

Senate File 275 - Introduced

SENATE FILE 275

BY ROZENBOOM

(COMPANION TO HF 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.