



February 25, 1999

HOUSE BILL No. 1812

DIGEST OF HB 1812 (Updated February 23, 1999 9:11 pm - DI 77)

Citations Affected: IC 12-15; IC 16-18; IC 16-28.

Synopsis: Allows the office of Medicaid policy and planning to require a health facility to disclose non-Medicaid revenue information in the health facility's annual historical financial report and allows the information to be used for public reporting purposes. Allows an allegation of breach at a health facility to be made orally or in writing. Requires the state department of health to investigate all oral allegations, not just oral allegations that the state department considers to have merit. Makes changes to the terminology and descriptions of the categories of a breach at a health facility. Increases the penalties for a breach at a health facility. Requires the state department of health to impose the balance of fines or costs assessed against a health facility against the licensee of the health facility if the health facility is unable to pay. Requires a health facility found to have committed a breach to comply with various notice requirements.

Effective: July 1, 1999.

Day, Moses

January 26, 1999, read first time and referred to Committee on Public Health.
February 24, 1999, amended, reported — Do Pass.

HB 1812—LS 7754/DI 98+



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February 25, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1812



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-15-14-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Payment of
- 3 nursing facility services shall be determined in accordance with 42
- 4 U.S.C. 1396a(a)(13)(A).
- 5 (b) The office may ~~not~~ require a provider to submit non-Medicaid
- 6 revenue information in the provider's annual historical financial report.
- 7 Non-Medicaid revenue information obtained by Medicaid auditors in
- 8 the course of their audits may ~~not~~ be used for public reporting
- 9 purposes.
- 10 (c) The office may only request complete balance sheet data that
- 11 applies directly to the provider's facility. ~~Complete balance sheet data~~
- 12 ~~acquired by the office under this subsection:~~
- 13 (1) is confidential; and
- 14 (2) may only be disclosed:
- 15 (A) in the aggregate; or

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- 1 ~~(B)~~ for an individual facility;
 2 if the office removes all non-Medicaid data.
 3 (d) The office of the secretary shall adopt rules under IC 4-22-2 to
 4 implement the reimbursement system required by this section.
 5 SECTION 2. IC 16-18-2-201.5 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 1999]: **Sec. 201.5. "Licensee", for purposes**
 8 **of IC 16-28-5, has the meaning set forth in IC 16-28-5-0.5.**
 9 SECTION 3. IC 16-28-4-1 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A person who
 11 believes that this article or ~~rules~~ **a rule** adopted under this article ~~have~~
 12 **has** been breached may file an allegation of breach with the state
 13 department. The allegation ~~must may~~ **be made orally or** in writing.
 14 ~~unless the breach complained of is an offense or a deficiency. The~~
 15 **state department shall reduce** an oral allegation of breach ~~shall be~~
 16 reduced to writing. ~~by the state department.~~
 17 SECTION 4. IC 16-28-4-2 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The division shall
 19 promptly investigate ~~the following:~~
 20 (1) ~~A written~~ **each** allegation of breach received under this
 21 chapter.
 22 (2) ~~An oral allegation of breach that the director, in the director's~~
 23 discretion, believes to have merit.
 24 SECTION 5. IC 16-28-5-0.5 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 1999]: **Sec. 0.5. As used in this chapter, "licensee" means a**
 27 **person who holds a valid license issued under IC 16-28-2.**
 28 SECTION 6. IC 16-28-5-1 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The executive board
 30 shall adopt rules under IC 4-22-2 to ~~classify each rule adopted by the~~
 31 executive board to govern a health facility under this article **define**
 32 **each level of breach as provided in subdivisions (1) through (4).**
 33 **The state survey inspectors shall, under this article and with the**
 34 **concurrence of the director, classify a breach** into one (1) of the
 35 following categories:
 36 (1) ~~An offense, which presents a substantial probability that death~~
 37 or a life-threatening condition will result. **Level 4 - immediate**
 38 **jeopardy to patient health or safety (as described in 42 CFR**
 39 **488.404).**
 40 (2) ~~A deficiency, which presents an immediate or a direct, serious~~
 41 adverse effect on the health, safety, security, rights, or welfare of
 42 a patient. **Level 3 - actual harm (as described in 42 CFR**



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1 **488.404).**

2 (3) **A noncompliance, which presents an indirect threat to the**
 3 **health, safety, security, rights, or welfare of a patient. Level 2 - no**
 4 **actual harm with potential for more than minimal harm (as**
 5 **described in 42 CFR 488.404).**

6 (4) **A nonconformance, which is any other classified breach not**
 7 **covered by subdivision (1), (2), or (3): Level 1 - no actual harm**
 8 **with potential for minimal harm (as described in 42 CFR**
 9 **488.404).**

10 SECTION 7. IC 16-28-5-4.1 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 1999]: **Sec. 4.1. (a) Except as provided by section 4.2 of this**
 13 **chapter, the commissioner shall enter orders for all of the following**
 14 **for a level 4 breach of this article:**

15 **(1) An order for immediate correction.**

16 **(2) An order imposing a fine of:**

17 **(A) not less than ten thousand dollars (\$10,000); and**

18 **(B) not more than twenty thousand dollars (\$20,000).**

19 **(3) Suspension of new admissions to the health facility until**
 20 **the state department determines through an onsite inspection**
 21 **of the health facility that the breach has been corrected.**

22 **(4) Issuance of a probationary license.**

23 **(b) In addition to the mandatory orders under subsection (a),**
 24 **the commissioner may enter orders for one (1) or more of the**
 25 **following:**

26 **(1) An order imposing a fine of not more than five thousand**
 27 **dollars (\$5,000) per day for each day of continued breach**
 28 **after the health facility is notified of the breach until the state**
 29 **department determines through an onsite inspection of the**
 30 **health facility that the breach has been corrected.**

31 **(2) At the expense of the health facility, one (1) or more of the**
 32 **following:**

33 **(A) Placing a monitor in the health facility under**
 34 **IC 16-28-7.**

35 **(B) Requesting the attorney general to petition a court to**
 36 **place the health facility in receivership under IC 16-28-8.**

37 **(c) If the licensee does not correct the breach after the issuance**
 38 **of orders under subsections (a) and (b), the commissioner may**
 39 **revoke the licensee's license.**

40 SECTION 8. IC 16-28-5-4.2 IS ADDED TO THE INDIANA CODE
 41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 1999]: **Sec. 4.2. (a) The commissioner shall enter orders for all of**

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1 the following for a level 4 breach of this article that occurs within
2 fifteen (15) months after a previous level 4 breach:

3 (1) An order for immediate correction.

4 (2) An order imposing a fine of:

5 (A) not less than twenty thousand dollars (\$20,000); and

6 (B) not more than forty thousand dollars (\$40,000).

7 (3) Suspension of new admissions to the health facility until
8 the state department determines through an onsite inspection
9 of the health facility that the breach has been corrected.

10 (4) Issuance of a probationary license.

11 (b) In addition to the mandatory orders under subsection (a),
12 the commissioner may enter orders for one (1) or more of the
13 following:

14 (1) An order imposing a fine of not more than five thousand
15 dollars (\$5,000) per day for each day of continued breach
16 after the health facility is notified of the breach until the state
17 department determines through an onsite inspection of the
18 health facility that the breach has been corrected.

19 (2) At the expense of the health facility, one (1) or more of the
20 following:

21 (A) Placing a monitor in the health facility under
22 IC 16-28-7.

23 (B) Requesting the attorney general to petition a court to
24 place the health facility in receivership under IC 16-28-8.

25 (c) If the licensee does not correct the breach after the issuance
26 of orders under subsections (a) and (b), the commissioner may
27 revoke the licensee's license.

28 SECTION 9. IC 16-28-5-4.3 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 1999]: Sec. 4.3. (a) Except as provided by section 4.4 of this
31 chapter, the commissioner shall enter orders for all of the following
32 for a level 3 breach of this article:

33 (1) An order for immediate correction.

34 (2) An order imposing a fine of:

35 (A) not less than five thousand dollars (\$5,000); and

36 (B) not more than ten thousand dollars (\$10,000).

37 (b) In addition to the mandatory orders under subsection (a),
38 the commissioner may enter orders for one (1) or more of the
39 following:

40 (1) Issuance of a probationary license.

41 (2) An order imposing a fine of not more than three thousand
42 dollars (\$3,000) per day for each day of continued breach. A



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1 fine under this subdivision may not be imposed until at least
 2 forty-eight (48) hours after the health facility is notified of the
 3 breach by the state department and may continue until the
 4 state department determines through an onsite inspection of
 5 the health facility that the breach has been corrected.

6 (3) Suspension of new admissions to the health facility until
 7 the state department determines through an onsite inspection
 8 of the health facility that the breach has been corrected.

9 (4) At the expense of the health facility, one (1) or more of the
 10 following:

11 (A) Placing a monitor in the health facility under
 12 IC 16-28-7.

13 (B) Requesting the attorney general to petition a court to
 14 place the health facility in receivership under IC 16-28-8.

15 SECTION 10. IC 16-28-5-4.4 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 1999]: Sec. 4.4. (a) The commissioner shall
 18 enter orders for all of the following for a level 3 breach of this
 19 article that occurs within fifteen (15) months after a previous level
 20 3 breach:

21 (1) An order for immediate correction.

22 (2) An order imposing a fine of:

23 (A) not less than ten thousand dollars (\$10,000); and

24 (B) not more than twenty thousand dollars (\$20,000).

25 (3) Issuance of a probationary license.

26 (b) In addition to the mandatory orders under subsection (a),
 27 the commissioner may enter orders for one (1) or more of the
 28 following:

29 (1) An order imposing a fine of not more than three thousand
 30 dollars (\$3,000) per day for each day of continued breach
 31 after the health facility is notified of the breach until the state
 32 department determines through an onsite inspection of the
 33 health facility that the breach has been corrected.

34 (2) Suspension of new admissions to the health facility until
 35 the state department determines through an onsite inspection
 36 of the health facility that the breach has been corrected.

37 (3) At the expense of the health facility, one (1) or more of the
 38 following:

39 (A) Placing a monitor in the health facility under
 40 IC 16-28-7.

41 (B) Requesting the attorney general to petition a court to
 42 place the health facility in receivership under IC 16-28-8.



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1 (c) If the licensee does not correct the breach after the issuance
 2 of orders under subsections (a) and (b), the commissioner may
 3 revoke the licensee's license.

4 SECTION 11. IC 16-28-5-4.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 1999]: Sec. 4.5. (a) Except as provided by
 7 section 4.6 of this chapter, the commissioner shall enter orders for
 8 all of the following for a level 2 breach of this article:

9 (1) An order for immediate correction.

10 (2) An order imposing a fine of:

11 (A) not less than one thousand dollars (\$1,000); and

12 (B) not more than five thousand dollars (\$5,000).

13 (b) In addition to the mandatory orders under subsection (a),
 14 the commissioner may enter an order suspending new admissions
 15 to the health facility until the state department determines through
 16 an onsite inspection of the health facility that the breach has been
 17 corrected.

18 SECTION 12. IC 16-28-5-4.6 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 1999]: Sec. 4.6. (a) The commissioner shall
 21 enter orders for all of the following for a level 2 breach of this
 22 article that occurs within fifteen (15) months after a previous level
 23 2 breach:

24 (1) An order for immediate correction.

25 (2) An order imposing a fine of:

26 (A) not less than five thousand dollars (\$5,000); and

27 (B) not more than ten thousand dollars (\$10,000).

28 (b) In addition to the mandatory orders under subsection (a),
 29 the commissioner may enter orders for one (1) or more of the
 30 following:

31 (1) An order imposing a fine of not more than one thousand
 32 dollars (\$1,000) per day for each day of continued breach
 33 after the health facility is notified of the breach, until the state
 34 department determines through an onsite inspection of the
 35 health facility that the breach has been corrected.

36 (2) An order suspending new admissions to the health facility
 37 until the state department determines through an onsite
 38 inspection of the health facility that the breach has been
 39 corrected.

40 SECTION 13. IC 16-28-5-4.7 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 1999]: Sec. 4.7. (a) Except as provided by



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1 section 4.8 of this chapter, the commissioner shall order the health
2 facility to comply with a plan of correction approved or directed
3 under section 7 of this chapter for a level 1 breach of this article.

4 (b) In addition to the mandatory order under subsection (a), the
5 commissioner may enter an order suspending new admissions to
6 the health facility until the state department determines through an
7 onsite inspection of the health facility that the breach has been
8 corrected.

9 SECTION 14. IC 16-28-5-4.8 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 1999]: Sec. 4.8. (a) The commissioner shall
12 order the health facility to comply with a plan of correction
13 approved or directed under section 7 of this chapter for a level 1
14 breach of this article that occurs within fifteen (15) months after a
15 previous level 1 breach.

16 (b) In addition to the mandatory order under subsection (a), the
17 commissioner may enter an order for one (1) or more of the
18 following:

19 (1) Imposition of a fine of not more than one thousand dollars
20 (\$1,000).

21 (2) An order suspending new admissions to the health facility
22 until the state department determines through an onsite
23 inspection of the health facility that the breach has been
24 corrected.

25 SECTION 15. IC 16-28-5-4.9 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 1999]: Sec. 4.9. The commissioner, with the
28 concurrence of a licensed physician, shall enter the following
29 against a health facility for an omission of care or an act that does
30 not fall within a rule:

31 (1) For an omission of care or an act that the health facility
32 should reasonably have known would present a substantial
33 probability that death or a life threatening condition would
34 result, the orders under section 4.1 of this chapter.

35 (2) For an omission of care or an act that the health facility
36 should reasonably have known would result in an immediate
37 or a direct, serious adverse effect on the health, safety,
38 security, rights, or welfare of a patient, the orders under
39 section 4.3 of this chapter.

40 SECTION 16. IC 16-28-5-5 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) In determining
42 appropriate remedies or waivers under ~~section 4~~ sections 4.1 through

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1 **4.9** of this chapter (or **IC 16-28-5-4** before its repeal), the
 2 commissioner shall consider the following:

3 (1) Whether the breach occurred for reasons outside of the health
 4 facility's control.

5 (2) Whether the health facility has demonstrated that the health
 6 facility has taken the appropriate steps to reasonably ensure that
 7 the breach will not recur.

8 (3) The history of breaches by the health facility.

9 (4) The effect of the breach on the patient,

10 (b) If the health facility furnishes sufficient relevant financial
 11 information, the commissioner may consider the following in
 12 determining appropriate remedies or waivers under section 5 of this
 13 chapter:

14 (1) Whether any financial savings or benefit accrued to the health
 15 facility as a result of the breach.

16 (2) The cost incurred by the health facility in correcting the
 17 breach.

18 **including the actual or potential physical or psychosocial**
 19 **harm.**

20 (5) **The history of breaches by other health facilities:**

21 (A) **owned by the same person who owns the health**
 22 **facility; or**

23 (B) **operated by the same person who operates the health**
 24 **facility.**

25 (6) **The number of patients actually or potentially affected by**
 26 **the breach.**

27 SECTION 17. IC 16-28-5-5.3 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 1999]: **Sec. 5.3. (a) Nothing in this chapter**
 30 **limits the authority of the commissioner to impose a fine or**
 31 **suspend new admissions to a health facility for each omission of**
 32 **care or act or repeat of an omission or act.**

33 (b) **The commissioner may renew an order suspending**
 34 **admissions issued under this chapter for successive periods.**
 35 **However, the suspension of new admissions to a health facility**
 36 **under a renewed order may not exceed ninety (90) consecutive**
 37 **days.**

38 SECTION 18. IC 16-28-5-5.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 1999]: **Sec. 5.5. If:**

41 (1) **the state department:**

42 (A) **imposes a fine; or**



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1 (B) assesses costs for:

2 (i) placing a monitor in the health facility under
3 IC 16-28-7; or

4 (ii) requesting the attorney general to petition a court to
5 place the health facility in receivership under IC 16-28-8;
6 against a health facility under this article; and

7 (2) the health facility is unable for any reason to pay all of the
8 fine or costs;

9 **the state department shall impose the unpaid balance of the fine or
10 costs upon the person that holds the license for the health facility.**

11 SECTION 19. IC 16-28-5-6 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. An order for
13 immediate correction under ~~section 4(b)(1)~~ **sections 4.1 through 4.9**
14 of this chapter shall state a specific date by which the correction shall
15 be made. The date shall be set by the commissioner according to the
16 circumstances of the breach but may not exceed five (5) days from the
17 time the health facility receives written notification from the
18 commissioner.

19 SECTION 20. IC 16-28-5-11 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 1999]: **Sec. 11. (a) The state department shall
22 develop a form for reporting the determination of a breach at a
23 health facility and any orders imposed for the breach. The state
24 department may periodically revise these forms.**

25 **(b) The state department and the long term care ombudsman
26 office established under IC 12-10-13-7 shall develop a uniform
27 letter for providing notice to a health facility patient and the legal
28 representative of a health facility patient of a determination of a
29 level 4 or a level 3 breach at the health facility and any orders
30 imposed for the breach. The state department and the long term
31 care ombudsman office may periodically revise these letters.**

32 **(c) Upon imposing an order for a breach at a health facility, the
33 state department shall:**

34 **(1) complete one (1) of the forms developed under subsection
35 (a); and**

36 **(2) provide a copy of the completed form to the health facility.**

37 **(d) In addition to the requirement of subsection (c), if the state
38 department imposes an order for a level 4 or a level 3 breach at a
39 health facility, the state department shall:**

40 **(1) complete one (1) of the letters developed under subsection
41 (b); and**

42 **(2) provide a copy of the completed letter to the health facility.**



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1 SECTION 21. IC 16-28-5-12 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 1999]: **Sec. 12. (a) A health facility that is**
4 **found to have committed a breach of this article or a rule adopted**
5 **under this article shall:**

6 (1) **post on all doors providing entrance to and exit from the**
7 **health facility; and**

8 (2) **send to all newspapers in:**

9 (A) **the county in which the health facility is located; and**

10 (B) **the counties contiguous to the county in which the**
11 **health facility is located;**

12 **the notice of the breach and the orders imposed by the state**
13 **department issued under section 11(c) of this chapter.**

14 (b) **In addition to the notice required under subsection (a), a**
15 **health facility that is found to have committed a level 4 or a level**
16 **3 breach of this article shall send to each patient and the legal**
17 **representative of each patient a copy of the letter of notification**
18 **regarding the nature of the breach and the orders entered by the**
19 **state department issued under section 11(d) of this chapter.**

20 (c) **The health facility shall bear the cost of duplicating and**
21 **sending the notices and letters required under this section.**

22 SECTION 22. IC 16-28-5-13 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 1999]: **Sec. 13. The state department may**
25 **adopt rules to implement this chapter.**

26 SECTION 23. IC 16-28-5-4 IS REPEALED [EFFECTIVE JULY 1,
27 1999].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1812, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1812 as introduced.)

BROWN C, Chair

Committee Vote: yeas 13, nays 0.

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