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# HOUSE BILL No. 1124

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 2-5-23; IC 16-28.

**Synopsis:** Health facilities. Allows oral allegation of a breach of the health facilities law or rules. Requires the state department of health (state department) to investigate all breach allegations. Increases the potential fines for breaches. Allows the state department, after imposing a fine on a health facility, to deduct from the fine funds expended by the health facility to retain a consultant or other professional or to provide staff education or training to assist in correcting or preventing a breach. Establishes the quality improvement and education fund. Requires that 50% of the fines collected be deposited in this fund. Specifies that a penalty may be imposed for each violation or repeat of a violation. Limits to 90 the number of consecutive days that new admissions to a health facility may be suspended upon renewal of an order suspending admissions. Prohibits the collection from certain facilities of a fine under state law in addition to a monetary penalty under federal law. Assigns certain study topics to the health finance commission. Requires the state department to operate an informal dispute resolution program by contracting with an independent organization. Establishes procedures for the informal dispute resolution process.

**Effective:** July 1, 2000; September 1, 2000.

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### Day

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January 10, 2000, read first time and referred to Committee on Public Health.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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# HOUSE BILL No. 1124



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 2-5-23-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2000]: Sec. 5. The commission has the  
3 following voting membership:

4 (1) The members of the senate ~~planning health~~ and ~~public~~  
5 **provider** services committee.

6 (2) The members of the house public health committee.

7 SECTION 2. IC 2-5-23-13 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 13. (a) The chairman  
9 of the senate ~~planning health~~ and ~~public service provider services~~  
10 committee is the chairman of the commission beginning May 1 of  
11 odd-numbered years and vice chairman beginning May 1 of  
12 even-numbered years.

13 (b) The chairman of the house public health committee is the  
14 chairman of the commission beginning May 1 of even-numbered years  
15 and vice chairman beginning May 1 of odd-numbered years.

16 SECTION 3. IC 16-28-3-3 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE SEPTEMBER 1, 2000]: Sec. 3. If a health



1 facility is in breach of this article or rules adopted under this article by  
 2 **offenses Level 4 breaches** or patterns of **deficiencies Level 3 breaches**  
 3 detrimental to the best interests of the public, the patients, or the health  
 4 facility profession, the only type of license that may be issued to the  
 5 health facility is a probationary license.

6 SECTION 4. IC 16-28-4-1 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. A person who  
 8 believes that this article or ~~rules a rule~~ adopted under this article ~~have~~  
 9 **has** been breached may file an allegation of breach with the state  
 10 department. The allegation ~~must may~~ be **made orally or** in writing.  
 11 ~~unless the breach complained of is an offense or a deficiency. The~~  
 12 **state department shall reduce** an oral allegation of breach ~~shall be~~  
 13 **reduced** to writing. ~~by the state department.~~

14 SECTION 5. IC 16-28-4-2 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. The division shall  
 16 promptly investigate ~~the following:~~

17 (1) ~~A written each~~ allegation of breach received under this  
 18 chapter.

19 (2) ~~An oral allegation of breach that the director, in the director's~~  
 20 ~~discretion, believes to have merit.~~

21 SECTION 6. IC 16-28-5-1 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE SEPTEMBER 1, 2000]: Sec. 1. The  
 23 executive board shall adopt rules under IC 4-22-2 to ~~classify each rule~~  
 24 ~~adopted by the executive board to govern a health facility under this~~  
 25 **article define each level of breach of this article or rules adopted**  
 26 **under this article as provided in subdivisions (1) through (4) of this**  
 27 **section. The state survey inspectors shall determine under this**  
 28 **article, with the concurrence of the director, the classification of a**  
 29 **breach** into one (1) of the following categories:

30 (1) ~~An offense, which presents a substantial probability that death~~  
 31 ~~or a life-threatening condition will result. (1) Level 4 - immediate~~  
 32 **jeopardy to patient health or safety (as described in 42 CFR**  
 33 **488.404).**

34 (2) ~~A deficiency, which presents an immediate or a direct, serious~~  
 35 ~~adverse effect on the health, safety, security, rights, or welfare of~~  
 36 ~~a patient. (2) Level 3 - actual harm (as described in 42 CFR~~  
 37 **488.404).**

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

42 (4) ~~A nonconformance, which is any other classified breach not~~



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1 covered by subdivision ~~(1); (2); or (3)~~. **(4) Level 1 - no actual**  
 2 **harm with potential for minimal harm (as described in 42**  
 3 **CFR 488.404).**

4 SECTION 7. IC 16-28-5-4 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE SEPTEMBER 1, 2000]: Sec. 4. (a) The  
 6 commissioner shall impose the following remedies for breaches of this  
 7 article or a rule adopted under this article:

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

11 (2) **For a Level 4 breach that is a repeat of the same Level 4**  
 12 **breach within a fifteen (15) month period, the remedies**  
 13 **specified in subsection (b)(1) through (b)(2). The**  
 14 **commissioner may also impose the remedies specified in**  
 15 **subsection (b)(4).**

16 (3) For a ~~deficiency~~, **Level 3 breach**, the ~~remedies~~ **remedy**  
 17 specified in subsection (b)(1). The commissioner may also impose  
 18 the remedies specified in subsection ~~(b)(4)~~; **(b)(5)**.

19 ~~(3)~~ **(4) For a Level 3 breach that is a repeat of the same deficiency**  
 20 **Level 3 breach** within a fifteen (15) month period, the remedies  
 21 specified in subsection (b)(1) ~~through (b)(2)~~; **and (b)(3)**. The  
 22 commissioner may also impose the remedy specified in  
 23 subsection ~~(b)(3)~~; **(b)(4)**.

24 ~~(4)~~ **(5) For a noncompliance, Level 2 breach**, the remedies  
 25 specified in subsection ~~(b)(5) (b)(7) through (b)(6)~~; **(b)(8)**.

26 ~~(5)~~ **(6) For a breach that is a repeat of the same noncompliance**  
 27 **Level 2 breach** within a fifteen (15) month period, the remedies  
 28 specified in subsection (b)(1). The commissioner may also impose  
 29 the remedies specified in subsection ~~(b)(4)~~; **(b)(6)**.

30 ~~(6)~~ **(7) For a nonconformance, Level 1 breach**, the ~~remedies~~  
 31 **remedy** specified in subsection ~~(b)(5)~~; **(b)(7)**.

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

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

37 ~~(1)~~ **Issuance of an order for immediate correction of the breach:**

38 **(1) Submission of an acceptable plan of correction by the**  
 39 **health facility.**

40 **(2) Imposition of a fine not to exceed thirty thousand dollars**  
 41 **(\$30,000) or suspension of new admissions to the health**  
 42 **facility for a period not to exceed forty-five (45) days, or both.**



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- 1           **(3)** Imposition of a fine not to exceed ~~ten~~ **twenty** thousand dollars  
 2           ~~(\$10,000)~~ **(\$20,000)** or suspension of new admissions to the  
 3           health facility for a period not to exceed forty-five (45) days, or  
 4           both.
- 5           ~~(3)~~ **(4)** Revocation by the director of the health facility's license  
 6           or issuance of a probationary license.
- 7           ~~(4)~~ **(5)** Imposition of a fine not to exceed ~~five~~ **ten** thousand dollars  
 8           ~~(\$5,000)~~ **(\$10,000)** or suspension of new admissions to the health  
 9           facility for a period not to exceed thirty (30) days, or both.  
 10           **However, the state department may not impose a fine in**  
 11           **excess of five thousand dollars (\$5,000) for an isolated Level**  
 12           **3 violation unless a breach involves serious injury to or the**  
 13           **death of a patient.**
- 14           **(6) Imposition of a fine not to exceed five thousand dollars**  
 15           **(\$5,000) or suspension of new admissions to the health facility**  
 16           **for a period not to exceed thirty (30) days, or both.**
- 17           ~~(5)~~ **(7)** A requirement that the health facility comply with any plan  
 18           of correction approved or directed under section 7 of this chapter.
- 19           ~~(6)~~ **(8)** If the health facility is found to have a pattern of breach,  
 20           the commissioner may suspend new admissions to the health  
 21           facility for a period not to exceed fifteen (15) days or impose a  
 22           fine not to exceed ~~one~~ **two** thousand dollars ~~(\$1,000)~~; **(\$2,000)**, or  
 23           both.
- 24           **(c) If a fine is imposed on a health facility under this section, the**  
 25           **commissioner may deduct from the fine money expended by the**  
 26           **health facility to do either or both of the following to assist the**  
 27           **health facility in correcting or preventing a breach of this article**  
 28           **or a rule adopted under this article:**
- 29                 **(1) Retain a consultant or other health care professional**  
 30                 **approved by the director.**
- 31                 **(2) Provide training or education to staff members of the**  
 32                 **health facility.**
- 33           **(d)** If a breach is immediately corrected and the commissioner has  
 34           imposed remedies under subsection (b)(2) **or (b)(3)**, the commissioner  
 35           may waive not more than fifty percent (50%) of the fine imposed and  
 36           reduce the number of days for suspension of new admissions by  
 37           one-half (1/2).
- 38           ~~(d)~~ **(e)** The commissioner may, with the concurrence of a licensed  
 39           physician, impose the following:
- 40                 **(1)** For an omission of care or an act that does not fall within a  
 41                 classification of a **rule breach** under this section and that the  
 42                 facility should reasonably have known would present a substantial

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1 probability that death or a life threatening condition will result,  
 2 one (1) or any combination of the remedies specified in  
 3 subsection (b)(1), ~~through (b)(3)~~: **(b)(2), and (b)(4).**

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

5 (A) does not fall within a classification of a ~~rule breach~~ **breach** under  
 6 this section; and

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

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

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

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

20 SECTION 8. IC 16-28-5-11 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 22 1, 2000]: **Sec. 11. For a health facility that is certified for  
 23 participation in Medicare under 42 U.S.C. 1395 et seq. or Medicaid  
 24 under 42 U.S.C. 1396 et seq., the state department may not collect  
 25 both a fine under this article and a civil monetary penalty under 42  
 26 CFR 488.**

27 SECTION 9. IC 16-28-11-1, AS AMENDED BY P.L.218-1999,  
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2000]: Sec. 1. (a) Except as provided in IC 16-28-1-11, ~~and~~  
 30 ~~IC 16-28-7-4, fines or fees~~ required to be paid under this article shall  
 31 be paid directly to the director, who shall deposit the ~~fines or fees~~  
 32 in the state general fund.

33 **(b) Except as provided in IC 16-28-7-4, fines required to be paid  
 34 under this article shall be paid directly to the director, who shall  
 35 deposit the fines as follows:**

36 **(1) Fifty percent (50%) in the state general fund.**

37 **(2) Fifty percent (50%) in the quality improvement and  
 38 education fund established by section 4 of this chapter.**

39 SECTION 10. IC 16-28-11-4 IS ADDED TO THE INDIANA  
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 41 [EFFECTIVE JULY 1, 2000]: **Sec. 4. (a) The quality improvement  
 42 and education fund is established. The state department shall**



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1 administer the fund.

2 (b) The treasurer of state shall invest the money in the fund not  
3 currently needed to meet the obligations of the fund in the same  
4 manner as other public funds may be invested. Interest that  
5 accrues from these investments shall be deposited in the fund.

6 (c) Money in the fund at the end of a state fiscal year does not  
7 revert to the state general fund.

8 (d) The state department shall use the money in the fund for the  
9 following purposes:

10 (1) Education or training programs conducted by:

11 (A) the state department; or

12 (B) a health facility under IC 16-28-5-4(c)(2).

13 (2) Development of best practice guidelines and clinical  
14 protocols.

15 (3) Clinical research and other activities designed to improve  
16 the quality of care provided in health facilities.

17 (e) The state department may use money from the fund for an  
18 education or training program under subsection (d)(1)(B) only if  
19 the cost of the program is more than the amount deducted under  
20 IC 16-28-5-4(c)(2). The total of:

21 (1) the amount deducted under IC 16-28-5-4(c)(2); and

22 (2) the amount used from the fund under subsection (d)(1)(B);  
23 may not exceed the cost of the education or training program  
24 conducted by the health facility.

25 SECTION 11. [EFFECTIVE JULY 1, 2000] (a) As used in this  
26 SECTION, "commission" refers to the health finance commission  
27 established by IC 2-5-23.

28 (b) As used in this SECTION, "health facility" has the meaning  
29 set forth in IC 16-18-2-167.

30 (c) As used in this SECTION, "state department" refers to the  
31 state department of health established by IC 16-19.

32 (d) The commission shall study the following:

33 (1) Staffing of health facilities.

34 (2) Training for employees of health facilities, including  
35 training on the special needs of individuals with Alzheimer's  
36 disease and other related disorders.

37 (3) Possible alternatives for changing the method of  
38 investigating and resolving complaints involving health  
39 facilities by the state department.

40 (4) Other topics assigned by the legislative council.

41 (e) The commission shall issue a report of its findings regarding  
42 the topics assigned to the commission under subsection (d) to the



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1 legislative council not later than December 1, 2000.

2 (f) This SECTION expires December 31, 2000.

3 SECTION 12. [EFFECTIVE JULY 1, 2000] (a) As used in this  
4 SECTION, "IDR process" refers to the informal dispute resolution  
5 process required by 42 CFR 488.331 and this SECTION.

6 (b) As used in this SECTION, "panel" refers to an informal  
7 dispute resolution panel appointed under subsection (g).

8 (c) As used in this SECTION, "state department" refers to the  
9 state department of health established by IC 16-19.

10 (d) The state department shall contract with an independent  
11 organization to operate the informal dispute resolution process  
12 required by 42 CFR 488.331.

13 (e) The state department shall seek recommendations from the  
14 health facilities council created by IC 16-28-1-1 regarding the  
15 contract required under subsection (f).

16 (f) The state department is not bound by the recommendations  
17 of the health facilities council provided under subsection (e).

18 (g) The independent organization contracted by the state  
19 department under subsection (d) shall, for each dispute raised,  
20 establish an informal dispute resolution panel consisting of the  
21 following members:

22 (1) An individual appointed by the state department.

23 (2) An individual appointed by the independent organization.

24 (h) The individual appointed by the state department under  
25 subsection (g)(1) may not have directly:

26 (1) participated in; or

27 (2) supervised any person involved with;

28 the survey under dispute.

29 (i) The independent organization may appoint an additional  
30 individual to the panel for reasons including the following:

31 (1) Disagreement between the individuals appointed under  
32 subsection (g).

33 (2) Complex regulatory issues.

34 (3) Complex medical issues.

35 (j) The state department and the health facility may discuss with  
36 the independent organization the need to make changes to the  
37 composition of the panel.

38 (k) The state department shall ensure that each member of the  
39 panel appointed under subsection (g):

40 (1) has specific knowledge in:

41 (A) clinical issues; and

42 (B) survey and certification issues; and

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- 1           (2) does not have:
- 2           (A) a financial interest in the outcome of the dispute
- 3           resolution; or
- 4           (B) any other conflict of interest, as determined by criteria
- 5           established by the state department.
- 6           (l) Except as provided in subsection (m), the IDR process
- 7           required under this SECTION may be conducted as a review of
- 8           paperwork.
- 9           (m) If requested by the health facility in its invocation of the
- 10          IDR process under subsection (n), the IDR process must be
- 11          conducted at an in-person meeting between the panel and
- 12          representatives of the health facility.
- 13          (n) To be given an informal opportunity to dispute survey
- 14          findings, a health facility must submit a request in writing to the
- 15          state health commissioner not more than ten (10) days after the
- 16          date the health facility receives the official statement of the
- 17          deficiencies.
- 18          (o) A health facility may invoke the IDR process established
- 19          under this SECTION for each violation cited by the state
- 20          department.
- 21          (p) The panel may request additional information from:
- 22                (1) the state department; or
- 23                (2) the health facility.
- 24          (q) Failure to complete a timely informal dispute resolution
- 25          request may not delay the effective date of any enforcement action
- 26          against the health facility.
- 27          (r) The health facility may not seek a delay of any enforcement
- 28          action against the health facility on the grounds that the IDR
- 29          process has not been completed before the effective date of the
- 30          enforcement action.
- 31          (s) An informal dispute resolution decision issued under this
- 32          SECTION may be appealed by either the state department or the
- 33          health facility.
- 34          (t) The state department shall hold quarterly public meetings
- 35          regarding the IDR process.
- 36          (u) The state department shall prepare brief monthly reports on
- 37          the outcome of informal dispute resolution decisions.
- 38          (v) The reports required under subsection (u):
- 39                (1) are public records; and
- 40                (2) shall be submitted to the legislative council or a legislative
- 41          body designated by the legislative council.
- 42          (w) The state department shall submit a report to the legislative

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1       **council, or a legislative body designated by the legislative council,**  
2       **regarding the state department's plans for informal dispute**  
3       **resolution upon the expiration of this SECTION.**

4       **(x) The state department shall submit the report required under**  
5       **subsection (w) not later than January 1, 2002.**

6       **(y) This SECTION expires June 30, 2002.**

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