

**House File 117 - Introduced**

HOUSE FILE 117

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*"  
9 includes a facility that otherwise meets the definition of an  
10 ambulatory surgical center whether or not licensed, certified,  
11 or accredited as an ambulatory surgical center and which may  
12 or may not operate on a partially cash-only or completely  
13 cash-only basis. "*Ambulatory surgical center*" does not include  
14 individual or group practice offices of private physicians  
15 or podiatrists that do not contain a distinct area used for  
16 outpatient surgical treatment on a regular basis, or that  
17 only provide surgery routinely provided in a physician's  
18 or podiatrist's office using local anesthesia or conscious  
19 sedation; individual or group practice offices of private  
20 dentists; or a portion of a licensed hospital designated for  
21 outpatient surgical treatment.

22 2. "*Department*" means the department of inspections and  
23 appeals.

24 Sec. 2. NEW SECTION. 135Q.2 Purpose.

25 The purposes of this chapter is to protect the public  
26 health, safety, and welfare by providing for the licensing and  
27 regulation of ambulatory surgical centers.

28 Sec. 3. NEW SECTION. 135Q.3 Licenses — application — fees  
29 — expiration and renewal.

30 1. A person, acting severally or jointly with any other  
31 person shall not establish, operate, or maintain an ambulatory  
32 surgical center in this state without first meeting the  
33 requirements and obtaining a license as provided in this  
34 chapter.

35 2. a. An application for a license shall be on a form

1 prescribed by the department and shall require information the  
2 department deems necessary. An application for an initial  
3 license for an ambulatory surgical center shall be accompanied  
4 by a nonrefundable fee of fifty dollars. The fees collected  
5 under this section shall be considered repayment receipts as  
6 defined in section 8.2 and shall be used by the department to  
7 administer this chapter.

8 *b.* The ambulatory surgical center shall meet the criteria  
9 adopted by rule of the department pursuant to section 135Q.5  
10 before a license is issued. The department is responsible  
11 to provide the necessary personnel to inspect the ambulatory  
12 surgical center to determine if the ambulatory surgical center  
13 complies with necessary standards before a license is issued.

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

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

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

23 6. A license shall be posted in a conspicuous place on the  
24 licensed premises as prescribed by rule of the department.

25 7. Separate licenses are not required for ambulatory  
26 surgical center facilities that are maintained on the same  
27 physical site and that have the same ownership or control.  
28 Multiple buildings located on the same physical site under the  
29 same ownership or control shall be considered one ambulatory  
30 surgical center and may operate under one license.

31 8. A license, unless sooner suspended or revoked, shall  
32 expire on June 30 of each year and shall be renewed annually.  
33 The department shall renew a license upon payment of a fifty  
34 dollar annual license renewal fee and filing of an application  
35 for renewal at least thirty days prior to the expiration of the

1 existing license. The annual licensure fee shall be considered  
2 a repayment receipt as defined in section 8.2 and dedicated to  
3 support the staffing necessary to conduct the inspections and  
4 investigations provided in section 135Q.6.

5 **Sec. 4. NEW SECTION. 135Q.4 Denial, suspension, or**  
6 **revocation of license — hearings and review.**

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

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

14 3. *a.* If the department finds, after providing notice of  
15 noncompliance and a reasonable time for corrective action, that  
16 an ambulatory surgical center is in repeated noncompliance with  
17 this chapter or the department's rules but that noncompliance  
18 does not endanger public health or safety, the department may  
19 issue a conditional license to the ambulatory surgical center  
20 as an alternative to suspending or revoking the ambulatory  
21 surgical center's license.

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

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

29 *d.* During the period an ambulatory surgical center is  
30 operating under a conditional license, the ambulatory surgical  
31 center shall correct the items that are in noncompliance and  
32 report the corrections to the department for approval.

33 4. The department may suspend or revoke the license of an  
34 ambulatory surgical center that does not correct items that  
35 are in noncompliance or that does not comply with this chapter

1 or the rules adopted under this chapter within the applicable  
2 period.

3 5. The department may issue an emergency order to suspend  
4 a license issued under this chapter if the department has  
5 reasonable cause to believe that the conduct of the ambulatory  
6 surgical center creates an immediate danger to the public  
7 health and safety. An emergency suspension is effective  
8 immediately without a hearing or notice to the licensee. On  
9 written request of the licensee, the department shall conduct  
10 a hearing not earlier than the tenth day or later than the  
11 thirtieth day after the date the hearing request is received  
12 to determine if the emergency suspension is to be continued,  
13 modified, or rescinded. The hearing and any appeal are  
14 governed by the department's rules for a contested case hearing  
15 and chapter 17A.

16 Sec. 5. NEW SECTION. 135Q.5 Rules.

17 1. The department, with the advice and approval of the state  
18 board of health, shall adopt rules specifying the standards  
19 for ambulatory surgical centers to be licensed under this  
20 chapter. The rules and standards shall be consistent with the  
21 requirements of this chapter and the conditions for coverage  
22 in the federal Medicare program for ambulatory surgical  
23 centers under 42 C.F.R. pt. 416 including those related to  
24 the administration of anesthesia and to a safe and sanitary  
25 environment in which to perform surgical procedures.

26 2. The department shall adopt rules as the department deems  
27 necessary to implement the provisions of this chapter relating  
28 to the issuance, renewal, denial, suspension, and revocation  
29 of a license to establish, operate, and maintain an ambulatory  
30 surgical center.

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

1     **Sec. 6. NEW SECTION. 135Q.6 Inspections or investigations.**

2     1. The department shall make or cause to be made inspections  
3 or investigations of ambulatory surgical centers to determine  
4 compliance with this chapter and applicable rules and  
5 standards. The department shall perform inspections on a  
6 schedule that is of the same frequency required for inspections  
7 of Medicare-certified ambulatory surgical centers.

8     2. The department shall recognize, in lieu of its own  
9 licensure inspection, the comparable inspection and inspection  
10 findings of a Medicare conditions for coverage survey completed  
11 by the department, or an accrediting organization authorized by  
12 the centers for Medicare and Medicaid services of the United  
13 States department of health and human services.

14     3. A department inspector shall not participate in an  
15 inspection or investigation of an ambulatory surgical center in  
16 which the inspector or a member of the inspector's immediate  
17 family works or has worked within the last two years or in  
18 which the inspector or the inspector's immediate family has  
19 a financial ownership interest. For the purposes of this  
20 section, "*immediate family member*" means a spouse, natural or  
21 adoptive parent or grandparent, child, grandchild, sibling,  
22 stepparent, stepchild, or stepsibling.

23     **Sec. 7. NEW SECTION. 135Q.7 Ambulatory surgical center  
24 employees — criminal history and abuse record checks.**

25     The department shall adopt rules pursuant to chapter 17A  
26 to provide for the performance of criminal record checks and  
27 founded child abuse or dependent adult abuse record checks  
28 applicable to prospective employees of an ambulatory surgical  
29 center in substantial conformance with the provisions of  
30 section 135B.34 and section 135C.33.

31     **Sec. 8. NEW SECTION. 135Q.8 Confidentiality.**

32     The department's final findings with respect to compliance  
33 by an ambulatory surgical center with requirements for  
34 licensing shall be made available to the public in a readily  
35 available form and place. Other information relating to

1 an ambulatory surgical center obtained by the department  
2 which does not constitute the department's findings from an  
3 inspection of the ambulatory surgical center shall not be made  
4 available to the public, except in proceedings involving the  
5 denial, suspension, or revocation of a license under this  
6 chapter. The name of a person who files a complaint with the  
7 department shall remain confidential and shall not be subject  
8 to discovery, subpoena, or other means of legal compulsion for  
9 its release to a person other than department employees or  
10 agents involved in the investigation of the complaint.

11 Sec. 9. NEW SECTION. 135Q.9 Injunction.

12 Notwithstanding the existence or pursuit of any other  
13 remedy, the department may, in the manner provided by law,  
14 maintain an action in the name of the state for injunction  
15 or other process against any person to restrain or prevent  
16 the establishment, operation, or maintenance of an ambulatory  
17 surgical center without a license.

18 Sec. 10. NEW SECTION. 135Q.10 Judicial review.

19 Judicial review of an action of the department may be sought  
20 in accordance with chapter 17A. Notwithstanding the provisions  
21 of chapter 17A, petitions for judicial review may be filed  
22 in the district court of the county in which the ambulatory  
23 surgical center is located or is to be located and the status  
24 quo of the petitioner or licensee shall be preserved pending  
25 final disposition of the judicial review matter.

26 Sec. 11. NEW SECTION. 135Q.11 Penalties.

27 Any person establishing, operating, or maintaining any  
28 ambulatory surgical center without a license commits a serious  
29 misdemeanor, and each day of continuing violation after  
30 conviction shall be considered a separate offense.

31 EXPLANATION

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

34 This bill creates a new Code chapter to provide for the  
35 licensing and regulation of ambulatory surgical centers.

1 The bill defines "ambulatory surgical center" as a distinct  
2 facility that operates exclusively for the purpose of providing  
3 surgical services to patients not requiring hospitalization  
4 and in which the expected duration of services does not exceed  
5 24 hours following an admission. "Ambulatory surgical center"  
6 includes a facility that otherwise meets the definition of an  
7 ambulatory surgical center whether or not licensed, certified,  
8 or accredited as an ambulatory surgical center and which may  
9 or may not operate on a partially cash-only or completely  
10 cash-only basis. "Ambulatory surgical center" does not include  
11 individual or group practice offices of private physicians  
12 or podiatrists that do not contain a distinct area used for  
13 outpatient surgical treatment on a regular basis, or that  
14 only provide surgery routinely provided in a physician's  
15 or podiatrist's office using local anesthesia or conscious  
16 sedation; individual or group practice offices of dentists;  
17 or a portion of a licensed hospital designated for outpatient  
18 surgical treatment.

19 The bill prohibits the establishment, operation, or  
20 maintenance of an ambulatory surgical center in the state  
21 without meeting the requirements of the new Code chapter and  
22 obtaining a license.

23 The bill provides for the application for licensure, the  
24 issuance and renewal of a license, and the denial, suspension,  
25 or revocation of a license, and the associated processes, and  
26 for the imposition and payment of associated fees.

27 The bill directs the department of inspections and appeals  
28 (DIA) to adopt rules with the advice and approval of the  
29 state board of health to specify the standards for ambulatory  
30 surgical centers. The rules and standards are required to be  
31 consistent with the requirements of the Code chapter and the  
32 conditions for coverage in the federal Medicare program for  
33 ambulatory surgical centers. DIA is also directed to adopt  
34 rules relating to the issuance, renewal, denial, suspension,  
35 and revocation of a license to establish, operate, and

1 maintain an ambulatory surgical center. If an ambulatory  
2 surgical center is in operation at the time of adoption of  
3 any applicable rules or standards, the center is to be given  
4 a reasonable time, not to exceed one year from the date of  
5 adoption, within which to comply with such rules and standards.

6 The bill provides for inspections or investigations of  
7 ambulatory surgical centers, and directs that the DIA shall  
8 perform inspections on a schedule that is of the same frequency  
9 required for inspections of Medicare-certified ambulatory  
10 surgical centers. The bill also requires the DIA to recognize,  
11 in lieu of its own licensure inspection, the comparable  
12 inspection and inspection findings of a Medicare conditions  
13 for coverage survey completed by the department or a national  
14 accreditation agency authorized by the centers for Medicare and  
15 Medicaid services of the United States department of health and  
16 human services.

17 The bill prohibits a DIA inspector from participating in an  
18 inspection or investigation of an ambulatory surgical center in  
19 which the inspector or a member of the inspector's immediate  
20 family works or has worked within the last two years or in  
21 which the inspector or the inspector's immediate family has a  
22 financial ownership interest.

23 The bill requires DIA to adopt administrative rules to  
24 provide for the performance of criminal record checks and  
25 founded child abuse or dependent adult abuse record checks  
26 applicable to employees of an ambulatory surgical center in  
27 substantial conformance with the record checks applicable to  
28 facilities and providers under Code sections 135B.34 (hospital  
29 employees — criminal history and abuse record checks —  
30 penalty) and 135C.33 (employees and certified nurse aide  
31 trainees — child or dependent adult abuse information and  
32 criminal record checks — evaluations — application to other  
33 providers — penalty).

34 The bill provides confidentiality provisions relating to  
35 ambulatory surgical center information. The final findings

1 with respect to compliance by an ambulatory surgical center  
2 are to be made available to the public in a readily available  
3 form and place. Other information relating to an ambulatory  
4 surgical center shall not be made available to the public,  
5 except in proceedings involving the denial, suspension, or  
6 revocation of a license. The name of a person who files a  
7 complaint with the DIA is required to remain confidential and  
8 not be subject to discovery, subpoena, or other means of legal  
9 compulsion.

10 The bill provides for injunctive relief and judicial review.

11 The bill provides that any person establishing, operating,  
12 or maintaining an ambulatory surgical center without a license  
13 commits a serious misdemeanor, and each day of continuing  
14 violation after conviction shall be considered a separate  
15 offense. A serious misdemeanor is punishable by confinement  
16 for no more than one year and a fine of at least \$430 but not  
17 more than \$2,560.