Corrected
P. 10 line 31: Effective Date

SENATE FILE 75
BY REICHMAN

(As Amended and Passed by the Senate February 15, 2023)

_____ and [ = New Language by the Senate
* = Language Stricken by the Senate

## A BILL FOR

An Act relating to certain health facilities including ambulatory surgical centers and rural emergency hospitals, including licensing requirements and fees, providing penalties and making penalties applicable, providing emergency rulemaking authority, and including applicability and effective date provisions.

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

DIVISION I

RURAL EMERGENCY HOSPITALS

Section 1. Section 135B.1, Code 2023, is amended by adding the following new subsections:

NEW SUBSECTION. 5. *"Rural emergency hospital"* means a facility that provides rural emergency hospital services in the facility twenty-four hours per day, seven days per week; does not provide any acute care inpatient services with the exception of any distinct part of the facility licensed as a skilled nursing facility providing posthospital extended care services; and meets the criteria specified in section 135B.1A and the federal Consolidated Appropriations Act, Pub. L. No. 116-260, §125.

NEW SUBSECTION. 6. *"Rural emergency hospital services"* means the following services provided by a rural emergency hospital that do not exceed an annual per patient average of twenty-four hours in such a rural emergency hospital:

*a.* Emergency department services and observation care. For purposes of providing emergency department services, an emergency department of a rural emergency hospital shall be considered staffed if a physician, advanced registered nurse practitioner, or physician assistant is available to furnish rural emergency hospital services in the facility twenty-four hours per day.

*b.* At the election of the rural emergency hospital, with respect to services furnished on an outpatient basis, other medical and health services as specified in regulations adopted by the United States secretary of health and human services.

Sec. 2. Section 135B.2, Code 2023, is amended to read as follows:

**135B.2 Purpose.**

The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards for the care and treatment of individuals in hospitals and rural emergency hospitals and for the construction, maintenance

and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in such hospitals, in the interest of the health, welfare and safety of the public.

Sec. 3. Section 135B.3, Code 2023, is amended to read as follows:

**135B.3 Licensure.**

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital or rural emergency hospital in this state without a license.

Sec. 4. NEW SECTION. **135B.3A Rural emergency hospital licensure.**

1. The department shall adopt rules pursuant to chapter 17A to establish minimum standards for the licensure of rural emergency hospitals consistent with the federal Consolidated Appropriations Act, Pub. L. No. 116-260, §125, and with regulations issued by the United States secretary of health and human services for rural emergency hospitals.

2. To be eligible for a rural emergency hospital license, a facility shall have been, on or before December 27, 2020, one of the following:

*a.* A licensed critical access hospital.

*b.* A general hospital with not more than fifty licensed beds located in a county in a rural area as defined in section 1886(d)(2)(D) of the federal Social Security Act.

*c.* A general hospital with no more than fifty licensed beds that is deemed as being located in a rural area pursuant to section 1886(d)(8)(E) of the federal Social Security Act.

Sec. 5. Section 135B.4, Code 2023, is amended to read as follows:

**135B.4 Application for license.**

Licenses shall be obtained from the department. Applications shall be upon forms and shall contain information as the department may reasonably require, which may include

affirmative evidence of ability to comply with reasonable standards and rules prescribed under this chapter. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be deposited into the state treasury and credited to the general fund if the license is issued. Hospitals and rural emergency hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars.

Sec. 6. Section 135B.5, subsection 1, Code 2023, is amended to read as follows:

1. Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant and hospital facilities comply with this chapter, chapter 135, and the rules of the department. Each licensee shall receive annual reapproval upon payment of five hundred dollars and upon filing of an application form which is available from the department. The annual licensure fee shall be dedicated to support and provide educational programs on regulatory issues for hospitals and rural emergency hospitals licensed under this chapter. Licenses shall be either general or restricted in form. Each license shall be issued only for the premises and persons or governmental units named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

Sec. 7. Section 135B.5A, Code 2023, is amended to read as follows:

135B.5A Conversion ~~of a hospital~~ relative to certain hospitals.

1. A conversion of a long-term acute care hospital,

rehabilitation hospital, or psychiatric hospital as defined by federal regulations to a general hospital or to a specialty hospital of a different type is a permanent change in bed capacity and shall require a certificate of need pursuant to section 135.63.

2. A conversion of a critical access hospital or general hospital to a rural emergency hospital shall not require a certificate of need pursuant to section 135.63.

Sec. 8. Section 135B.7, Code 2023, is amended to read as follows:

**135B.7 Rules and enforcement.**

1. *a.* The department, with the approval of the state board of health, shall adopt rules setting out the standards for the different types of hospitals and for rural emergency hospitals to be licensed under this chapter. The department shall enforce the rules.

*b.* Rules or standards shall not be adopted or enforced which would have the effect of denying a license to a hospital, rural emergency hospital, or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians in the hospital, rural emergency hospital, or other institution if the school or system of practice is recognized by the laws of this state.

2. *a.* The rules shall state that a hospital or rural emergency hospital shall not deny clinical privileges to physicians and surgeons, podiatric physicians, osteopathic physicians and surgeons, dentists, certified health service providers in psychology, physician assistants, or advanced registered nurse practitioners licensed under chapter 148, 148C, 149, 152, or 153, or section 154B.7, solely by reason of the license held by the practitioner or solely by reason of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an

organization recognized by the council on higher education accreditation or an accrediting group recognized by the United States department of education.

*b.* A hospital or rural emergency hospital may establish procedures for interaction between a patient and a practitioner. The rules shall not prohibit a hospital or rural emergency hospital from limiting, restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this paragraph, when applied in good faith and in a nondiscriminatory manner.

*c.* This subsection shall not require a hospital or rural emergency hospital to expand the ~~hospital's~~ current scope of service delivery solely to offer the services of a class of providers not currently providing services at the hospital or rural emergency hospital. This section shall not be construed to require a hospital or rural emergency hospital to establish rules which are inconsistent with the scope of practice established for licensure of practitioners to whom this subsection applies.

*d.* This section shall not be construed to authorize the denial of clinical privileges to a practitioner or class of practitioners solely because a hospital or rural emergency hospital has as employees of the hospital or rural emergency hospital identically licensed practitioners providing the same or similar services.

3. The rules shall require that a hospital or rural emergency hospital establish and implement written criteria for the granting of clinical privileges. The written criteria shall include but are not limited to consideration of all of the following:

*a.* The ability of an applicant for privileges to provide patient care services independently and appropriately in the hospital or rural emergency hospital.

*b.* The license held by the applicant to practice.

*c.* The training, experience, and competence of the applicant.

*d.* The relationship between the applicant's request for the granting of privileges and the hospital's or rural emergency hospital's current scope of patient care services, as well as the hospital's or rural emergency hospital's determination of the necessity to grant privileges to a practitioner authorized to provide comprehensive, appropriate, and cost-effective services.

4. The department shall also adopt rules requiring hospitals and rural emergency hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

5. The department shall also adopt rules requiring hospitals and rural emergency hospitals to establish and implement protocols for responding to the needs of patients who are victims of elder abuse, as defined in section 235F.1.

Sec. 9. Section 135B.7A, Code 2023, is amended to read as follows:

**135B.7A Procedures — orders.**

The department shall adopt rules that require hospitals and rural emergency hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed thirty days following a patient's discharge.

Sec. 10. Section 135B.8, Code 2023, is amended to read as follows:

**135B.8 Effective date of rules.**

Any hospital or rural emergency hospital which is in operation at the time of promulgation of any applicable rules or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and minimum standards.

Sec. 11. Section 135B.9, Code 2023, is amended to read as

follows:

**135B.9 Inspections and qualifications for hospital and rural emergency hospital inspectors — protection and advocacy agency investigations.**

1. The department shall make or cause to be made inspections as it deems necessary in order to determine compliance with applicable rules. Hospital and rural emergency hospital inspectors shall meet the following qualifications:

*a.* Be free of conflicts of interest. A hospital or rural emergency hospital inspector shall not participate in an inspection or complaint investigation of a hospital or rural emergency hospital in which the inspector or a member of the inspector's immediate family works or has worked within the last two years. For purposes of this paragraph, "*immediate family member*" means a spouse; natural or adoptive parent, child, or sibling; or stepparent, stepchild, or stepsibling.

*b.* Complete a yearly conflict of interest disclosure statement.

*c.* Biennially, complete a minimum of ten hours of continuing education pertaining to hospital or rural emergency hospital operations including but not limited to quality and process improvement standards, trauma system standards, and regulatory requirements.

2. In the state resource centers and state mental health institutes operated by the department of human services, the designated protection and advocacy agency as provided in section 135C.2, subsection 4, shall have the authority to investigate all complaints of abuse and neglect of persons with developmental disabilities or mental illnesses if the complaints are reported to the protection and advocacy agency or if there is probable cause to believe that the abuse has occurred. Such authority shall include the examination of all records pertaining to the care provided to the residents and contact or interview with any resident, employee, or any other person who might have knowledge about the operation of the

institution.

Sec. 12. Section 135B.12, Code 2023, is amended to read as follows:

**135B.12 Confidentiality.**

The department's final findings or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association with respect to compliance by a hospital or rural emergency hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital or rural emergency hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or rural emergency hospital or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall remain confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or agents involved in the investigation of the complaint.

Sec. 13. Section 135B.14, Code 2023, is amended to read as follows:

**135B.14 Judicial review.**

Judicial review of the action of the department may be sought in accordance with chapter 17A. Notwithstanding the terms of chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hospital or rural emergency hospital is located or to be located, and the status quo of the petitioner or licensee shall be preserved pending final disposition of the matter in the courts.

Sec. 14. Section 135B.15, Code 2023, is amended to read as follows:

**135B.15 Penalties.**

Any person establishing, conducting, managing, or operating any hospital or rural emergency hospital without a license shall be guilty of a serious misdemeanor, and each day of continuing violation after conviction shall be considered a separate offense.

Sec. 15. Section 135B.16, Code 2023, is amended to read as follows:

**135B.16 Injunction.**

Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital or rural emergency hospital without a license.

Sec. 16. Section 135B.20, subsection 3, Code 2023, is amended to read as follows:

3. *"Hospital"* ~~shall mean~~ means all hospitals and rural emergency hospitals licensed under this chapter.

Sec. 17. Section 135B.33, subsection 1, unnumbered paragraph 1, Code 2023, is amended to read as follows:

Subject to availability of funds, the Iowa department of public health shall provide technical planning assistance to local boards of health and hospital or rural emergency hospital governing boards to ensure access to ~~hospital~~ such services in rural areas. The department shall encourage the local boards of health and hospital or rural emergency hospital governing boards to adopt a long-term community health services and developmental plan including the following:

Sec. 18. Section 135B.34, subsection 7, Code 2023, is amended to read as follows:

7. For the purposes of this section~~, *"comprehensive*~~

~~*preliminary background check"*~~:

*a. "Comprehensive preliminary background check"* means the same as defined in section 135C.1.

*b. "Hospital"* means a hospital or rural emergency hospital licensed under this chapter.

Sec. 19. EMERGENCY RULEMAKING AUTHORITY. The department shall adopt emergency rules within six months of the effective date of this Act under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this division of this Act and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4.

Sec. 20. APPLICABILITY. This division of this Act applies to a facility, or due to change in ownership, a successor facility, that was, on or before December 27, 2020, a general hospital with no more than fifty licensed beds, located in a county in a rural area as specified in section 135B.3A, as enacted in this division of this Act, with a population between thirty thousand and thirty-five thousand according to the 2020 federal decennial census, operating under a valid certificate of need on and prior to September 1, 2022. Notwithstanding any provision to the contrary, and in accordance with section 135B.5A, as amended in this division of this Act, the reopening of a general hospital by a successor facility as specified under this section and subsequent conversion to a rural emergency hospital under this division of this Act, shall not be subject to certificate of need requirements pursuant to section 135.63.

Sec. 21. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II

AMBULATORY SURGICAL CENTERS

Sec. 22. NEW SECTION. **135R.1 Definitions.**

New Language

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

1. *"Ambulatory surgical center"* means a distinct facility that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services does not exceed twenty-four hours following an admission. *"Ambulatory surgical center"* includes a facility certified or seeking certification as an ambulatory surgical center under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A. *"Ambulatory surgical center"* does not include the individual or group practice office of a private physician, podiatrist, or dentist who there engages in the lawful practice of surgery, or the portion of a licensed hospital designated for outpatient surgical treatment.

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

Sec. 23. NEW SECTION. **135R.2 Licensure.**

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

Sec. 24. NEW SECTION. **135R.3 Application for license — fee.**

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

2. An application for an initial license for an ambulatory surgical center shall be accompanied by a fee of fifty dollars.

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

New language

Sec. 25. NEW SECTION. 135R.4 Rules.

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

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

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

4. The department shall enforce the rules.

Sec. 26. NEW SECTION. 135R.5 Inspections or investigations.

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

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

3. A department inspector shall not participate in an inspection or investigation of an ambulatory surgical center in

which the inspector or a member of the inspector's immediate family works or has worked within the last two years or in which the inspector or the inspector's immediate family has a financial ownership interest. For the purposes of this section, "*immediate family member*" means a spouse, natural or adoptive parent or grandparent, child, grandchild, sibling, stepparent, stepchild, or stepsibling.

Sec. 27. NEW SECTION. **135R.6 Confidentiality.**

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

Sec. 28. NEW SECTION. **135R.7 Injunction.**

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

Sec. 29. NEW SECTION. **135R.8 Judicial review.**

Judicial review of an action of the department may be sought in accordance with chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the ambulatory surgical center is located or is to be located and the status

New Language

New Language

quo of the petitioner or licensee shall be preserved pending final disposition of the judicial review matter.

Sec. 30. NEW SECTION. **135R.9 Penalties.**

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

Sec. 31. Section 135.11, Code 2023, is amended by adding the following new subsection:

NEW SUBSECTION. 29. Adopt rules requiring ambulatory surgical centers to report quality data to the department of health and human services that is consistent with the data required to be reported to the centers for Medicare and Medicaid services of the United States department of health and human services as authorized by the Medicare Improvements and Extension Act of 2006 under Tit. I of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, and the regulations adopted under such Acts. Notwithstanding any provision of law to the contrary, nothing in this subsection shall require an ambulatory surgical center to provide health data to the department of health and human services or any other public or private entity that is in addition to, different than, or exceeds the quality data required to be reported to the centers for Medicare and Medicaid services of the United States department of health and human services.

Sec. 32. Section 135.61, Code 2023, is amended by adding the following new subsection:

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

Sec. 33. Section 135.61, subsection 14, paragraph d, Code 2023, is amended to read as follows:

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

Sec. 34. Section 135.61, subsection 21, Code 2023, is amended by striking the subsection.