

House File 2388 - Introduced

HOUSE FILE 2388
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 606)

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 admission. "*Ambulatory surgical center*"
9 includes a facility certified or seeking certification as an
10 ambulatory surgical center under the federal Medicare program
11 or under the medical assistance program established pursuant
12 to chapter 249A. "*Ambulatory surgical center*" does not include
13 the individual or group practice office of a private physician,
14 podiatrist, or dentist who there engages in the lawful practice
15 of surgery, or the portion of a licensed hospital designated
16 for outpatient surgical treatment.

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

19 Sec. 2. NEW SECTION. 135Q.2 **Purpose.**

20 The purpose of this chapter is to protect the public
21 health, safety, and welfare by providing for the licensing and
22 regulation of ambulatory surgical centers.

23 Sec. 3. NEW SECTION. 135Q.3 **Licensure.**

24 A person, acting severally or jointly with any other person,
25 shall not establish, operate, or maintain an ambulatory
26 surgical center in this state without obtaining a license as
27 provided under this chapter.

28 Sec. 4. NEW SECTION. 135Q.4 **Application for license — fee.**

29 1. An applicant for an ambulatory surgical center license
30 shall submit an application to the department. Applications
31 shall be upon such forms and shall include such information
32 as the department may reasonably require, which may include
33 affirmative evidence of ability to comply with reasonable rules
34 and standards prescribed under this chapter.

35 2. An application for an initial license for an ambulatory

1 surgical center shall be accompanied by a fee of fifty dollars.

2 3. The fees collected under this section shall be considered
3 repayment receipts as defined in section 8.2 and shall be used
4 by the department to administer this chapter.

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

7 1. Upon receipt of an application for license and the
8 license fee, the department shall issue a license if the
9 applicant and the ambulatory surgical center meet the
10 requirements of this chapter and the rules adopted by the
11 department.

12 2. A license shall be issued only for the premises and
13 persons named in the application.

14 3. A license is not transferable or assignable except with
15 the written approval of the department.

16 4. A license shall be posted in a conspicuous place on the
17 licensed premises as prescribed by rule of the department.

18 5. Separate licenses are not required for ambulatory
19 surgical center facilities that are maintained on the same
20 physical site and that have the same ownership or control.
21 Multiple buildings located on the same physical site under the
22 same ownership or control shall be considered one ambulatory
23 surgical center facility for purposes of this chapter and
24 section 135.61, and may operate under one license.

25 6. A license, unless sooner suspended or revoked, shall
26 expire on June 30 of each year and shall be renewed annually.
27 The department shall renew a license upon payment of a five
28 hundred dollar annual license renewal fee and filing of an
29 application for renewal at least thirty days prior to the
30 expiration of the existing license. The annual licensure fee
31 shall be considered a repayment receipt as defined in section
32 8.2 and dedicated to support the staffing necessary to conduct
33 the inspections and investigations provided in section 135Q.8.

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

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

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

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

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

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

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

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

32 5. The department may issue an emergency order to suspend
33 a license issued under this chapter if the department has
34 reasonable cause to believe that the conduct of the ambulatory
35 surgical center creates an immediate danger to the public

1 health and safety. An emergency suspension is effective
2 immediately without a hearing or notice to the licensee. On
3 written request of the licensee, the department shall conduct
4 a hearing not earlier than the tenth day or later than the
5 thirtieth day after the date the hearing request is received
6 to determine if the emergency suspension is to be continued,
7 modified, or rescinded. The hearing and any appeal are
8 governed by the department's rules for a contested case hearing
9 and chapter 17A.

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

11 1. The department, with the advice and approval of the state
12 board of health, shall adopt rules specifying the standards for
13 ambulatory surgical centers to be licensed under this chapter.
14 The rules shall be consistent with and shall not exceed the
15 requirements of this chapter and the conditions for coverage in
16 the federal Medicare program for ambulatory surgical centers
17 under 42 C.F.R. pt. 416.

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

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

28 4. The department shall enforce the rules.

29 Sec. 8. NEW SECTION. 135Q.8 Inspections.

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

1 2. The department shall recognize, in lieu of its own
2 licensure inspection, the comparable inspection and inspection
3 findings of a Medicare conditions for coverage survey completed
4 by the department or an accrediting organization authorized by
5 the centers for Medicare and Medicaid services with deeming
6 authority.

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

16 Sec. 9. NEW SECTION. 135Q.9 **Employee background checks**
17 **penalty.**

18 1. *a.* Prior to employment of a person in an ambulatory
19 surgical center, the ambulatory surgical center shall request
20 that the department of public safety perform a criminal
21 history check and the department of human services perform
22 child and dependent adult abuse record checks of the person
23 in this state. An ambulatory surgical center shall inform
24 all persons prior to employment regarding the performance of
25 the record checks and shall obtain from the persons a signed
26 acknowledgment of the receipt of the information.

27 *b.* An ambulatory surgical center shall include the following
28 inquiry in an application for employment:

29 Do you have a record of founded child or dependent adult abuse
30 or have you ever been convicted of a crime, in this state or any
31 other state?

32 2. *a.* If it is determined that a person being considered
33 for employment in an ambulatory surgical center has been
34 convicted of a crime, the department of public safety shall
35 notify the ambulatory surgical center that upon the request

1 of the ambulatory surgical center the department of human
2 services will perform an evaluation to determine whether the
3 crime warrants prohibition of the person's employment in the
4 ambulatory surgical center.

5 *b.* If a department of human services child or dependent
6 adult abuse record check shows that the person has a record of
7 founded child or dependent adult abuse, the department of human
8 services shall notify the ambulatory surgical center that upon
9 the request of the ambulatory surgical center the department of
10 human services will perform an evaluation to determine whether
11 the founded child or dependent adult abuse warrants prohibition
12 of the person's employment in the ambulatory surgical center.

13 *c.* An evaluation performed under this subsection shall
14 be performed in accordance with procedures adopted for this
15 purpose by the department of human services.

16 *d.* (1) If a person owns or operates more than one
17 ambulatory surgical center, and an employee of one of such
18 ambulatory surgical centers is transferred to another such
19 ambulatory surgical center without a lapse in employment,
20 the ambulatory surgical center is not required to request
21 additional criminal and child and dependent adult abuse record
22 checks of that employee.

23 (2) If the ownership of an ambulatory surgical center is
24 transferred, at the time of transfer the record checks required
25 by this section shall be performed for each employee for whom
26 there is no documentation that such record checks have been
27 performed. The ambulatory surgical center may continue to
28 employ such employee pending the performance of the record
29 checks and any related evaluation.

30 3. In an evaluation, the department of human services
31 shall consider the nature and seriousness of the crime
32 or founded child or dependent adult abuse in relation to
33 the position sought or held, the time elapsed since the
34 commission of the crime or founded child or dependent adult
35 abuse, the circumstances under which the crime or founded

1 child or dependent adult abuse was committed, the degree of
2 rehabilitation, the likelihood that the person will commit
3 the crime or founded child or dependent adult abuse again,
4 and the number of crimes or founded child or dependent adult
5 abuses committed by the person involved. If the department of
6 human services performs an evaluation for the purposes of this
7 section, the department of human services has final authority
8 in determining whether prohibition of the person's employment
9 is warranted.

10 4. a. Except as provided in paragraph "b" and subsection 2,
11 a person who has been convicted of a crime or has a record of
12 founded child or dependent adult abuse shall not be employed
13 in an ambulatory surgical center licensed under this chapter
14 unless an evaluation has been performed by the department of
15 human services.

16 b. A person with a criminal or abuse record who is or was
17 employed by an ambulatory surgical center licensed under this
18 chapter and is hired by an employer who is another licensee
19 without a lapse in employment shall be subject to the criminal
20 history and abuse record checks required pursuant to subsection
21 1. However, if an evaluation was previously performed by the
22 department of human services concerning the person's criminal
23 or abuse record and it was determined that the record did not
24 warrant prohibition of the person's employment and the latest
25 record checks do not indicate a crime was committed or founded
26 abuse record was entered subsequent to that evaluation, the
27 person may commence employment with the other licensee in
28 accordance with the department of human services' evaluation
29 and an exemption from the requirements in paragraph "a" for
30 reevaluation of the latest record checks is authorized.
31 Otherwise, the requirements of paragraph "a" remain applicable
32 to the person's employment. Authorization of an exemption
33 under this lettered paragraph "b" from requirements for
34 reevaluation of the latest record checks by the department of
35 human services is subject to all of the following provisions:

1 (1) The position with the subsequent employer is
2 substantially the same or has the same job responsibilities as
3 the position for which the previous evaluation was performed.

4 (2) Any restrictions placed on the person's employment in
5 the previous evaluation by the department of human services
6 shall remain applicable in the person's subsequent employment.

7 (3) The person subject to the record checks has maintained a
8 copy of the previous evaluation and provides the evaluation to
9 the subsequent employer or the previous licensee provides the
10 previous evaluation from the person's personnel file pursuant
11 to the person's authorization. If a physical copy of the
12 previous evaluation is not provided to the subsequent employer
13 the record checks shall be reevaluated.

14 (4) Although an exemption under this lettered paragraph "b"
15 may be authorized, the subsequent employer may instead request
16 a reevaluation of the record checks and may employ the person
17 while the reevaluation is being performed.

18 5. a. If a person employed by an ambulatory surgical center
19 licensed under this chapter is convicted of a crime or has a
20 record of founded child or dependent adult abuse entered in the
21 abuse registry after the person's employment application date,
22 the person shall inform the ambulatory surgical center of such
23 information within forty-eight hours of the criminal conviction
24 or entry of the record of founded child or dependent adult
25 abuse. The ambulatory surgical center shall act to verify
26 the information within forty-eight hours of notification. If
27 the information is verified, the requirements of subsections
28 2, 3, and 4 regarding employability and evaluations shall
29 be applied by the ambulatory surgical center to determine
30 whether or not the person's employment is continued. The
31 ambulatory surgical center may continue to employ the person
32 pending the performance of an evaluation by the department
33 of human services to determine whether prohibition of the
34 person's employment is warranted. A person who is required by
35 this subsection to inform the ambulatory surgical center of

1 a conviction or entry of an abuse record and fails to do so
2 within the required period commits a serious misdemeanor.

3 *b.* If an ambulatory surgical center receives credible
4 information, as determined by the ambulatory surgical center,
5 that a person employed by the ambulatory surgical center has
6 been convicted of a crime or a record of founded child or
7 dependent adult abuse has been entered in the abuse registry
8 after employment from a person other than the employee and the
9 employee has not informed the ambulatory surgical center of
10 such information within the period required under paragraph
11 "a", the ambulatory surgical center shall act to verify the
12 credible information within forty-eight hours of receipt of
13 the credible information. If the information is verified, the
14 requirements of subsections 2, 3, and 4 regarding employability
15 and evaluations shall be applied by the ambulatory surgical
16 center to determine whether or not the person's employment is
17 continued.

18 *c.* The ambulatory surgical center may notify the county
19 attorney for the county where the ambulatory surgical center is
20 located of any violation or failure by an employee to notify
21 the ambulatory surgical center of a criminal conviction or
22 entry of an abuse record within the period required under
23 paragraph "a".

24 6. An ambulatory surgical center licensed under this
25 chapter may access the single contact repository established by
26 the department pursuant to section 135C.33 as necessary for the
27 ambulatory surgical center to perform record checks of persons
28 employed or being considered for employment by the ambulatory
29 surgical center.

30 Sec. 10. NEW SECTION. 135Q.10 Confidentiality.

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

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

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

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

17 Sec. 12. NEW SECTION. 135Q.12 Judicial review.

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

25 Sec. 13. NEW SECTION. 135Q.13 Penalties.

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

30 Sec. 14. Section 135.11, Code 2022, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 29. Adopt rules requiring ambulatory
33 surgical centers to report quality data to the department of
34 public health that is consistent with the data required to be
35 reported to the centers for Medicare and Medicaid services

1 of the United States department of health and human services
2 as authorized by the Medicare Improvements and Extension Act
3 of 2006 under Title I of the Tax Relief and Health Care Act
4 of 2006, Pub. L. No. 109-432, and the regulations adopted
5 under such Acts. Notwithstanding any provision of law to
6 the contrary, nothing in this subsection shall require an
7 ambulatory surgical center to provide health data to the
8 department of public health or any other public or private
9 entity that is in addition to, different than, or exceeds
10 the quality data required to be reported to the centers for
11 Medicare and Medicaid services of the United States department
12 of health and human services.

13 Sec. 15. Section 135.61, Code 2022, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 1A. "*Ambulatory surgical center*" means
16 ambulatory surgical center as defined in section 135Q.1.

17 Sec. 16. Section 135.61, subsection 14, paragraph d, Code
18 2022, is amended to read as follows:

19 *d.* An ~~outpatient~~ ambulatory surgical facility center.

20 Sec. 17. Section 135.61, subsection 21, Code 2022, is
21 amended by striking the subsection.

22 EXPLANATION

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

25 This bill creates a new Code chapter to provide for the
26 licensing and regulation of ambulatory surgical centers. The
27 department of inspections and appeals (DIA) is designated to
28 enforce the regulations.

29 The bill provides that the purpose of the new Code chapter is
30 to protect the public health, safety, and welfare by providing
31 for the licensing and regulation of ambulatory surgical
32 centers. The bill prohibits the establishment, operation,
33 or maintenance of an ambulatory surgical center in the state
34 without obtaining a license.

35 The bill provides the process for application for licensure.

1 An application for an initial license is required to be
2 accompanied by a fee of \$50. The fees collected are repayment
3 receipts and are to be used by DIA to administer the new Code
4 chapter.

5 The bill provides for the issuance and renewal of licenses.
6 A license is to be issued only for the premises and persons
7 named in the application; is not transferable or assignable
8 except with the written approval of DIA; and is required to
9 be posted in a conspicuous place on the licensed premises as
10 prescribed by rule of DIA. The bill provides that separate
11 licenses are not required for ambulatory surgical center
12 facilities that are maintained on the same physical site and
13 that have the same ownership or control. Multiple buildings
14 located on the same physical site under the same ownership or
15 control are considered one ambulatory surgical center facility
16 for purposes of the new Code chapter and Code chapter 135,
17 division VI, relating to the health facilities council and
18 certificate of need provisions, and are to be permitted to
19 operate under one license. Licenses expire on June 30 of each
20 year and are required to be renewed annually. The bill directs
21 DIA to renew a license upon payment of a \$500 annual license
22 renewal fee and the filing of an application for renewal at
23 least 30 days prior to the expiration of the existing license.
24 The annual licensure fee is considered a repayment receipt and
25 is to be dedicated to support the staffing necessary to conduct
26 the inspections and investigations under the new Code chapter.

27 The bill provides for denial, suspension, or revocation of
28 licenses. A license may be denied, suspended, or revoked if
29 DIA finds there has been a substantial failure to comply with
30 the new Code chapter or the rules and standards adopted under
31 the new Code chapter. The denial, suspension, or revocation
32 of a license by DIA and appeal from that action are governed by
33 the procedures for a contested case hearing under Code chapter
34 17A. The bill authorizes DIA, after providing notice of
35 noncompliance and a reasonable time for corrective action, and

1 if the noncompliance does not endanger public health or safety,
2 to issue a conditional license to the ambulatory surgical
3 center as an alternative to suspending or revoking its license.

4 The bill also authorizes DIA to issue an emergency order
5 to suspend a license if DIA has reasonable cause to believe
6 that the conduct of the ambulatory surgical center creates an
7 immediate danger to the public health or safety. On written
8 request of the licensee, DIA is required to conduct a hearing
9 to determine if the emergency suspension is to be continued,
10 modified, or rescinded. The hearing and any appeal are
11 governed by DIA's rules for a contested case hearing and Code
12 chapter 17A.

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

27 The bill provides for inspections or investigations of
28 ambulatory surgical centers, and directs that 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 DIA to recognize, in
32 lieu of its own licensure inspection, the comparable inspection
33 and inspection findings of a Medicare conditions for coverage
34 survey.

35 The bill prohibits a DIA inspector from participating in an

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

6 The bill requires an ambulatory surgical center to comply
7 with child and dependent adult abuse information and criminal
8 record checks and evaluations.

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

20 The bill provides for injunctive relief and judicial review.

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

28 The bill also directs the department of public health (DPH)
29 to adopt rules requiring ambulatory surgical centers to report
30 quality data to DPH that is consistent with the data required
31 to be reported to the centers for Medicare and Medicaid
32 services of the United States department of health and human
33 services. However, the rules shall not require an ambulatory
34 surgical center to provide health data to DPH or any other
35 public or private entity that is in addition to, different

1 than, or exceeds the quality data required to be reported to
2 the centers for Medicare and Medicaid services of the United
3 States department of health and human services.

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