



February 26, 1999

SENATE BILL No. 526

DIGEST OF SB 526 (Updated February 25, 1999 6:01 pm - DI 77)

Citations Affected: IC 16-28.

Synopsis: Requires state department of health survey inspectors to categorize each breach by a health facility into one of four categories described in federal law. Increases the amount of fines that the commissioner of the state department of health may impose for breaches by health facilities. Allows the state department of health to deduct from any fine the amount of funds expended by the health facility to retain a consultant or other health care professional approved by the state department of health to assist the health facility in correcting a breach. Specifies that the commissioner may impose a penalty for each violation or repeat of a violation. Limits to 90 the total number of consecutive days that the commissioner may suspend new admissions to a health facility. Provides that the state department of health may not collect fines under both state and federal law from certain health facilities. Requires the state department of health to contract with an independent organization to operate the informal dispute resolution process required by federal law. Specifies that the
(Continued next page)

Effective: July 1, 1999.

Miller

January 19, 1999, read first time and referred to Committee on Health and Provider Services.
February 25, 1999, amended, reported favorably — Do Pass.

SB 526—LS 7382/DI 77+



C
O
P
Y

Digest Continued

independent organization with which the state department of health contracts must employ or contract with an interdisciplinary team composed of persons with certain qualifications. Requires the state department of health to assure that members of the interdisciplinary team are knowledgeable about health facility operations and receive training regarding federal survey and certification and state licensure requirements. Makes a conforming amendment.

C
o
p
y



February 26, 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.

C
O
P
Y

SENATE BILL No. 526

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 16-28-3-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. If a health facility is
3 in breach of this article or rules adopted under this article by ~~offenses~~
4 **Level 4 breaches** or patterns of ~~deficiencies~~ **Level 3 breaches**
5 detrimental to the best interests of the public, the patients, or the health
6 facility profession, the only type of license that may be issued to the
7 health facility is a probationary license.

8 SECTION 2. IC 16-28-5-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The executive board
10 shall adopt rules under IC 4-22-2 to ~~classify each rule adopted by the~~
11 ~~executive board to govern a health facility under this article~~ **define**
12 **each level of breach as provided in subdivisions (1) through (4) of**
13 **this section. The state survey inspectors shall determine under this**
14 **article, with the concurrence of the director, the classification of a**
15 **breach** into one (1) of the following categories:

SB 526—LS 7382/DI 77+



1 (1) ~~An offense, which presents a substantial probability that death~~
 2 ~~or a life-threatening condition will result. Level 4 - immediate~~
 3 ~~jeopardy to patient health or safety (as described in 42 CFR~~
 4 ~~488.404).~~

5 (2) ~~A deficiency, which presents an immediate or a direct, serious~~
 6 ~~adverse effect on the health, safety, security, rights, or welfare of~~
 7 ~~a patient. Level 3 - actual harm (as described in 42 CFR~~
 8 ~~488.404).~~

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

13 (4) ~~A nonconformance, which is any other classified breach not~~
 14 ~~covered by subdivision (1), (2), or (3). Level 1 - no actual harm~~
 15 ~~with potential for minimal harm (as described in 42 CFR~~
 16 ~~488.404).~~

17 SECTION 3. IC 16-28-5-4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The
 19 commissioner shall impose the following remedies for breaches of this
 20 article or a rule adopted under this article:

21 (1) ~~For an offense, a Level 4 breach,~~ the remedies specified in
 22 subsection (b)(1) ~~through (b)(2); and (b)(3).~~ The commissioner
 23 may also impose the remedy specified in subsection ~~(b)(3); (b)(4).~~

24 (2) ~~For a Level 4 breach that is a repeat of the same Level 4~~
 25 ~~breach within a fifteen (15) month period, the remedies~~
 26 ~~specified in subsection (b)(1) through (b)(2). The~~
 27 ~~commissioner may also impose the remedies specified in~~
 28 ~~subsection (b)(4).~~

29 ~~(2) (3) For a deficiency, Level 3 breach,~~ the remedies specified
 30 in subsection (b)(1). The commissioner may also impose the
 31 remedies specified in subsection ~~(b)(4); (b)(5).~~

32 ~~(3) (4) For a Level 3 breach that is a repeat of the same deficiency~~
 33 ~~Level 3 breach within a fifteen (15) month period, the remedies~~
 34 ~~specified in subsection (b)(1) through (b)(2); and (b)(3). The~~
 35 ~~commissioner may also impose the remedy specified in~~
 36 ~~subsection (b)(3); (b)(4).~~

37 ~~(4) (5) For a noncompliance, Level 2 breach,~~ the remedies
 38 specified in subsection ~~(b)(5) (b)(7) through (b)(6); (b)(8).~~

39 ~~(5) (6) For a breach that is a repeat of the same noncompliance~~
 40 ~~Level 2 breach within a fifteen (15) month period, the remedies~~
 41 ~~specified in subsection (b)(1). The commissioner may also impose~~
 42 ~~the remedies specified in subsection (b)(4); (b)(6).~~



C
O
P
Y

1 ~~(6)~~ **(7)** For a ~~nonconformance~~, **Level 1 breach**, the remedies
2 specified in subsection ~~(b)(5)~~: **(b)(7)**.

3 ~~(7)~~ For a breach that is a repeat of the same nonconformance
4 within a fifteen ~~(15)~~ month period, the remedies specified in
5 subsection ~~(b)(5)~~ through ~~(b)(6)~~:

6 (b) The remedies for breaches of this article or rules adopted under
7 this article are as follows:

8 ~~(1)~~ Issuance of an order for immediate correction of the breach:
9 **Submission of an acceptable plan of correction by the health**
10 **facility.**

11 ~~(2)~~ **Imposition of a fine not to exceed thirty thousand dollars**
12 **(\$30,000) or suspension of new admissions to the health**
13 **facility for a period not to exceed forty-five (45) days, or both.**

14 ~~(2)~~ **(3)** Imposition of a fine not to exceed ~~ten~~ **twenty** thousand
15 dollars ~~(\$10,000)~~ **(\$20,000)** or suspension of new admissions to
16 the health facility for a period not to exceed forty-five (45) days,
17 or both.

18 ~~(3)~~ **(4)** Revocation by the director of the health facility's license
19 or issuance of a probationary license.

20 ~~(4)~~ **(5)** Imposition of a fine not to exceed ~~five~~ **ten** thousand dollars
21 ~~(\$5,000)~~ **(\$10,000)** or suspension of new admissions to the health
22 facility for a period not to exceed thirty (30) days, or both.

23 ~~(6)~~ **(6)** **Imposition of a fine not to exceed five thousand dollars**
24 **(\$5,000) or suspension of new admissions to the health facility**
25 **for a period not to exceed thirty (30) days, or both.**

26 ~~(5)~~ **(7)** A requirement that the health facility comply with any plan
27 of correction approved or directed under section 7 of this chapter.

28 ~~(6)~~ **(8)** If the health facility is found to have a pattern of breach,
29 the commissioner may suspend new admissions to the health
30 facility for a period not to exceed fifteen (15) days or impose a
31 fine not to exceed ~~one~~ **two** thousand dollars ~~(\$1,000)~~; **(\$2,000)**, or
32 both.

33 (c) **The commissioner may deduct from a fine imposed upon the**
34 **health facility money expended by the health facility to retain a**
35 **consultant or other health care professional approved by the**
36 **director to assist the health facility in correcting a breach of this**
37 **article or a rule adopted under this article.**

38 ~~(c)~~ **(d)** If a breach is immediately corrected and the commissioner
39 has imposed remedies under subsection (b)(2) **or (b)(3)**, the
40 commissioner may waive not more than fifty percent (50%) of the fine
41 imposed and reduce the number of days for suspension of new
42 admissions by one-half (1/2).

C
O
P
Y

1 ~~(d)~~ (e) The commissioner may, with the concurrence of a licensed
2 physician, impose the following:

3 (1) For an omission of care or an act that does not fall within a
4 classification of a **rule breach** under this section and that the
5 facility should reasonably have known would present a substantial
6 probability that death or a life threatening condition will result,
7 one (1) or any combination of the remedies specified in
8 subsection (b)(1), ~~through (b)(3)~~; **(b)(2), and (b)(4)**.

9 (2) For an omission of care or an act that:

10 (A) does not fall within a classification of a **rule breach** under
11 this section; and

12 (B) the facility should reasonably have known would result in
13 an immediate or a direct, serious adverse effect on the health,
14 safety, security, rights, or welfare of a patient;

15 the remedies specified in subsection (b)(1) or ~~(b)(4)~~; **(b)(5)**, or
16 both.

17 **(f) This section does not limit the authority of the commissioner
18 to impose a fine or suspend new admissions to the health facility
19 for each omission of care or act or repeat of an omission or act.**

20 **(g) The commissioner may renew an order suspending
21 admissions issued under this section for successive periods.
22 However, the suspension of new admissions to a health facility
23 under a renewed order may not exceed ninety (90) consecutive
24 days.**

25 SECTION 4. IC 16-28-5-11 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 1999]: **Sec. 11. For a health facility that is certified for
28 participation in Medicare under 42 U.S.C. 1395 et seq. or Medicaid
29 under 42 U.S.C. 1396 et seq., the state department may not collect
30 both a fine under this article and a civil monetary penalty under 42
31 CFR 488.**

32 SECTION 5. IC 16-28-12-5 IS ADDED TO THE INDIANA CODE
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
34 1, 1999]: **Sec. 5. (a) The state department shall contract with an
35 independent organization to operate the informal dispute
36 resolution process required by 42 CFR 488.331.**

37 **(b) The independent organization contracted by the state
38 department under subsection (a) shall employ or contract with an
39 interdisciplinary team consisting of one (1) or more of the
40 following persons:**

41 (1) A registered nurse.

42 (2) A social worker.



C
O
P
Y

- 1 **(3) A dietician.**
- 2 **(4) A licensed administrator.**
- 3 **(c) The state department shall assure that each member of the**
- 4 **interdisciplinary team employed or contracted under subsection**
- 5 **(b):**
- 6 **(1) is knowledgeable about health facility operation; and**
- 7 **(2) receives training regarding:**
- 8 **(A) federal survey and certification; and**
- 9 **(B) state licensure requirements.**

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 526, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-28-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. If a health facility is in breach of this article or rules adopted under this article by ~~offenses~~ **Level 4 breaches** or patterns of ~~deficiencies~~ **Level 3 breaches** detrimental to the best interests of the public, the patients, or the health facility profession, the only type of license that may be issued to the health facility is a probationary license.

SECTION 2. IC 16-28-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. The executive board shall adopt rules under IC 4-22-2 to ~~classify each rule adopted by the executive board to govern a health facility under this article~~ **define each level of breach as provided in subdivisions (1) through (4) of this section. The state survey inspectors shall determine under this article, with the concurrence of the director, the classification of a breach** into one (1) of the following categories:

- (1) ~~An offense, which presents a substantial probability that death or a life-threatening condition will result.~~ **Level 4 - immediate jeopardy to patient health or safety (as described in 42 CFR 488.404).**
- (2) ~~A deficiency, which presents an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient.~~ **Level 3 - actual harm (as described in 42 CFR 488.404).**
- (3) ~~A noncompliance, which presents an indirect threat to the health, safety, security, rights, or welfare of a patient.~~ **Level 2 - no actual harm with potential for more than minimal harm (as described in 42 CFR 488.404).**
- (4) ~~A nonconformance, which is any other classified breach not covered by subdivision (1), (2), or (3).~~ **Level 1 - no actual harm with potential for minimal harm (as described in 42 CFR 488.404)."**

Page 1, delete lines 5 through 17, begin a new line block indented and insert:

- "(1) For an ~~offense~~, a **Level 4 breach**, the remedies specified in



C
O
P
Y

subsection (b)(1) ~~through (b)(2):~~ **and (b)(3)**. The commissioner may also impose the remedy specified in subsection ~~(b)(3):~~ **(b)(4)**.
(2) For a Level 4 breach that is a repeat of the same Level 4 breach within a fifteen (15) month period, the remedies specified in subsection (b)(1) through (b)(2). The commissioner may also impose the remedies specified in subsection (b)(4).

~~(2) (3) For a deficiency, Level 3 breach,~~ the remedies specified in subsection (b)(1). The commissioner may also impose the remedies specified in subsection ~~(b)(4):~~ **(b)(5)**.

~~(3) (4) For a Level 3 breach that is a repeat of the same deficiency~~ **Level 3 breach** within a fifteen (15) month period, the remedies specified in subsection (b)(1) ~~through (b)(2):~~ **and (b)(3)**. The commissioner may also impose the remedy specified in subsection ~~(b)(3):~~ **(b)(4)**.

~~(4) (5) For a noncompliance, Level 2 breach,~~ the remedies specified in subsection ~~(b)(5) (b)(7) through (b)(6):~~ **(b)(8)**.

~~(5) (6) For a breach that is a repeat of the same noncompliance~~ **Level 2 breach** within a fifteen (15) month period, the remedies specified in subsection (b)(1). The commissioner may also impose the remedies specified in subsection ~~(b)(4):~~ **(b)(6)**.

~~(6) (7) For a nonconformance, Level 1 breach,~~ the remedies specified in subsection ~~(b)(5):~~ **(b)(7)**.

~~(7) For a breach that is a repeat of the same nonconformance within a fifteen (15) month period, the remedies specified in subsection (b)(5) through (b)(6):"~~

Page 2, delete lines 1 through 8.

Page 2, delete lines 11 through 26, begin a new line block indented and insert:

"(1) Issuance of an order for immediate correction of the breach: **Submission of an acceptable plan of correction by the health facility.**

(2) Imposition of a fine not to exceed thirty thousand dollars (\$30,000) or suspension of new admissions to the health facility for a period not to exceed forty-five (45) days, or both.

~~(2) (3) Imposition of a fine not to exceed ten twenty thousand dollars (\$10,000) (\$20,000) or suspension of new admissions to the health facility for a period not to exceed forty-five (45) days, or both.~~

~~(3) (4) Revocation by the director of the health facility's license or issuance of a probationary license.~~

~~(4) (5) Imposition of a fine not to exceed five ten thousand dollars~~



C
O
P
Y

~~(\$5,000)~~ **(\$10,000)** or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

(6) Imposition of a fine not to exceed five thousand dollars (\$5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

~~(5)~~ **(7)** A requirement that the health facility comply with any plan of correction approved or directed under section 7 of this chapter.

~~(6)~~ **(8)** If the health facility is found to have a pattern of breach, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed ~~one~~ **two** thousand dollars ~~(\$1,000); (\$2,000)~~, or both.

(c) The commissioner may deduct from a fine imposed upon the health facility money expended by the health facility to retain a consultant or other health care professional approved by the director to assist the health facility in correcting a breach of this article or a rule adopted under this article."

Page 2, line 27, strike "(c)" and insert "**(d)**".

Page 2, line 28, after "(b)(2)" delete "," and insert "**or (b)(3)**".

Page 2, line 31, strike "(d)" and insert "**(e)**".

Page 2, line 34, strike "rule" and insert "**breach**".

Page 2, line 38, after "(b)(1)" insert ",".

Page 2, line 38, strike "through (b)(3)." and insert "**(b)(2), and (b)(4)**".

Page 2, line 40, strike "rule" and insert "**breach**".

Page 3, line 3, strike "(b)(4)," and insert "**(b)(5)**".

Page 3, delete lines 4 through 10, begin a new paragraph and insert:
"(f) This section does not limit the authority of the commissioner to impose a fine or suspend new admissions to the health facility for each omission of care or act or repeat of an omission or act.

(g) The commissioner may renew an order suspending admissions issued under this section for successive periods. However, the suspension of new admissions to a health facility under a renewed order may not exceed ninety (90) consecutive days.

SECTION 3. IC 16-28-5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 11. For a health facility that is certified for participation in Medicare under 42 U.S.C. 1395 et seq. or Medicaid under 42 U.S.C. 1396 et seq., the state department may not collect both a fine under this article and a civil monetary penalty under 42 CFR 488.**



C
O
P
Y

SECTION 4. IC 16-28-12-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. (a) The state department shall contract with an independent organization to operate the informal dispute resolution process required by 42 CFR 488.331.**

(b) The independent organization contracted by the state department under subsection (a) shall employ or contract with an interdisciplinary team consisting of one (1) or more of the following persons:

- (1) A registered nurse.**
- (2) A social worker.**
- (3) A dietician.**
- (4) A licensed administrator.**

(c) The state department shall assure that each member of the interdisciplinary team employed or contracted under subsection (b):

- (1) is knowledgeable about health facility operation; and**
- (2) receives training regarding:**
 - (A) federal survey and certification; and**
 - (B) state licensure requirements."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 526 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
O
P
Y

