.**

8 1. A health care facility, health care provider, or hospital
9 shall not accept an incentive from an insurer or pharmaceutical
10 company in exchange for the immunization of patients.

11 2. A health care facility, health care provider, or hospital
12 shall not require a patient or the parent or guardian of a
13 patient to sign a liability waiver as a condition of receiving
14 medical care if the patient or the patient's parent or guardian
15 chooses to delay or decline an immunization.

16 3. The department of human services shall not initiate a
17 child abuse investigation against the parent or guardian of a
18 child on the sole basis that the parent or guardian has chosen
19 to delay or decline an immunization for the child.

20 4. A health care facility, health care provider, hospital,
21 or a staff member or employee of a health care facility, health
22 care provider, or hospital shall not discriminate against a
23 patient or the parent or guardian of a patient or terminate
24 treatment of a patient based solely on a patient or a parent
25 or guardian of a patient choosing to delay or decline an
26 immunization. The exercise of a patient's right to informed
27 consent by delaying or declining immunization shall not be
28 grounds for the dismissal of a patient from a health care
29 provider practice, health care facility, or hospital or for a
30 patient's loss of medical privileges or benefits.

31 5. A health care facility, health care provider, or hospital
32 shall not harass, coerce, admonish, or threaten a patient
33 or the parent or guardian of a patient for exercising the
34 patient's right to delay or decline an immunization.

35 **Sec. 7. NEW SECTION. 135Q.7 Rights of patients.**

1 1. The department shall publish on the department's
2 publicly accessible internet site a summary of the rights of a
3 patient and the patient's parent or guardian as specified in
4 this chapter.

5 2. If requested, a health care facility, health care
6 provider, or hospital shall inform a patient and a patient's
7 parent or guardian of the address and telephone number of
8 each state agency responsible for responding to a patient's
9 complaints of noncompliance with this chapter.

10 3. A health care facility, health care provider, or hospital
11 shall adopt policies and procedures to ensure that a patient
12 and a patient's parent or guardian are provided the opportunity
13 to receive information regarding the patient's rights under
14 this chapter.

15 4. A health care facility, health care provider, or hospital
16 that fails to make the patient's summary of rights available to
17 a patient or the patient's parent or guardian as specified in
18 this section shall be subject to the following:

19 a. (1) For a first unintentional violation, completion of a
20 corrective action plan.

21 (2) For a second or subsequent unintentional violation, a
22 fine of not more than one hundred dollars.

23 (3) For a first or subsequent intentional violation, a fine
24 of not more than five hundred dollars, with each intentional
25 violation constituting a separate violation subject to a
26 separate fine.

27 b. In determining the amount of fine to be assessed under
28 paragraph "a", the following factors shall be considered:

29 (1) The scope and severity of the violation, including the
30 number of patients or parents or guardians of patients found
31 not to have received notice of a patient's rights, and whether
32 the failure to provide the information was willful.

33 (2) Actions taken by the health care facility, health care
34 provider, or hospital to correct the violation or to remedy a
35 complaint.

1 (3) Any previous violations under this chapter by a health
2 care facility, health care provider, or hospital.

3 Sec. 8. NEW SECTION. 135Q.8 Penalties.

4 1. A health care facility, health care provider, hospital,
5 or insurer, as applicable, that violates a provision of this
6 chapter, is subject to the following as determined by the
7 appropriate licensing authority:

8 a. For a first violation, a fine in the amount of one
9 thousand dollars.

10 b. For a second or subsequent violation, licensee discipline
11 as applicable to the health care facility, health care
12 provider, hospital, or insurer.

13 2. In addition to the penalties specified in subsection
14 1, a health care facility, health care provider, hospital,
15 or insurer, as applicable, that violates this chapter may be
16 subject to the following, as determined by the department or
17 the commissioner of insurance, as applicable:

18 a. A fine of not more than five thousand dollars for an
19 unintentional violation.

20 b. A fine of not more than twenty-five thousand dollars
21 for an intentional violation, with each intentional violation
22 constituting a separate violation subject to a separate fine.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill creates the "Immunization Informed Consent
27 Protection Act". The bill provides definitions used in the
28 bill.

29 The bill prohibits a hospital or health care facility
30 from discriminating against or terminating the employment or
31 contract of a health care provider, staff member, employee,
32 contractor, subcontractor, or applicant for one of these
33 positions based on the person's refusal to receive an
34 immunization; and from discriminating against or terminating
35 the employment or contract of a health care provider, staff

1 member, employee, contractor, or subcontractor based on
2 the person's willingness to participate in the immunization
3 of patients. The bill also prohibits a hospital or health
4 care facility from discriminating against or prohibiting
5 or terminating participation by a volunteer based upon the
6 person's refusal to receive an immunization or the person's
7 willingness to participate in the immunization of patients.
8 Additionally, a hospital, health care facility, or educational
9 institution providing clinical experience to satisfy the
10 professional degree requirements of a student, intern, or
11 resident is prohibited from discriminating against the student,
12 intern, or resident, or prohibit admission, enrollment, or
13 employment as a student, intern, or resident based on the
14 immunization status of the student, intern, or resident. The
15 bill provides that a person aggrieved under this portion of
16 the bill may petition the district court for injunctive relief
17 against any further violation; affirmative relief, including
18 reinstatement of employment with back pay and interest; any
19 other equitable relief the court deems appropriate; or other
20 appropriate relief necessary to ensure compliance with this
21 portion of the bill.

22 With respect to health care provider licensees, the bill
23 prohibits the licensing authority for a health care provider
24 from denying an applicant for a license or from suspending,
25 revoking, or refusing to renew a license, and from taking
26 disciplinary action against a licensee based on the applicant's
27 or licensee's immunization history or refusal to submit to or
28 administer an immunization. However, the licensing authority
29 may deny an applicant a license or suspend, revoke, or refuse
30 to renew a license, or take disciplinary action against a
31 licensee based on the applicant or licensee having three or
32 more verified failures to comply in one calendar year with the
33 applicable federal health care provider requirements relative
34 to the recording and reporting of immunization information and
35 the provision of immunization information to patients under

1 federal law.

2 Relative to insurers and insurance, the bill prohibits an
3 insurer providing a group policy, contract, or plan for health
4 insurance from using the immunization status of a person as a
5 basis to reject; deny; limit; cancel; refuse to renew; increase
6 the premiums for; limit the amount, extent, or kind of coverage
7 available to; or otherwise adversely affect eligibility
8 or coverage for the group health policy, contract, or plan
9 for health insurance. An insurer providing a group policy,
10 contract, or plan for health insurance is also prohibited from
11 using the immunization status of a patient as a qualification
12 or requirement for contracting with the patient's provider
13 or as a basis for terminating a contract with the patient's
14 provider. The bill prohibits the immunization status of a
15 person covered by a group policy, contract, or plan for health
16 insurance from being used as a factor in the rating of a group
17 policy, contract, or plan for health insurance in this state,
18 and prohibits an insurer issuing a group policy contract or
19 plan for health insurance from denying a health care facility,
20 health care provider, or hospital's participation or decreasing
21 reimbursement based on low patient immunization rates or the
22 facility's, provider's, or hospital's decision not to immunize
23 a patient. An insurer who violates this portion of the bill is
24 subject to the summary cease and desist order, cease and desist
25 order, and penalty provisions pursuant to Code chapter 507B
26 (insurance trade practices).

27 The bill includes other prohibited activities relative to
28 immunizations. The bill prohibits a health care facility,
29 health care provider, or hospital from accepting an incentive
30 from an insurer or pharmaceutical company in exchange for
31 the immunization of patients; and from requiring a patient
32 or the parent or guardian of a patient to sign a liability
33 waiver as a condition of receiving medical care if the patient
34 or the patient's parent or guardian chooses to delay or
35 decline an immunization. The bill prohibits the department

1 of human services from initiating a child abuse investigation
2 against the parent or guardian of a child on the sole basis
3 that the parent or guardian has chosen to delay or decline
4 an immunization for the child. Additionally, a health care
5 facility, health care provider, hospital, or a staff member or
6 employee of a health care facility, health care provider, or
7 hospital is prohibited from discriminating against a patient
8 or the parent or guardian of a patient or from terminating
9 treatment of a patient based solely on a patient or a parent
10 or guardian of a patient choosing to delay or decline an
11 immunization. The exercise of a patient's right to informed
12 consent by delaying or declining an immunization shall not
13 be grounds for the dismissal of a patient from a health care
14 provider practice, health care facility, or hospital or for a
15 patient's loss of medical privileges or benefits. The bill
16 prohibits a health care facility, health care provider, or
17 hospital from harassing, coercing, admonishing, or threatening
18 a patient or the parent or guardian of a patient for exercising
19 the patient's right to delay or decline an immunization.

20 The bill requires the department of public health to
21 publish on the department's publicly accessible internet
22 site a summary of the rights of a patient and the patient's
23 parent or guardian as specified in the bill. If requested, a
24 health care facility, health care provider, or hospital shall
25 inform a patient and a patient's parent or guardian of the
26 address and telephone number of each state agency responsible
27 for responding to a patient's complaints of noncompliance
28 with the provisions of the bill. The bill requires a health
29 care facility, health care provider, and a hospital to
30 adopt policies and procedures to ensure that a patient and
31 a patient's parent or guardian are provided the opportunity
32 to receive information regarding the patient's rights under
33 the bill. If a health care facility, health care provider,
34 or hospital fails to make the patient's summary of rights
35 available to a patient or the patient's parent or guardian

1 as specified in the bill, the entity is subject to penalties
2 including a corrective action plan for a first unintentional
3 violation; a fine of not more than \$100 for a second or
4 subsequent unintentional violation; and a fine of not more
5 than \$500 per violation for a first or subsequent intentional
6 violation. The bill provides factors to be considered in
7 determining the amount of fine to be assessed.

8 The bill includes penalties for a health care facility,
9 health care provider, hospital, or insurer, as applicable, that
10 violates a provision of the Code chapter, as determined by the
11 appropriate licensing authority, including licensing discipline
12 and fines ranging from \$1,000 to \$25,000 per violation.