

**IC 16-28**

**ARTICLE 28. HEALTH FACILITIES**

**IC 16-28-1**

**Chapter 1. Health Facilities Council**

**IC 16-28-1-1**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-2**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-3**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-4**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-5**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-6**

**Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

**IC 16-28-1-7**

**Adoption of rules; fire safety rule recommendations; classification of facilities**

Sec. 7. The state department shall do the following:

- (1) Adopt rules under IC 4-22-2 governing the following:
  - (A) Health and sanitation standards necessary to protect the health, safety, security, rights, and welfare of patients.
  - (B) Qualifications of applicants for licenses issued under this article to assure the proper care of patients.
  - (C) Operation, maintenance, management, equipment, and construction of facilities required to be licensed under this article if jurisdiction is not vested in any other state agency.
  - (D) Manner, form, and content of the license, including rules governing disclosure of ownership interests.
  - (E) Levels of medical staffing and medical services in cooperation with the office of Medicaid policy and planning, division of family resources, and other agencies authorized to pay for the services.
- (2) Recommend to the fire prevention and building safety commission fire safety rules necessary to protect the health,

safety, security, rights, and welfare of patients.

(3) Classify health facilities in health care categories.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.3; P.L.145-2006, SEC.135; P.L.156-2011, SEC.21; P.L.141-2014, SEC.9.*

#### **IC 16-28-1-8**

##### **Repealed**

*(Repealed by P.L.156-2011, SEC.41; P.L.197-2011, SEC.153.)*

#### **IC 16-28-1-9**

##### **Repealed**

*(Repealed by P.L.141-2014, SEC.10.)*

#### **IC 16-28-1-10**

##### **Waiver of rules**

Sec. 10. (a) The state health commissioner may, for good cause shown, waive for a specified time any rule that may be waived under the following for a health facility:

- (1) This article.
- (2) IC 16-29.
- (3) IC 16-30.

(b) The granting of a waiver may not adversely affect the health, safety, and welfare of the patients or residents.

*As added by P.L.2-1993, SEC.11. Amended by P.L.156-2011, SEC.22.*

#### **IC 16-28-1-11**

##### **Qualified medication aides and certified nurse aides; certification by state department; registry**

Sec. 11. (a) Unless an individual is certified under this section:

- (1) the individual may not practice as a qualified medication aide or a certified nurse aide; and
- (2) a facility may not employ the individual as a qualified medication aide or a certified nurse aide.

(b) The state department shall do the following:

- (1) Establish a program for the certification of qualified medication aides and certified nurse aides who work in facilities licensed under this article.
- (2) Prescribe education and training programs for qualified medication aides and certified nurse aides, including course and inservice requirements. The training program must include a competency test that the individual must pass before being granted an initial certification.
- (3) Determine the standards concerning the functions that may be performed by a qualified medication aide and a certified nurse aide.
- (4) Establish annual certification fees for qualified medication aides.
- (5) Adopt rules under IC 4-22-2 necessary to implement and

enforce this section.

(c) The state department shall maintain a registry of each individual who is:

(1) certified as a:

(A) qualified medication aide; or

(B) certified nurse aide; or

(2) registered as a home health aide under rules adopted under IC 16-27-1-7.

(d) The department may conduct hearings for violations of this section under IC 4-21.5.

*As added by P.L.2-1993, SEC.11. Amended by P.L.24-2002, SEC.1; P.L.156-2011, SEC.23; P.L.226-2011, SEC.5.*

#### **IC 16-28-1-12**

##### **Repealed**

*(Repealed by P.L.141-2014, SEC.11.)*

#### **IC 16-28-1-13**

##### **Licensure inspections; reports**

Sec. 13. (a) Licensure inspections of health facilities shall be made regularly in accordance with rules adopted under this chapter. The division shall make all health and sanitation inspections. The division of fire and building safety shall make all fire safety inspections.

(b) The exact date of an inspection of a health facility under this chapter may not be announced or communicated directly or indirectly to the owner, administrator, or an employee of the facility before the inspection. An employee of the state department who knowingly or intentionally informs a health facility of the exact date of an inspection shall be suspended without pay for five (5) days for a first offense and shall be dismissed for a subsequent offense.

(c) Reports of all inspections must be:

(1) in writing; and

(2) sent to the health facility.

(d) The report of an inspection and records relating to the inspection may not be released to the public until the conditions set forth in IC 16-19-3-25 are satisfied.

*As added by P.L.2-1993, SEC.11. Amended by P.L.190-1995, SEC.5; P.L.1-2006, SEC.299; P.L.141-2014, SEC.12.*

#### **IC 16-28-1-14**

##### **Provision of licensure inspection report copies and summaries; maintenance and inspection of reports**

Sec. 14. (a) The division shall provide, on the request of any person and payment of a fee to cover the direct and indirect costs of complying with the request:

(1) a copy of a report of an inspection from the public file of a health facility;

(2) a brief descriptive summary of the annual survey report of a health facility; or

(3) both.

(b) Reports of all inspections under this chapter shall be maintained by each health facility for two (2) years and shall be made available for inspection by any member of the public upon request.  
*As added by P.L.2-1993, SEC.11.*

## **IC 16-28-2**

### **Chapter 2. Licensure of Health Facilities**

#### **IC 16-28-2-1**

##### **License required; licensing of state institutions and municipal corporations**

Sec. 1. A person must obtain a license from the director before the person may operate a health facility. A state institution or municipal corporation may specifically request licensure and upon compliance with this chapter may be licensed under this chapter.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-2-2**

##### **Applications**

Sec. 2. To obtain a license, an applicant must submit an application on the prescribed form showing that the applicant is of reputable and responsible character and able to comply with the standards for health facilities established by this chapter and rules adopted under this chapter.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-2-3**

##### **Requirements for licensure; tax warrant list**

Sec. 3. (a) Before the director may issue a license to a health facility, the director must find that the health facility, within the care category for which license is sought, is adequate in each of the following respects:

- (1) The physical structure in which the service is to be performed.
  - (2) The educational level, number, and personal health of the staff.
  - (3) The financial ability to provide the service to be performed.
  - (4) The equipment with which to perform the service.
  - (5) The operating history of other health facilities owned or managed by the same person who owns or manages the facility.
- The director may recommend denial of licensure to a new facility or facility applying for licensure under new ownership where the owner or manager has a record of operation of other health facilities in substantial breach of this chapter or any other law governing health facilities.

(b) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

- (1) the person provides to the department a statement from the department of state revenue indicating that the person's tax warrant has been satisfied; or
- (2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

*As added by P.L.2-1993, SEC.11. Amended by P.L.172-2011, SEC.118.*

#### **IC 16-28-2-4**

##### **Issuance of licenses; types; denial, revocation, and refusal to renew licenses**

Sec. 4. The director may under IC 4-21.5-3-5 do one (1) of the following:

- (1) Issue a full license for not more than one (1) year, on finding that the applicant complies with the provisions of this article and rules adopted under this article.
- (2) Issue a provisional license to a new facility or to a facility under new ownership for not more than twelve (12) consecutive months if the applicant can assure the director that the applicant will comply with this article and rules adopted under this article. A provisional license may not be continued beyond twelve (12) consecutive months.
- (3) Issue a probationary license to an existing facility as described in IC 16-28-3.
- (4) Deny, revoke, or refuse to renew the issuance of a license.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-2-5**

##### **Exclusive use of licenses**

Sec. 5. A license issued under this chapter is not assignable or transferable and may be issued only for the person and premises named in the application.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-2-6**

##### **Disclosure statements; affiliations; advertising**

Sec. 6. (a) This section does not apply to a health facility that:

- (1) does not require the investment of money or the payment of money or other consideration for admission; and
- (2) only charges daily or monthly rates for room, board, and care.

(b) A health facility may be licensed or relicensed under this chapter only if a disclosure statement is filed with the director at the time of application on forms provided by the director that contains the following information:

- (1) Whether the health facility is affiliated with a religious, charitable, or other nonprofit organization.
- (2) The nature and extent of the affiliation, if any, including the extent to which the affiliated organization is responsible for the financial and contractual obligations of the health facility.

(c) The health facility shall deliver a copy of the current disclosure statement on file with the director as provided by subsection (b) to each prospective resident.

(d) If a health facility is affiliated with a religious, charitable, or other nonprofit organization, the health facility must include in the health facility's advertisements and solicitations a summary statement disclosing the following:

- (1) The affiliation between the health facility and the religious,

charitable, or other nonprofit organization.

(2) The extent to which the affiliated organization is responsible for the financial and contractual obligations of the health facility.

(e) If a health facility is not affiliated with a religious, charitable, or other nonprofit organization but the name of the health facility or the person operating the health facility implies an affiliation, the health facility must include in all the health facility's advertisements and solicitations a summary statement disclosing the following:

(1) That the health facility is not affiliated with a religious, charitable, or other nonprofit organization.

(2) That no religious, charitable, or other nonprofit organization is responsible for the financial or contractual obligations of the health facility.

(f) Whenever there is a change in the affiliation of the health facility with a religious, charitable, or other nonprofit organization, including a change in the extent, if any, to which the affiliated organization is responsible for the financial and contractual obligations of the health facility, the health facility shall amend:

(1) the health facility's disclosure statement on file with the director as required by subsection (b); and

(2) the summary statement included in the health facility's advertisements and solicitations as required by subsections (d) and (e);

if an amendment is necessary to prevent the statement from containing any misstatement of fact or omission to state a material fact required to be stated.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-2-7**

##### **License fees**

Sec. 7. The fee for a license as a health facility under this chapter is two hundred dollars (\$200) for the first fifty (50) beds available and ten dollars (\$10) for each additional bed available.

*As added by P.L.2-1993, SEC.11. Amended by P.L.227-2003, SEC.1.*

#### **IC 16-28-2-8**

##### **Notice regarding requests for names of nursing personnel or direct care staff**

Sec. 8. (a) Each comprehensive care health facility shall post a notice that a resident, the legal representative of the resident, or another individual designated by the resident may request from the licensed nurse in charge of each shift information that designates the names of all nursing personnel on duty by job classification for the:

(1) wing;

(2) unit; or

(3) other area as routinely designated by the health facility;

where the resident resides.

(b) The notice required under subsection (a) must meet the following conditions:

- (1) Be posted in a conspicuous place that is readily accessible to residents and the public.
  - (2) Be at least 24 point font size on a poster that is at least eleven (11) inches wide and seventeen (17) inches long.
  - (3) Contain the:
    - (A) business telephone number of the administrator of the health facility; and
    - (B) toll free telephone number for filing complaints with the state department.
  - (4) State that if a resident, the legal representative of the resident, or another individual designated by the resident is unable to obtain the information described in subsection (a) from the licensed nurse in charge of each shift, the resident, the legal representative of the resident, or another individual designated by the resident may do any of the following:
    - (A) Contact the administrator of the health facility.
    - (B) File a complaint with the state department by using the state department's toll free telephone number.
- (c) The state department may adopt rules under IC 4-22-2 to carry out this section.

*As added by P.L.108-2000, SEC.5.*

#### **IC 16-28-2-9**

##### **Semiannual statistical reports**

Sec. 9. (a) The office of Medicaid policy and planning shall produce a statistical report semi-annually for each Medicaid certified comprehensive care health facility that lists the following information:

- (1) The health facility's case mix index for each quarter covered by the statistical report for which the office of Medicaid policy and planning maintains data.
  - (2) The number of total hours worked in the health facility by each classification of personnel for which the office of Medicaid policy and planning maintains data.
  - (3) The resident census of the health facility for which the office of Medicaid policy and planning maintains data.
  - (4) A calculation of the average case-mix-adjusted hours-per-resident-day ratio for each health facility by each classification of nursing personnel and the average hours-per-resident-day ratio for each health facility for all other personnel by category for which the office of Medicaid policy and planning maintains data.
- (b) The office of Medicaid policy and planning shall provide a compilation of the statistical reports prepared under subsection (a) to the following:
- (1) Each Medicaid certified comprehensive care health facility.
  - (2) The state department.
  - (3) The state ombudsman.
  - (4) Each area ombudsman.
  - (5) Each area agency on aging.



(c) Each Medicaid certified comprehensive care health facility shall:

- (1) make available in a place that is readily accessible to residents and the public a copy of the compilation of statistical reports prepared under subsection (a); and
- (2) post a notice that a copy of the compilation of statistical reports may be requested from the licensed nurse in charge of each shift.

(d) The notice required under subsection (c)(2) must meet the following conditions:

- (1) Be posted in a conspicuous place that is readily accessible to residents and the public.
- (2) Be at least 24 point font size on a poster that is at least eleven (11) inches wide and seventeen (17) inches long.
- (3) Contain the:
  - (A) business telephone number of the administrator of the health facility; and
  - (B) toll free telephone number for filing complaints with the state department.
- (4) State that if a resident, the legal representative of the resident, or another individual designated by the resident is unable to obtain the compilation of statistical reports in subsection (a) from the licensed nurse in charge of each shift, the resident, the legal representative of the resident, or another individual designated by the resident may do any of the following:
  - (A) Contact the administrator of the health facility.
  - (B) File a complaint with the state department by using the state department's toll free telephone number.

(e) The state department may adopt rules under IC 4-22-2 to carry out this section.

*As added by P.L.108-2000, SEC.6.*

### **IC 16-28-2-10**

#### **Third party billing notice**

Sec. 10. A health facility that provides to a patient notice concerning a third party billing for a service provided to the patient shall ensure that the notice:

- (1) conspicuously states that the notice is not a bill;
- (2) does not include a tear-off portion; and
- (3) is not accompanied by a return mailing envelope.

*As added by P.L.178-2003, SEC.7.*

## **IC 16-28-3**

### **Chapter 3. Probationary Licenses; Revocation of Licenses**

#### **IC 16-28-3-1**

##### **Initiation of proceedings; procedure**

Sec. 1. (a) The director may initiate a proceeding to issue a probationary license or to revoke a license issued under this article on any of the following grounds:

- (1) Breach of this article or rules adopted under this article.
- (2) Permitting, aiding, or abetting the commission of an act in the health facility or on the health facility's premises that is determined by a court to be illegal.
- (3) Conduct or practice found by the director to be detrimental to the welfare of the patients at the health facility.
- (4) Employing consecutively more than one (1) health facility administrator provisionally licensed under IC 25-19-1-3(b) during any twelve (12) month period.

(b) The procedure governing an action taken under subsection (a) is governed by:

- (1) IC 4-21.5-3-8; or
- (2) IC 4-21.5-4.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-3-2**

##### **Issuance of probationary licenses**

Sec. 2. The director may initiate a proceeding under section 1 of this chapter to issue a probationary license if the director determines that the revocation of an existing license would not be in the best interests of the patients of the health facility or in the best interests of the community served by that facility. The director shall state the requirements and orders that the health facility must comply with in order to receive a probationary license.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-3-3**

##### **Facilities restricted to probationary licenses**

Sec. 3. If a health facility is in breach of this article or rules adopted under this article by offenses or patterns of deficiencies 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.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-3-4**

##### **Duration of probationary licenses; reissuance; expiration of other licenses**

Sec. 4. A probationary license may be issued for three (3) months. The probationary license may be reissued but not more than three (3) probationary licenses may be issued during a twelve (12) month period. The issuance of a probationary license results in the automatic

expiration of any other license held under this article.  
*As added by P.L.2-1993, SEC.11.*

**IC 16-28-3-5**

**License fees**

Sec. 5. The license fee for a probationary license is the same as the annual license fee charged for that class and size of facility.  
*As added by P.L.2-1993, SEC.11.*

## **IC 16-28-4**

### **Chapter 4. Allegations of Breaches**

#### **IC 16-28-4-1**

##### **Filing of allegations; form**

Sec. 1. A person who believes that this article or rules adopted under this article have been breached may file an allegation of breach with the state department. The allegation must be in writing unless the breach complained of is an offense or a deficiency. An oral allegation of breach shall be reduced to writing by the state department.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-4-2**

##### **Investigations**

Sec. 2. The division shall promptly investigate the following:

- (1) A written allegation of breach received under this chapter.
- (2) An oral allegation of breach that the director, in the director's discretion, believes to have merit.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-4-3**

##### **Referral to licensing boards**

Sec. 3. The state department shall refer an allegation of breach received about licensed personnel at a health facility to the appropriate licensing board for review and possible disciplinary action.

*As added by P.L.2-1993, SEC.11. Amended by P.L.156-2011, SEC.25; P.L.197-2011, SEC.67.*

#### **IC 16-28-4-4**

##### **Reporting to state department**

Sec. 4. A governmental unit that:

- (1) receives an allegation of breach alleging breach of this article or rules adopted under this article; or
- (2) has knowledge of facts constituting breach of this article or rules adopted under this article;

shall report that allegation of breach or knowledge in writing to the state department while protecting the confidentiality of the alleging party and the patient.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-4-5**

##### **Confidentiality**

Sec. 5. (a) An allegation of breach filed with the state department under this article that is subsequently released to the health facility complained of or any member of the public shall not disclose the name or identifying characteristics of the alleging party or the patient who is the subject of the allegation of breach unless:

- (1) the alleging party or patient consents in writing to the

disclosure; or

(2) the investigation results in a judicial proceeding and disclosure is ordered by the court.

(b) If disclosure is essential to the investigation, the alleging party shall be given the opportunity to withdraw the allegation of breach before disclosure.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-4-6**

##### **Relicensure considerations**

Sec. 6. The report of a substantiated allegation of breach investigation, together with the response of the health facility and any enforcement action taken, shall be made a part of the health facility's record and shall be considered, together with the survey report, by the director at the time of relicensure of the facility.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-4-7**

##### **Reporting of investigation results and actions taken**

Sec. 7. Upon request of the alleging party the director shall report to the alleging party or the alleging party's designated relative, friend, or legal representative concerning the results of the investigation and the action taken.

*As added by P.L.2-1993, SEC.11.*

## **IC 16-28-5**

### **Chapter 5. Remedies for Breaches; Plans of Correction**

#### **IC 16-28-5-1**

##### **Classification of rules**

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 into one (1) of the following categories:

- (1) An offense, which presents a substantial probability that death or a life-threatening condition will result.
- (2) A deficiency, which presents an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient.
- (3) A noncompliance, which presents an indirect threat to the health, safety, security, rights, or welfare of a patient.
- (4) A nonconformance, which is any other classified breach not covered by subdivision (1), (2), or (3).

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.5.*

#### **IC 16-28-5-2**

##### **Citations**

Sec. 2. On a determination by the commissioner that a breach of this article or a rule adopted under this article has occurred, the director shall issue a citation under IC 4-21.5-3-6 to the administrator of the health facility in which the breach occurred. The citation must state the following:

- (1) The nature of the breach.
- (2) The classification of the breach.
- (3) The corrective actions required of the health facility to remedy the breach and to protect the patients of the facility.
- (4) Any penalty imposed on the facility.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-5-3**

##### **Review of citations**

Sec. 3. A person aggrieved by a citation issued under this chapter may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within the fifteen (15) day period, the determination contained in the citation is final.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-5-4**

##### **Remedies for breaches**

Sec. 4. (a) The commissioner shall impose the following remedies for breaches of this article or a rule adopted under this article:

- (1) For an offense, the remedies specified in subsection (b)(1) through (b)(2). The commissioner may also impose the remedy specified in subsection (b)(3).
- (2) For a deficiency, the remedies specified in subsection (b)(1). The commissioner may also impose the remedies specified in

subsection (b)(4).

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

(4) For a noncompliance, the remedies specified in subsection (b)(5) through (b)(6).

(5) For a breach that is a repeat of the same noncompliance 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).

(6) For a nonconformance, the remedies specified in subsection (b)(5).

(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).

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

(1) Issuance of an order for immediate correction of the breach.

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

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

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

(6) 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 thousand dollars (\$1,000), or both.

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

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

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

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

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

(B) the facility should reasonably have known would result in an immediate or a direct, serious adverse effect on the health, safety, security, rights, or welfare of a patient; the remedies specified in subsection (b)(1) or (b)(4), or both.  
*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.6.*

#### **IC 16-28-5-5**

##### **Determination of remedies**

Sec. 5. (a) In determining appropriate remedies or waivers under section 4 of this chapter, the commissioner shall consider the following:

- (1) Whether the breach occurred for reasons outside of the health facility's control.
- (2) Whether the health facility has demonstrated that the health facility has taken the appropriate steps to reasonably ensure that the breach will not recur.
- (3) The history of breaches by the health facility.
- (4) The effect of the breach on the patient.

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

- (1) Whether any financial savings or benefit accrued to the health facility as a result of the breach.
- (2) The cost incurred by the health facility in correcting the breach.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.7.*

#### **IC 16-28-5-6**

##### **Correction of breaches; time allowed**

Sec. 6. An order for immediate correction under section 4(b)(1) of this chapter shall state a specific date by which the correction shall be made. The date shall be set by the commissioner according to the circumstances of the breach but may not exceed five (5) days from the time the health facility receives written notification from the commissioner.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-5-7**

##### **Corrective period**

Sec. 7. (a) A plan of correction submitted to the commissioner for approval and acceptance shall contain a fixed time within which the correction must be made.

(b) When accepting or directing a corrective period, the commissioner shall consider the following:

- (1) A reasonable amount of time needed by a health facility to achieve compliance.
- (2) The effects of the continuing breach on patients.
- (3) Temporary measures that will be taken to protect patients during the time allowed for correction.



*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.8.*

#### **IC 16-28-5-8**

##### **Plans of correction; actions; notices of rejection; reports of correction**

Sec. 8. (a) A plan of correction may be:

- (1) accepted;
- (2) modified upon agreement between the commissioner and the health facility; or
- (3) rejected by the commissioner.

(b) If a plan of correction is rejected, the commissioner:

- (1) shall send notice of the rejection and the reasons for the rejection to the health facility; and
- (2) may impose a directed plan of correction on the health facility.

(c) If a breach was corrected before submission and approval of a plan of correction, the health facility may submit a report of correction in place of a plan of correction.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.9.*

#### **IC 16-28-5-9**

##### **Modification of plans of correction**

Sec. 9. (a) A directed plan of correction imposed on a health facility by the commissioner may also be modified upon agreement between the commissioner and the health facility.

(b) A petition for modification of an approved plan of correction must be filed with the commissioner before the expiration of the correction time period approved by the commissioner. The burden of proof is on the petitioner to show good cause for not complying within the approved correction time.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.10.*

#### **IC 16-28-5-10**

##### **Failure to correct breaches; additional penalties**

Sec. 10. If:

- (1) a breach is not corrected within the time fixed by the order of correction or is not corrected within the time fixed by the plan of correction; and
- (2) an extension has not been granted under section 9 of this chapter;

the commissioner may find a new breach that may be subject to the imposition of additional penalties as the class would warrant.

*As added by P.L.2-1993, SEC.11.*

**IC 16-28-6**

**Chapter 6. Emergency Relocations of Patients**

**IC 16-28-6-1**

**Relocation orders**

Sec. 1. In an emergency, the director may, with the approval of the commissioner, order the relocation of a patient from a health facility under IC 4-21.5-4.

*As added by P.L.2-1993, SEC.11.*

**IC 16-28-6-2**

**Relocation rules**

Sec. 2. The state department shall adopt rules governing the emergency relocation of patients that provide for the following:

(1) Notice to the patient, the patient's next of kin, guardian, and physician of the emergency transfer and the reasons for the relocation.

(2) Protections designed to ensure the welfare and desires of the patient.

*As added by P.L.2-1993, SEC.11. Amended by P.L.156-2011, SEC.26; P.L.197-2011, SEC.68.*

## **IC 16-28-7**

### **Chapter 7. Monitors**

#### **IC 16-28-7-1**

##### **Placement of monitors**

Sec. 1. The director may issue an order under IC 4-21.5 to place a monitor in a health facility if:

- (1) the health facility is operating without a license;
- (2) the existing license of a health facility has been revoked or not renewed;
- (3) the:
  - (A) director has initiated revocation procedures or has placed the health facility on a probationary license; and
  - (B) director has determined that the health, safety, security, rights, or welfare of the patients cannot be adequately assured during the pendency of such procedures or during the term of a probationary license; or
- (4) the health facility is closing or plans to close and adequate arrangements for relocation of the patients have not been made at least thirty (30) days before the date of closure.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-7-2**

##### **Appealability of orders**

Sec. 2. An order issued under section 1 of this chapter may be appealed under IC 4-21.5.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-7-3**

##### **Licensing and duties of monitors who are not state employees**

Sec. 3. A monitor who is not a state employee and who is placed in a health facility under this chapter:

- (1) must be licensed under IC 25-19-1;
- (2) shall serve as a consultant to the administrator concerning the operation of the health facility; and
- (3) shall submit a written report to the director on the operation of the health facility and the status and condition of the patients.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.11.*

#### **IC 16-28-7-4**

##### **Placement costs for monitors who are not state employees**

Sec. 4. (a) A health facility shall pay the costs of placing a monitor who is not a state employee in the health facility under this chapter unless it is determined by a final order under IC 4-21.5 that the placement of the monitor was not needed. The state shall reimburse the costs if it is determined the monitor is unneeded.

(b) If the state department has reason to believe that the health facility is not financially able to pay the cost of a monitor in the health facility and the health facility and office of Medicaid policy

and planning verify the health facility's insolvency, the state department may authorize money from fines paid under this article to be used to pay the costs of placing a monitor who is not a state employee in the health facility.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.12; P.L.218-1999, SEC.1.*

#### **IC 16-28-7-4.3**

##### **Placement costs, licensing, and duties of monitors who are state employees**

Sec. 4.3. The costs of placing a monitor in a health facility under this chapter shall be paid by the state if the monitor is a state employee. A state employee who is placed in a health facility as a monitor:

- (1) is not required to be licensed under IC 25-19-1;
- (2) does not serve as a consultant to the administrator of the health facility; and
- (3) must report to the director on the operation of the health facility and the status and condition of the patients.

*As added by P.L.179-1993, SEC.13.*

#### **IC 16-28-7-5**

##### **Confidentiality**

Sec. 5. Except as required by sections 3 and 4.3 of this chapter, the monitor shall observe the strict confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the health facility. An individual who violates this section:

- (1) commits a Class A misdemeanor; and
- (2) is prohibited from serving as a monitor under this chapter for five (5) years.

*As added by P.L.2-1993, SEC.11. Amended by P.L.179-1993, SEC.14.*

## **IC 16-28-8**

### **Chapter 8. Receivership**

#### **IC 16-28-8-0.5**

##### **Cost of receivership**

Sec. 0.5. As used in this chapter, "cost of receivership" may include the costs of placing a receiver in a health facility and all reasonable expenditures and attorney's fees incurred by the receiver to operate the health facility while the health facility is in receivership.

*As added by P.L.29-2002, SEC.2.*

#### **IC 16-28-8-1**

##### **Petitions for receivership**

Sec. 1. The director may, after consultation with the commissioner, request the attorney general to petition the circuit or superior court of the county in which a health facility is located to place the facility in receivership to protect the patients in the facility.

*As added by P.L.2-1993, SEC.11. Amended by P.L.156-2011, SEC.27; P.L.197-2011, SEC.69.*

#### **IC 16-28-8-2**

##### **Conditions for receivership**

Sec. 2. The court may order a health facility placed in receivership in the following circumstances:

- (1) The facility is operating without a license.
- (2) The license of the facility has expired or been revoked.
- (3) The facility is closing or plans to close and adequate arrangements have not been made for the orderly transfer of patients at least thirty (30) days before closing.
- (4) The facility is operating under extraordinary conditions that present a major threat to the health, safety, security, rights, or welfare of a facility's patients, including imminent abandonment of the facility by the owner.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-8-3**

##### **Repealed**

*(Repealed by P.L.179-1993, SEC.15.)*

#### **IC 16-28-8-4**

##### **Receivers; qualifications; powers and duties**

Sec. 4. A receiver:

- (1) must be licensed under IC 25-19-1 and may be a state employee;
- (2) must possess the education and experience necessary, as determined by the director, to oversee correction of the deficiencies of the facility;
- (3) must not have been found guilty of misconduct by any licensing board or professional society in the state;

(4) must not have (or a member of the receiver's immediate family must not have) a financial ownership interest in the facility;

(5) has the powers and duties granted by the court to protect the interests of the patients in the health facility, which may include providing for the orderly relocation of patients from the health facility and the refusal to admit new patients pending closure; and

(6) must report to the director on the operation of the facility and the status and condition of the patients.

*As added by P.L.2-1993, SEC.11. Amended by P.L.210-1999, SEC.1.*

#### **IC 16-28-8-5**

##### **Operation of facilities**

Sec. 5. Unless a health facility is ordered to be closed within one hundred twenty (120) days, the receiver shall operate the health facility subject to the same standard and rate criteria that apply to all health facilities licensed under IC 16-28-2.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-8-6**

##### **Bond**

Sec. 6. (a) Before beginning duties as a receiver, the receiver must execute a bond, with one (1) or more sureties approved by the court, to the effect that the receiver will:

(1) faithfully discharge the duties of the receiver while operating the health facility; and

(2) obey the orders of the court.

(b) The health facility shall pay the cost of the bond required of the receiver.

(c) Upon:

(1) the court's approval of the receiver's final report that the conditions that presented a major threat to the patients in the health facility have been corrected or that the health facility has closed; and

(2) the receiver's compliance with the court's order made on the final report;

the receiver and the surety on the receiver's bond are fully discharged for all matters related to the final report.

*As added by P.L.210-1999, SEC.2.*

#### **IC 16-28-8-7**

##### **Costs of receivership; receiver who is a state employee; state paid cost of receivership preferred**

Sec. 7. (a) The costs of the receivership shall be determined by the court and shall be paid by the owner or operator of the health facility.

(b) If the receiver is a state employee, the state shall pay the receiver's salary.

(c) Any cost of receivership paid by the state for the receivership of a health facility is a preferred claim against the receivership estate.

The state may file a claim against the health facility or the health facility's assets and resources for recovery of any administrative expense incurred by the state under this chapter.

- (d) Any asset or resource of the health facility may be used to:
  - (1) fund the cost of receivership; and
  - (2) reimburse any expenditure made by the state under this chapter.

*As added by P.L.210-1999, SEC.3. Amended by P.L.29-2002, SEC.3.*

## **IC 16-28-9**

### **Chapter 9. Penalties**

#### **IC 16-28-9-1**

##### **Investigations and reports**

Sec. 1. The division shall investigate a report of an unlicensed health facility operation and report the division's findings to the attorney general.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-9-2**

##### **Penalty options**

Sec. 2. The attorney general may do any of the following:

(1) Seek an injunction in the circuit or superior court of the county in which the unlicensed health facility is located or in the circuit or superior court of Marion County.

(2) Seek relief under IC 4-21.5, including a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day of unlicensed operation.

(3) Seek criminal penalties as provided by section 5 of this chapter.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-9-3**

##### **Interference with investigations; retaliation; failure to correct; interference with correction process**

Sec. 3. (a) A person who intentionally:

(1) prevents, interferes with, or attempts to impede the work of an employee of the state department in the investigation and enforcement of any provision of this article;

(2) prevents or attempts to prevent an employee of the state department from examining any relevant records in the conduct of official duties under this article;

(3) prevents or interferes with an employee of the state department in preserving evidence of the breach of any provision of this article;

(4) retaliates or discriminates against a resident or an employee for:

(A) contacting or providing information to any state official;  
or

(B) initiating, participating in, or testifying in an action under this article; or

(5) fails to correct or interferes with the correction process within the correction period specified on the citation or approved plan of correction, unless an extension is granted by the director and the corrections are made before expiration of the extension;

commits a Class C misdemeanor.

(b) In addition to the criminal provisions for violations described in subsection (a), the commissioner may commence an action under



IC 4-21.5-3-6 or IC 4-21.5-4 for issuance of an order of compliance and a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-9-4**

##### **Destruction or falsification of records**

Sec. 4. A person who intentionally destroys or falsifies records of the breach of any provision of this article commits a Level 6 felony.

*As added by P.L.2-1993, SEC.11. Amended by P.L.158-2013, SEC.233.*

#### **IC 16-28-9-5**

##### **Unlicensed operation of facilities; advertisement of unlicensed facilities**

Sec. 5. A person who:

(1) operates a health facility that is not licensed under this article; or

(2) advertises by any means the operation of a health facility that is not licensed under this article;

commits a Class A misdemeanor.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-9-6**

##### **Imposition of fine**

Sec. 6. The state department may impose a fine not to exceed five thousand dollars (\$5,000) for a violation of a provision of this chapter.

*As added by P.L.108-1999, SEC.2.*

## **IC 16-28-10**

### **Chapter 10. Hearings and Appeals**

#### **IC 16-28-10-1**

##### **Hearings; qualifications of administrative law judges; costs**

Sec. 1. (a) Hearings under this article shall be conducted in accordance with IC 4-21.5. Except for hearings held on the adoption of rules, an administrative law judge must meet the following conditions:

- (1) Be admitted to the practice of law in Indiana.
- (2) Not be an employee of the state.

(b) A health facility shall pay the costs of appointing an administrative law judge if the administrative law judge finds in favor of the state. However, if the administrative law judge finds in favor of the health facility, the state shall pay the costs of appointing the administrative law judge.

*As added by P.L.2-1993, SEC.11. Amended by P.L.141-2014, SEC.13.*

#### **IC 16-28-10-2**

##### **Appeals panel; members; proceedings; costs**

Sec. 2. (a) The executive board shall appoint an appeals panel consisting of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state may not be a member of the panel.

(c) An appeals panel shall conduct proceedings for review of an order issued by an administrative law judge under this chapter. The panel is the ultimate authority under IC 4-21.5.

(d) The cost of the proceedings, including the fees of the appeals panel, shall be paid as follows:

- (1) By the health facility if the panel finds in favor of the state.
- (2) By the state if the panel finds in favor of the health facility.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-10-3**

##### **Judicial review**

Sec. 3. Judicial review of an administrative order issued under this chapter may be sought by either the facility or the state under IC 4-21.5.

*As added by P.L.2-1993, SEC.11.*

## **IC 16-28-11**

### **Chapter 11. Miscellaneous Provisions**

#### **IC 16-28-11-1**

##### **Payment of fines and fees; deposit**

Sec. 1. Except as provided in IC 16-28-1-11 and IC 16-28-7-4, fines or fees required to be paid under this article shall be paid directly to the director who shall deposit the fines or fees in the state general fund.

*As added by P.L.2-1993, SEC.11. Amended by P.L.218-1999, SEC.2.*

#### **IC 16-28-11-2**

##### **Compulsory medical treatment and examination**

Sec. 2. This article does not authorize or require any form of compulsory medical treatment or physical or mental examination of a person who:

- (1) is a resident, a guest, a patient, an employee, a registrant, or an enrollee of an exempt institution specified in IC 16-18-2-167(c); and
- (2) is being treated by prayer or spiritual means alone for healing;

or to deny to the person the right to rely solely upon prayer or spiritual means by receiving only the treatment given by an accredited practitioner of the religious denomination known as the Church of Christ, Scientist, if the laws pertaining to the safe condition of the premises, cleanliness of the operation of the premises, and the physical equipment on the premises are complied with.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-11-3**

##### **Practice of medicine**

Sec. 3. This article does not authorize any person to engage, in any manner, in the practice of medicine (as defined in IC 25-22.5).

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-11-4**

##### **Health facility, county jail, or department of correction facility required to return certain unused medication**

Sec. 4. (a) A health facility, county jail under IC 11-12-5-8, or department of correction facility under IC 11-10-3-4 that possesses unused medication that meets the requirements of IC 25-26-13-25(k)(1) through IC 25-26-13-25(k)(6):

- (1) shall return medication that belonged to a Medicaid recipient; and
- (2) may return other unused medication;  
to the pharmacy that dispensed the medication.

(b) An entity participating in a program under IC 25-26-23 may return unused medication to the pharmacy that dispensed the medication if the board of pharmacy adopts a rule allowing this

procedure under IC 25-26-23-2.

*As added by P.L.75-2004, SEC.1. Amended by P.L.204-2005, SEC.3; P.L.119-2011, SEC.2; P.L.174-2011, SEC.3; P.L.159-2012, SEC.3.*

#### **IC 16-28-11-5**

##### **Fire sprinkler systems in health facilities**

Sec. 5. (a) This section does not apply to the Indiana Veterans' Home.

(b) A health facility licensed under IC 16-28 as a comprehensive care facility must do the following:

(1) Have an automatic fire sprinkler system installed throughout the facility before July 1, 2012.

(2) If an automatic fire sprinkler system is not installed throughout the health facility before July 1, 2010, submit before July 1, 2010, a plan to the state department for completing the installation of the automatic fire sprinkler system before July 1, 2012.

(3) Have a battery operated or hard wired smoke detector in each resident's room before July 1, 2012.

(c) The state department shall adopt rules under IC 4-22-2 to implement this section.

*As added by P.L.73-2007, SEC.1.*

#### **IC 16-28-11-5.5**

##### **Employee of health facility not required to perform CPR if specified criteria are met**

Sec. 5.5. (a) This section does not apply to the implementation of a do not resuscitate order.

(b) This article does not require an employee of a health facility to provide cardiopulmonary resuscitation (CPR) or other intervention on a patient if a registered nurse licensed under IC 25-23 or a physician licensed under IC 25-22.5 who is employed by the health facility has determined that the following criteria have been met:

(1) The patient has experienced an unwitnessed cessation of circulatory and respiratory functions.

(2) The patient is unresponsive.

(3) The patient's pupils are fixed and dilated.

(4) The patient's body temperature indicates hypothermia.

(5) The patient has generalized cyanosis.

(6) The patient has livor mortis.

*As added by P.L.134-2008, SEC.13.*

#### **IC 16-28-11-6**

##### **Disclosure of fire sprinkler systems in consumer guide to nursing homes**

Sec. 6. The state department shall disclose, in the state department's consumer guide to nursing homes, whether a health facility is:

(1) fully;

(2) partially; or

(3) not;  
equipped with fire sprinklers.  
*As added by P.L.73-2007, SEC.2.*

**IC 16-28-11-7**

**Disclosure of smoke detector information in consumer guide to nursing homes**

Sec. 7. The state department shall disclose the following information in the state department's consumer guide to nursing homes:

(1) Until July 1, 2012, whether each health facility has:

(A) a battery operated;

(B) a hard wired; or

(C) no;

smoke detector in each resident's room.

(2) After June 30, 2012, whether a health facility has:

(A) a battery operated; or

(B) a hard wired;

smoke detector in each resident's room.

(3) If a health facility has a hard wired or wireless smoke detector in each resident's room, whether the smoke detector:

(A) provides a visual and audible signal at the nurses' stations that attend each room;

(B) transmits to a central station service; and

(C) connects to the health facility's fire alarm system.

*As added by P.L.73-2007, SEC.3.*

## **IC 16-28-12**

### **Chapter 12. Federally Required Enforcement Process**

#### **IC 16-28-12-1**

##### **Adoption of rules**

Sec. 1. The state department shall, as the state agency utilized under 42 U.S.C. 1395aa(a) and authorized to perform the duties of the state survey agency under 42 U.S.C. 1396, adopt rules under IC 4-22-2 to satisfy the requirements of 42 U.S.C. 1396r(h).

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-12-2**

##### **1396r(h) fund; investment; use of principal and interest**

Sec. 2. (a) The 1396r(h) fund is established to receive money collected under this chapter. The state department shall administer the fund.

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

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

(d) The state department shall use the principal and interest in the fund in accordance with 42 U.S.C. 1396r(h)(2)(A)(ii).

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-12-3**

##### **Department actions; procedure**

Sec. 3. The procedure governing an action taken by the state department under this chapter must be in accordance with:

(1) IC 4-21.5-3-6; or

(2) IC 4-21.5-4.

*As added by P.L.2-1993, SEC.11.*

#### **IC 16-28-12-4**

##### **Review; procedure; filing period**

Sec. 4. (a) A person adversely affected by action of the state department under this chapter may request review under IC 4-21.5-3-7.

(b) The procedure governing appeals under this chapter must be in accordance with IC 16-28-10.

(c) If a request for a hearing is not filed within the fifteen (15) day period specified in IC 4-21.5-3-7, the determination of the executive board is final.

*As added by P.L.2-1993, SEC.11.*

## **IC 16-28-13**

### **Chapter 13. Criminal History of Nurse Aides and Other Unlicensed Employees**

#### **IC 16-28-13-0.5**

##### **"Health care facility" defined**

Sec. 0.5. As used in this chapter, "health care facility" includes the following:

- (1) An ambulatory outpatient surgical center licensed under IC 16-21-2.
- (2) A health facility licensed under IC 16-28-2 or IC 16-28-3.
- (3) A home health agency licensed under IC 16-27-1.
- (4) A hospice program licensed under IC 16-25-3.
- (5) A hospital licensed under IC 16-21-2.

*As added by P.L.108-1999, SEC.3. Amended by P.L.14-2000, SEC.44.*

#### **IC 16-28-13-1**

##### **"Nurse aide" defined**

Sec. 1. (a) As used in this chapter, "nurse aide" means an individual who provides nursing or nursing related services to residents in the following:

- (1) A health facility.
- (2) A hospital based health facility.
- (3) An ambulatory outpatient surgical center licensed under IC 16-21-2. Under this subdivision, the term applies to an individual who was employed by the center after July 1, 1999.
- (4) A home health agency licensed under IC 16-27-1. Under this subdivision, the term applies to an individual who was employed by the agency after July 1, 1999.
- (5) A hospice program licensed under IC 16-25-3. Under this subdivision, the term applies to an individual who was employed by the program after July 1, 1999.
- (6) A hospital licensed under IC 16-21-2. Under this subdivision, the term applies to an individual who was employed by the hospital after July 1, 1999.

(b) The term does not include the following:

- (1) A licensed health professional (as defined in IC 25-1-9-3).
- (2) A registered dietician.
- (3) An individual who volunteers to provide nursing or nursing related services without pay.

*As added by P.L.152-1995, SEC.18. Amended by P.L.108-1999, SEC.4; P.L.14-2000, SEC.45.*

#### **IC 16-28-13-2**

##### **"Other unlicensed employee" defined**

Sec. 2. (a) As used in this chapter, "other unlicensed employee" means:

- (1) an employee of a health facility;
- (2) a hospital based health facility; or

(3) a personal services attendant (as defined in IC 12-10-17.1-8);  
who is not licensed (as defined in IC 25-1-9-3) by a board (as defined in IC 25-1-9-1).

(b) The term does not include an employee of an ambulatory outpatient surgical center, a home health agency, a hospice program, or a hospital that is not licensed (as defined in IC 25-1-9-3) by a board (as defined in IC 25-1-9-1).

*As added by P.L.152-1995, SEC.18. Amended by P.L.108-1999, SEC.5; P.L.255-2001, SEC.16; P.L.141-2006, SEC.85.*

### **IC 16-28-13-3**

#### **Crimes barring employment at certain health care facilities**

Sec. 3. (a) A health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility may not knowingly employ a person as a nurse aide or other unlicensed employee if one (1) or more of the following conditions exist:

(1) The person has been convicted of any of the following:

(A) A sex crime (IC 35-42-4).

(B) Exploitation of an endangered adult (IC 35-46-1-12).

(C) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).

(D) Theft (IC 35-43-4), if the person's conviction for theft occurred less than five (5) years before the individual's employment application date, except as provided in IC 16-27-2-5(a)(5).

(E) Murder (IC 35-42-1-1).

(F) Voluntary manslaughter (IC 35-42-1-3).

(G) Involuntary manslaughter (IC 35-42-1-4) within the previous five (5) years.

(H) Felony battery within the previous five (5) years.

(I) A felony offense relating to controlled substances within the previous five (5) years.

(2) The person:

(A) has abused, neglected, or mistreated a patient or misappropriated a patient's property; and

(B) had a finding entered into the state nurse aide registry.

(b) A person who knowingly or intentionally applies for a job as a nurse aide or other unlicensed employee at:

(1) a health care facility; or

(2) an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility; after a conviction of one (1) or more of the offenses listed in subsection (a)(1) commits a Class A infraction.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.1; P.L.108-1999, SEC.6.*

### **IC 16-28-13-4**

#### **Operator of health care facility; request for nurse aide registry**



### **report and limited criminal history**

Sec. 4. (a) Except as provided in subsection (b), a person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

shall apply within three (3) business days from the date a person is employed as a nurse aide or other unlicensed employee for a copy of the person's state nurse aide registry report from the state department and a limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3 or another source allowed by law.

(b) A health care facility is not required to apply for the state nurse aide registry report and limited criminal history required by subsection (a) if the health care facility contracts to use the services of a nurse aide or other unlicensed employee who is employed by an entity in the business of contracting to provide nurse aides or other unlicensed employees to health care facilities.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.2; P.L.108-1999, SEC.7; P.L.2-2003, SEC.51.*

### **IC 16-28-13-5**

#### **Operator of health care facility; prohibition from employing person with certain convictions**

Sec. 5. A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

may not employ a person as a nurse aide or other unlicensed employee after receipt of the person's state nurse aide registry report if that person's report indicates that the person committed an offense under section (3)(a)(2) of this chapter and has been placed on the state nurse aide registry, or after receipt of the limited criminal history if that person's limited criminal history indicates that the person has been convicted of any of the offenses described in section 3(a)(1) of this chapter.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.3; P.L.108-1999, SEC.8.*

### **IC 16-28-13-6**

#### **Operator of health care facility; fees for request of registry report and criminal history**

Sec. 6. (a) A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

is responsible for the payment of fees under IC 10-13-3-30 and other fees required to process a state nurse aide registry report and a limited

criminal history under section 4 of this chapter.

(b) A health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility may require a person who applies to the health care facility or entity for employment as a nurse aide or other unlicensed employee:

- (1) to pay the cost of fees described in subsection (a) to the health care facility or entity at the time the person submits an application for employment; or
- (2) to reimburse the health care facility or entity for the cost of fees described in subsection (a).

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.4; P.L.108-1999, SEC.9; P.L.2-2003, SEC.52.*

### **IC 16-28-13-7**

#### **Applicability of chapter**

Sec. 7. The application of this chapter to a health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility is limited to an individual:

- (1) who is employed by:
  - (A) a health care facility; or
  - (B) an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;and
- (2) whose employment or responsibilities are limited to activities primarily performed within a health care facility.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.5; P.L.108-1999, SEC.10; P.L.1-2002, SEC.73; P.L.1-2007, SEC.134.*

### **IC 16-28-13-8**

#### **Rights of individuals denied or dismissed from employment**

Sec. 8. An individual who is denied employment or dismissed from employment under this chapter:

- (1) does not have a cause of action;
- (2) is not eligible for unemployment compensation;
- (3) does not acquire the rights of an unemployed individual; and
- (4) does not have other rights under IC 22;

as a result of the denial or dismissal.

*As added by P.L.152-1995, SEC.18.*

### **IC 16-28-13-9**

#### **Immunity from civil and criminal liability**

Sec. 9. A person, other than a person denied employment or dismissed under this chapter or against whom a finding is made for the nurse aide registry under 42 CFR 483.156, who in good faith:

- (1) denies employment to an individual or dismisses an individual from employment under this chapter;
- (2) testifies or participates in an investigation or an

administrative or a judicial proceeding arising from:

- (A) this chapter; or
- (B) 42 CFR 483 regarding the nurse aide registry; or
- (3) makes a report to the state department or the nurse aide registry;

is immune from both civil and criminal liability arising from those actions.

*As added by P.L.152-1995, SEC.18.*

#### **IC 16-28-13-10**

##### **Operator of health care facility; intentional violation of chapter**

Sec. 10. A person:

(1) who:

- (A) operates or administers a health care facility; or
- (B) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility; and

(2) who knowingly or intentionally violates section 4 or 5 of this chapter;

commits a Class A infraction.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.6; P.L.108-1999, SEC.11.*

#### **IC 16-28-13-11**

##### **Personnel record; providing limited criminal history**

Sec. 11. (a) Each:

- (1) health care facility; and
- (2) entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

shall maintain a personnel record for each nurse aide and other unlicensed employee employed by the health care facility or entity that includes the nurse aide's or other unlicensed employee's state nurse aide registry report and limited criminal history required by section 4 of this chapter.

(b) The personnel records of each health care facility shall be available for inspection by the state department to assure compliance with this chapter.

(c) An entity in the business of contracting to provide nurse aides or other unlicensed employees to health care facilities shall provide a copy of the state nurse aide registry report and limited criminal history obtained under section 4 of this chapter to each health care facility to which the entity provides a nurse aide or other unlicensed employee. If the entity fails to provide a copy of the state nurse aide registry report and limited criminal history to a health care facility, the health care facility is not in violation of this chapter.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.7; P.L.108-1999, SEC.12.*

#### **IC 16-28-13-12**

##### **Health care facility to report convictions of employees**

Sec. 12. If a health care facility has knowledge of a conviction of an employee of the health care facility that would indicate unfitness for service as a nurse aide, other unlicensed employee, or other health care professional (as defined by IC 16-27-2-1), the health care facility shall report the information to the state nurse aide registry or the appropriate licensing authority.

*As added by P.L.108-1999, SEC.13.*

### **IC 16-28-13-13**

#### **Rules**

Sec. 13. The state department may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.108-1999, SEC.14.*

**IC 16-28-14**  
**Chapter 14. Patient Immunizations**

**IC 16-28-14-1**

**Repealed**

*(Repealed by P.L.29-2009, SEC.3.)*

**IC 16-28-14-2**

**Obtaining informed consent**

Sec. 2. (a) A health facility shall attempt to obtain informed consent from:

- (1) a patient; or
- (2) a patient's legal guardian;

for a patient to participate in immunization programs conducted within the health facility while the patient is residing at the health facility.

(b) A health facility shall attempt to obtain the consent required under subsection (a):

- (1) upon the patient's admission, if the patient's admission occurs after June 30, 1999; or
- (2) before an immunization is administered, if the patient's admission occurred before July 1, 1999.

*As added by P.L.97-1999, SEC.2.*

**IC 16-28-14-3**

**Required immunizations; methods**

Sec. 3. (a) Subject to obtaining a patient's informed consent under section 2(b) of this chapter and subject to obtaining an order from the individual's physician to administer the immunizations, a health facility shall immunize all patients of the health facility against the following:

- (1) Influenza virus.
- (2) Pneumococcal disease.

(b) A health facility shall conduct the immunizations required under subsection (a) in accordance with the recommendations established by the Advisory Committee on Immunization Practices of the United States Centers for Disease Control and Prevention that are in effect at the time the health facility conducts the immunizations.

*As added by P.L.97-1999, SEC.2. Amended by P.L.3-2008, SEC.109.*

**IC 16-28-14-4**

**Date by which immunizations required**

Sec. 4. Except as required by section 5 of this chapter, a health facility shall administer or cause to be administered the immunizations required under this chapter before December 1 of each year if the vaccine is available.

*As added by P.L.97-1999, SEC.2.*

**IC 16-28-14-5**

**Determination of patient status**

Sec. 5. (a) This section applies to an individual who becomes a patient of a health facility on or after December 1 and before April 1.

(b) A health facility shall attempt to determine the status of an individual's immunization against the influenza virus and pneumococcal disease upon the individual's admission to the health facility.

(c) Subject to obtaining a patient's informed consent under section 2(b) of this chapter if the health facility determines that an individual's immunization status is deficient and subject to obtaining an order from the individual's physician to administer the immunizations, the health facility shall, as soon as possible after the individual's admission, administer or cause to be administered the immunizations required under this chapter if the vaccine is available.  
*As added by P.L.97-1999, SEC.2.*

**IC 16-28-14-6****Exceptions to required immunization**

Sec. 6. Notwithstanding any other provision of this chapter, a health facility shall not require an individual to receive an immunization under this chapter if:

- (1) the health facility:
  - (A) has written documentation from the individual's physician or other health care provider indicating the date and place that the individual received an immunization required under this chapter; and
  - (B) determines that no additional immunization is required;
- (2) the immunization is medically contraindicated as described in the product labeling approved by the United States Food and Drug Administration;
- (3) receiving the immunization is against the individual's religious beliefs; or
- (4) the individual refuses to permit the immunization as provided by state or federal law.

*As added by P.L.97-1999, SEC.2.*

## **IC 16-28-14.5**

### **Chapter 14.5. Health Facility Employee Immunizations**

#### **IC 16-28-14.5-1**

##### **Application of chapter**

Sec. 1. This chapter applies only to the following:

- (1) Health facilities that are licensed under IC 16-28 as comprehensive care facilities.
- (2) Employees of health facilities described in subdivision (1) who have direct contact with a patient or resident of the health facility.

*As added by P.L.29-2009, SEC.2.*

#### **IC 16-28-14.5-2**

##### **Consent; influenza immunizations**

Sec. 2. (a) Subject to obtaining an employee's consent, a health facility shall annually administer or make available to be administered immunizations against the influenza virus to the employee of the health facility.

(b) A health facility shall conduct the immunizations required under subsection (a) in accordance with the recommendations established by the Advisory Committee on Immunization Practices of the United States Centers for Disease Control and Prevention that are in effect at the time the health facility conducts the immunizations.

*As added by P.L.29-2009, SEC.2.*

#### **IC 16-28-14.5-3**

##### **Date immunizations are required**

Sec. 3. A health facility shall annually administer or make available to be administered the immunizations required under this chapter to each employee of the health facility who is employed by the health facility during the period beginning October 1 and ending February 1 of the following year.

*As added by P.L.29-2009, SEC.2.*

#### **IC 16-28-14.5-4**

##### **Availability of vaccine**

Sec. 4. A health facility is not required to provide or make available to the health facility's employees annual immunizations against the influenza virus if the department determines that the necessary vaccine is not in adequate supply.

*As added by P.L.29-2009, SEC.2.*

#### **IC 16-28-14.5-5**

##### **Exceptions to required immunizations**

Sec. 5. Notwithstanding any other provision of this chapter, a health facility shall not require an employee to receive an immunization under this chapter if:

- (1) the health facility:

- (A) has written documentation from the employee's physician or other health care provider indicating the date and place that the individual received an immunization required under this chapter; and
- (B) determines that no additional immunization is required;
- (2) the immunization is medically contraindicated for the employee;
- (3) receiving the immunization is against the employee's religious beliefs; or
- (4) the employee refuses to permit the immunization after being fully informed of the health risks.

*As added by P.L.29-2009, SEC.2.*

#### **IC 16-28-14.5-6**

##### **Rules**

Sec. 6. The state department may adopt rules under IC 4-22-2 to administer this chapter.

*As added by P.L.29-2009, SEC.2.*



## **IC 16-28-15**

### **Chapter 15. Health Facility Quality Assessment Fee**

#### **IC 16-28-15-1**

##### **Initial date fee imposed**

Sec. 1. The imposition of a quality assessment fee under this chapter occurs after June 30, 2011.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-2**

##### **"Continuing care retirement community"**

Sec. 2. As used in this chapter, "continuing care retirement community" means a health care facility that:

- (1) provides independent living services and health facility services in a campus setting with common areas;
- (2) either:
  - (A) holds continuing care agreements with at least twenty-five percent (25%) of its residents (as defined in IC 23-2-4-1); or
  - (B) has continuously maintained, for a continuing care retirement community that was registered under IC 23-2-4 before January 2, 2007, at least one (1) continuing care agreement since on or before January 1, 2007, with an individual residing in the continuing care retirement community;
- (3) uses the money from the agreement or agreements described in subdivision (2) to provide services to the resident before the resident may be eligible for Medicaid under IC 12-15; and
- (4) meets the requirements of IC 23-2-4.

*As added by P.L.229-2011, SEC.162. Amended by P.L.278-2013, SEC.15.*

#### **IC 16-28-15-3**

##### **"Health facility"**

Sec. 3. As used in this chapter, "health facility" refers to a health facility that is licensed under this article as a comprehensive care facility.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-4**

##### **"Nursing facility"**

Sec. 4. As used in this chapter, "nursing facility" means a health facility that is certified for participation in the federal Medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-5**

##### **"Office"**

Sec. 5. As used in this chapter, "office" refers to the office of

Medicaid policy and planning established by IC 12-8-6.5-1.  
*As added by P.L.229-2011, SEC.162. Amended by P.L.160-2012, SEC.46.*

#### **IC 16-28-15-6**

##### **Collection of fee**

Sec. 6. (a) Effective July 1, 2011, the office shall collect a quality assessment fee from each health facility.

(b) The quality assessment fee must apply to all non-Medicare patient days of the health facility. The office shall determine the quality assessment rate per non-Medicare patient day in a manner that collects the maximum amount permitted by federal law as of July 1, 2011, and October 1, 2011, based on the latest nursing facility financial reports and nursing facility quality assessment data collection forms as of July 28, 2010.

(c) The office shall offset the collection of the assessment fee for a health facility:

- (1) against a Medicaid payment to the health facility;
- (2) against a Medicaid payment to another health facility that is related to the health facility through common ownership or control; or
- (3) in another manner determined by the office.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-7**

##### **Implementation of waiver**

Sec. 7. The office shall implement the waiver approved by the United States Centers for Medicare and Medicaid Services under 42 CFR 433.68(e)(2) that provides for the following:

- (1) Nonuniform quality assessment fee rates.
- (2) An exemption from collection of a quality assessment fee from the following:
  - (A) A continuing care retirement community as follows:
    - (i) A continuing care retirement community that was registered with the securities commissioner as a continuing care retirement community on or before January 1, 2007, and has continuously maintained at least one (1) continuing care agreement since on or before January 1, 2007, with an individual residing in the continuing care retirement community.
    - (ii) A continuing care retirement community that, for the period January 1, 2007, through June 30, 2009, operated independent living units, at least twenty-five percent (25%) of which are provided under contracts that require the payment of a minimum entrance fee of at least twenty-five thousand dollars (\$25,000).
    - (iii) An organization registered under IC 23-2-4 before July 1, 2009, that provides housing in an independent living unit for a religious order.
    - (iv) A continuing care retirement community that meets

the definition set forth in section 2 of this chapter.

(B) A hospital based health facility.

(C) The Indiana Veterans' Home.

Any revision to the state plan amendment or waiver request under this section is subject to and must comply with this chapter.

*As added by P.L.229-2011, SEC.162. Amended by P.L.278-2013, SEC.16.*

#### **IC 16-28-15-8**

##### **Distribution of revenue from fee**

Sec. 8. (a) The money collected from the quality assessment fee during state fiscal year 2012 may be used only as follows:

(1) Sixty-seven and one-tenth percent (67.1%) to pay the state's share of costs for Medicaid nursing facility services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(2) Twenty-three and eight-tenths percent (23.8%) to pay the state's share of costs for other Medicaid services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(3) Nine and one-tenth percent (9.1%) to pay prior year state nursing facility expenditures.

(b) The money collected from the quality assessment fee during state fiscal year 2013 may be used only as follows:

(1) Sixty-six and five-tenths percent (66.5%) to pay the state's share of costs for Medicaid nursing facility services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(2) Twenty-nine and four-tenths percent (29.4%) to pay the state's share of costs for other Medicaid services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(3) Four and one-tenth percent (4.1%) to pay prior year state nursing facility expenditures.

(c) The money collected from the quality assessment fee after state fiscal year 2013 may be used only as follows:

(1) Seventy and six-tenths percent (70.6%) to pay the state's share of the costs for Medicaid nursing facility services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(2) Twenty-nine and four-tenths percent (29.4%) to pay the state's share of costs for other Medicaid services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.).

(3) The office may decrease the percentage specified in subdivision (1) to pay state fiscal year 2011 and prior year state nursing facility expenditures only if the amounts collected in subsections (a)(3) and (b)(3) are insufficient to pay the expenditures. Once the expenditures described in this subdivision have been collected, the percentage specified in

subdivision (1) shall be restored.

(d) Any increase in reimbursement for Medicaid nursing facility services resulting from maximizing the quality assessment rate under section 6(b) of this chapter shall be directed exclusively to initiatives determined by the office to promote and enhance improvements in quality of care to nursing facility residents.

(e) The office may establish a method to allow a health facility to enter into an agreement to pay the quality assessment fee collected under this chapter under an installment plan.

*As added by P.L.229-2011, SEC.162. Amended by P.L.205-2013, SEC.215.*

#### **IC 16-28-15-9**

##### **Termination of fee; conditions**

Sec. 9. If federal financial participation becomes unavailable to match money collected from the quality assessment fees for the purpose of enhancing reimbursement to nursing facilities for Medicaid services provided under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), the office shall cease collection of the quality assessment fee under this chapter.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-10**

##### **Rules**

Sec. 10. The office shall adopt rules under IC 4-22-2 necessary to implement this chapter.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-11**

##### **Failure to pay fee; interest; report**

Sec. 11. (a) If a health facility fails to pay the quality assessment fee under this chapter not later than ten (10) days after the date the payment is due, the health facility shall pay interest on the quality assessment fee at the same rate as determined under IC 12-15-21-3(6)(A).

(b) The office shall report to the state department each nursing facility and each health facility that either:

(1) fails to submit patient day information requested by the office to calculate the quality assessment fee; or

(2) fails to pay the quality assessment fee under this chapter; not later than one hundred twenty (120) days after the patient day information is requested or payment of the quality assessment fee is due.

*As added by P.L.229-2011, SEC.162.*

#### **IC 16-28-15-12**

##### **Failure to pay fee; penalties**

Sec. 12. (a) The state department shall do the following:

(1) Notify each nursing facility and each health facility reported under section 11 of this chapter that the nursing facility's license

or health facility's license under IC 16-28 will be revoked if the patient day information is not submitted or the quality assessment fee is not paid.

(2) Revoke the nursing facility's license or health facility's license under IC 16-28 if the nursing facility or the health facility fails to submit the patient day information or fails to pay the quality assessment fee.

(b) An action taken under subsection (a)(2) is governed by:

(1) IC 4-21.5-3-8; or

(2) IC 4-21.5-4.

*As added by P.L.229-2011, SEC.162.*

### **IC 16-28-15-13**

#### **Review; implementation of chapter**

Sec. 13. The interim study committee on public health, behavioral health, and human services established by IC 2-5-1.3-4 shall review the implementation of this chapter.

*As added by P.L.229-2011, SEC.162. Amended by P.L.205-2013, SEC.216; P.L.53-2014, SEC.134.*

### **IC 16-28-15-14**

#### **Expiration**

Sec. 14. This chapter expires June 30, 2017.

*As added by P.L.229-2011, SEC.162. Amended by P.L.205-2013, SEC.217.*

**IC 16-28-16**

**Chapter 16. Expired**

*(Expired 6-30-2014 by P.L.229-2011, SEC.163.)*