

CHAPTER 1073

DEPARTMENT OF INSPECTIONS, APPEALS, AND LICENSING — RECORD CONFIDENTIALITY — DEPENDENT ADULT ABUSE

H.F. 2390

AN ACT relating to certain powers and duties of the department of inspections, appeals, and licensing including confidentiality of information and records, and dependent adult abuse, and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. [Section 10A.105, subsection 5](#), Code 2024, is amended to read as follows:

5. If information in the possession of the department indicates that a criminal or regulatory offense may have been committed, the information may be reported to the appropriate criminal justice or regulatory agency.

Sec. 2. [Section 235E.1, subsection 5](#), paragraph a, subparagraphs (2) and (3), Code 2024, are amended to read as follows:

(2) Sexual exploitation of a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. “*Sexual exploitation*” means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in [section 702.17](#). “*Sexual exploitation*” includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing evaluation or investigation. “*Sexual exploitation*” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

(3) Personal degradation of a dependent adult. “*Personal degradation*” means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. “*Personal degradation*” includes the taking, transmission, or display of an electronic image of a dependent adult by a caretaker, where the caretaker’s actions constitute a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. “*Personal degradation*” does not include the taking, transmission, or display of an electronic image of a dependent adult for the purpose of reporting dependent adult abuse to law enforcement, the department, or other regulatory agency that oversees caretakers or enforces abuse or neglect provisions, or for the purpose of treatment or diagnosis or as part of an ongoing evaluation or investigation. “*Personal degradation*” also does not include the taking, transmission, or display of an electronic image by a caretaker in accordance with the facility’s or program’s confidentiality policy and release of information or consent policies.

Sec. 3. [Section 235E.2, subsection 3](#), paragraph a, Code 2024, is amended to read as follows:

a. If a staff member or employee is required to make a report pursuant to [this section](#), the staff member or employee shall immediately notify the person in charge or the person’s designated agent who shall then notify the department within twenty-four hours of such notification. If the person in charge is the alleged perpetrator of dependent adult abuse, the staff member shall directly report the abuse to the department within twenty-four hours.

Sec. 4. [Section 235E.2, subsection 5](#), Code 2024, is amended to read as follows:

5. Any other person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department of ~~inspections, appeals, and licensing~~. The department of ~~inspections, appeals, and licensing~~ shall transfer any reports received of dependent adult abuse in the community to the department of health and human services. The department of health and human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department of ~~inspections, appeals, and licensing~~.

Sec. 5. [Section 235E.2, subsection 6](#), unnumbered paragraph 1, Code 2024, is amended to read as follows:

The department shall inform the appropriate county ~~attorneys~~ attorney of any ~~reports~~ report of dependent adult abuse. ~~The department may provide the county attorney, other appropriate law enforcement agencies, and appropriate licensing boards with the department's evaluation materials and findings related to a report of dependent adult abuse.~~ The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to [subsection 2](#) to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

Sec. 6. [Section 235E.2, subsection 6](#), paragraphs a and b, Code 2024, are amended to read as follows:

a. If, upon completion of an investigation of a report of dependent adult abuse, the department determines that the best interests of the dependent adult require court action, the department shall notify the department of health and human services of the potential need for a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under [chapter 125, 222, 229, or 633](#), or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department of health and human services in the preparation of the necessary papers to initiate the action and shall appear and represent the department of health and human services at all district court proceedings.

b. ~~Investigators~~ Inspectors within the department shall be specially trained to investigate cases of dependent adult abuse including but not limited to cases involving gerontological, dementia, and wound care issues.

Sec. 7. [Section 235E.2, subsections 7, 8, 10, 11, 12, and 13](#), Code 2024, are amended to read as follows:

7. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a report or investigating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report, cooperation, or assistance or relating to the subject matter of the report, cooperation, or assistance.

8. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to [subsection 2 or 5](#), or cooperating with, or assisting the department in evaluating a report or investigating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent

adult abuse. A person or employer found in violation of [this subsection](#) is guilty of a simple misdemeanor.

10. a. The department shall adopt rules which require facilities and programs to separate an alleged perpetrator of dependent adult abuser abuse from a victim following the report of an allegation of perpetration of dependent adult abuse and prior to the completion of an investigation of the allegation report by the department.

b. Independent of the department's investigation of the report, the facility or program employing the alleged perpetrator of dependent adult abuser abuse shall conduct an investigation of the alleged dependent adult abuse and determine what, if any, employment action should be taken including but not limited to placing the alleged perpetrator of dependent adult abuser abuse on administrative leave or reassigning or terminating the alleged perpetrator of dependent adult abuser abuse as a result of the investigation by the facility or program.

c. If the facility or program terminates the alleged perpetrator of dependent adult abuser abuse as a result of the investigation by the facility or program or ~~the alleged dependent adult abuser resigns~~, the alleged perpetrator of dependent adult abuser abuse shall disclose such termination or investigation to any prospective facility or program employer. An alleged perpetrator of dependent adult abuser abuse who fails to disclose such termination or investigation is guilty of a simple misdemeanor.

11. Upon receiving notice from a credible source, the department shall notify a facility or program that subsequently employs a perpetrator of founded dependent adult abuser abuse when the notice of investigative findings has been issued. ~~Such notification shall occur prior to the completion of an investigation that is founded for dependent adult abuse.~~

12. a. An inspector of the department may enter any facility or program without a warrant and may examine all records pertaining to residents, employees, former employees, and the alleged perpetrator of dependent adult abuser abuse.

b. If upon entry, the inspector has knowledge of or learns during the course of an investigation of a report that alleged dependent adult abuse is suspected or is being investigated by the facility or program, the inspector shall inform the facility or program that the inspector is investigating a report of an alleged case of dependent adult abuse.

c. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who ~~might~~ may have knowledge about the alleged dependent adult abuse. Prior to the interview, the department shall provide written notification to the ~~person under investigation for alleged perpetrator of dependent adult abuse that~~. The notification shall include all of the following information:

(1) That the person is ~~under investigation for dependent adult abuse~~, the subject of a report of dependent adult abuse being investigated by the department.

(2) The nature of the abuse being investigated, ~~the~~.

(3) The possible civil administrative consequences of founded abuse, ~~the~~.

(4) The requirement that the department forward a report to law enforcement if the department's investigation reveals a potential criminal offense, ~~that~~.

(5) That the person has the right to retain legal counsel at the person's expense and may choose to have legal counsel, union representation, or any other desired representative employed by the facility present during the interview, ~~and the fact that~~.

(6) That the person has the right to decline to be interviewed or to terminate an interview at any time.

d. The person ~~under investigation who is the subject of the report~~ shall inform the department of the representatives desired the person wants to be have present during the interview and not delay the interview by more than five working days to make arrangements for the person's representatives to be present at the interview.

e. Any employer representative shall be informed of the requirement to maintain strict confidentiality and of the prohibition against dissemination of such information pursuant to [chapter 235B](#). At

f. During the interview, the department shall request and the alleged perpetrator of dependent adult abuser abuse shall provide the alleged dependent adult abuser's perpetrator's most current contact information to facilitate provision of the findings of the investigation to the alleged dependent adult abuser perpetrator.

g. An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

13. a. Notwithstanding [section 235B.6](#) and [chapter 22](#), an employee organization or union representative may observe an ~~investigative~~ interview conducted by the department of an alleged ~~perpetrator of dependent adult abuser abuse~~ if all of the following conditions are met:

(1) The alleged ~~perpetrator of dependent adult abuser abuse~~ is part of a bargaining unit that is party to a collective bargaining agreement under [chapter 20](#) or any other applicable state or federal law.

(2) The alleged ~~perpetrator of dependent adult abuser abuse~~ requests the presence of an employee organization or union representative.

(3) The employee organization or union representative maintains the confidentiality of all information from the interview subject to the penalties provided in [section 235B.12](#) if such confidentiality is breached.

b. [This subsection](#) shall only apply to interviews conducted pursuant to [this chapter](#). [This subsection](#) does not apply to interviews conducted pursuant to the regulatory activities of [chapter 135B](#), [135C](#), [231B](#), [231C](#), or [231D](#), or any other state or federal law.

Sec. 8. [Section 726.26, subsection 1](#), Code 2024, is amended to read as follows:

1. For the purposes of [this section](#), “*caretaker*”, “*dependent adult*”, and “*dependent adult abuse*” mean the same as defined in [section 235B.2](#) or [section 235E.1](#), as applicable.

Approved April 19, 2024