

CHAPTER 74
IOWA DEPARTMENT OF SUBSTANCE ABUSE

H. F. 594

AN ACT relating to substance abuse by creating an Iowa department of substance abuse, prescribing the structure, powers and duties of the department, applying the funding formula for alcoholism programs in chapter one hundred twenty-five (125) of the Code to all substance abuse programs, providing for the licensing of treatment facilities by the department, making provisions of chapter one hundred twenty-five (125) of the Code relating to the treatment and commitment of alcoholics, and persons incapacitated by alcohol applicable to persons who abuse any chemical substance, repealing chapters two hundred twenty-four (224) and two hundred twenty-four A (224A) of the Code and providing a penalty.

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

Section 1. NEW SECTION. DECLARATION OF POLICY. It is the policy of this state:

1. That substance abusers and persons suffering from chemical dependency be afforded the opportunity to receive quality treatment and directed into rehabilitation services which will help them resume a socially acceptable and productive role in society.
2. To encourage substance abuse education and prevention efforts and to insure that such efforts are coordinated to provide a high quality of services without unnecessary duplication.
3. To insure that substance abuse programs are being operated by individuals who are qualified in their field whether through formal education or through employment or personal experience.

This section is effective January 1, 1978.

Sec. 2. Section one hundred twenty-five point two (125.2), Code 1977, is amended by striking subsections one (1), three (3), five (5), and eleven (11) and inserting in lieu thereof the following:

1. "Chemical dependency" means an addiction or dependency, either physical or psychological, on a chemical substance. Persons who take medically prescribed drugs shall not be considered chemically dependent if the drug is medically prescribed and the intake is proportionate to the medical need.
3. "Chemical substance" means alcohol, wine, spirits and beer as defined in chapter one hundred twenty-three (123)

of the Code and drugs as defined in section two hundred three A point two (203A.2), subsection three (3) of the Code, which when used improperly could result in chemical dependency.

5. "Substance abuser" means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that his or her health is substantially impaired or endangered or that his or her social or economic function is substantially disrupted.

Sec. 3. Section one hundred twenty-five point two (125.2), subsections two (2), four (4), six (6), seven (7), eight (8), and ten (10), Code 1977, are amended to read as follows:

2. "Facility" means a hospital, institution, detoxification center, or installation providing care, maintenance and treatment for ~~alcoholics~~ substance abusers and approved licensed by the ~~director~~ department under section 125.13.

4. "Department" means the state Iowa department of health substance abuse.

6. "Director" means the director of the Iowa division on-alcoholism department of substance abuse.

7. "Commission" means the ~~Iowa~~ commission on alcoholism substance abuse within the division department.

8. "Incapacitated by ~~alcohol~~ a chemical substance" means that a person, as a result of the use of ~~alcohol~~ a chemical substance, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to ~~his~~ the need for treatment.

10. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of ~~alcohol~~ a chemical substance.

Sec. 4. Section one hundred twenty-five point three (125.3), Code 1977, is amended to read as follows:

125.3 ESTABLISHED. There is established within the state Iowa department of ~~health-a-division-on-alcoholism~~ substance abuse which shall develop, implement and administer a comprehensive ~~alcoholism~~ substance abuse program pursuant to sections 125.1 to 125.26. There is established within the division department a commission on ~~alcoholism~~ substance abuse to establish policies governing the performance of the division department in the discharge of duties imposed on it by this chapter. The commission shall consist of nine members appointed by the governor. Appointments shall be

made on the basis of interest in and knowledge of alcoholism substance abuse, however two of the members shall be persons who, in their regular work, have direct contact with substance abuse clients. All members shall be eligible electors of the state of Iowa ~~and no more than five members shall belong to the same political party. No member shall be a director of a local or regional alcoholism center.~~

Sec. 5. Section one hundred twenty-five point five (125.5), Code 1977, is amended to read as follows:

125.5 MEETINGS. The commission shall organize annually and shall select from its membership a chairman chairperson and a vice chairman chairperson. The commission shall meet at least six times a year. Other meetings shall be called by the chairman chairperson or upon written request of a majority of the members of the commission. The chairman chairperson shall preside at all meetings or in his the chairperson's absence the vice chairman chairperson shall preside. Five members of the commission shall constitute a quorum but the concurrence of a majority of the commission shall be required to determine any matter relating to its duties.

Sec. 6. Section one hundred twenty-five point six (125.6), Code 1977, is amended to read as follows:

125.6 COMPENSATION. Each member of the Iowa commission on alcoholism substance abuse shall receive forty dollars per day for each day spent in performance of the duties of the commission. Each member shall also receive his actual necessary expenses incurred in the performance of his or her duties.

Sec. 7. Section one hundred twenty-five point seven (125.7), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. Consider and approve or disapprove all applications for a license and all cases involving the renewal, denial, suspension or revocation of a license.

Sec. 8. Section one hundred twenty-five point seven (125.7), subsections two (2), four (4), five (5) and eight (8), Code 1977, are amended to read as follows:

2. Approve the comprehensive alcoholism substance abuse program, and the funding therefore, developed by the division department pursuant to sections 125.1 to 125.26.

4. Establish policies governing the performance of the director in the discharge of his the director's duties.

5. Advise or make recommendations to the governor and the general assembly relative to alcoholism substance abuse treatment, intervention and education and prevention programs in this state.

8. Submit to the governor and the general assembly an annual report covering the activities of the division department.

Sec. 9. Section one hundred twenty-five point eight (125.8), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

125.8 DIRECTOR APPOINTED. The director of the department shall be appointed by the governor for a four-year term with the approval of two-thirds of the members of the senate. The director shall be a qualified person who has training or experience in handling substance abuse problems and the ability to organize and otherwise supervise delivery systems providing treatment, intervention and education and prevention services to persons suffering from substance abuse problems. The director shall serve as secretary to the commission.

Sec. 10. Section one hundred twenty-five point nine (125.9), subsections one (1), two (2), four (4) and six (6), Code 1977, are amended to read as follows:

1. Plan, establish and maintain treatment, intervention and education and prevention programs as necessary or desirable in accordance with the comprehensive alcoholism substance abuse program.

2. Make contracts necessary or incidental to the performance of his the duties and the execution of his the powers of the director, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to alcoholics substance abusers or intoxicated persons.

4. Co-ordinate the activities of the division department and co-operate with alcoholism substance abuse programs in this and other states, and make contracts and other joint or co-operative arrangements with state, local or private agencies in this and other states for the treatment of alcoholics substance abusers and intoxicated persons and for the common advancement of alcoholism substance abuse programs.

6. Employ a deputy director who shall be exempt from the merit system and shall serve at the pleasure of the director. The director may employ other staff necessary to carry out the duties assigned to him the director.

Sec. 11. Section one hundred twenty-five point nine (125.9), Code 1977, is amended by adding the following new subsections after subsection four (4):

NEW SUBSECTION. Require that a written report, in reasonable detail, be submitted to the director at any time by any agency of this state or of any of its political subdivisions in respect to any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse, which is being conducted by the agency.

NEW SUBSECTION. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat substance abuse, and has failed to effect appropriate changes in the function or program.

Sec. 12. Section one hundred twenty-five point ten (125.10), Code 1977, is amended to read as follows:

125.10 DUTIES OF DIRECTOR. The director shall:

1. Prepare and submit a state plan subject to approval by the commission and in accordance with the provisions of title XLII, United States Code, section 4573. The state plan shall designate the division department as the sole agency for supervision of the administration of the plan and may shall provide for the appointment of a citizens advisory council on alcoholism substance abuse.

2. Develop, encourage, and foster state-wide, regional and local plans and programs for the prevention of alcoholism substance abuse and the treatment of alcoholics substance abusers and intoxicated persons in co-operation with public and private agencies, organizations and individuals, and provide technical assistance and consultation services for these purposes.

3. Co-ordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of alcoholism substance abuse and the treatment of alcoholics substance abusers and intoxicated persons.

4. Co-operate with the department of social services in establishing and conducting programs to provide treatment

for ~~alcoholics~~ substance abusers and intoxicated persons.

5. Co-operate with the department of public instruction, boards of education, schools, police departments, courts and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism substance abuse and the treatment of ~~alcoholics~~ substance abusers and intoxicated persons, and in preparing curriculum materials thereon for use at all levels of school education.

6. Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of ~~alcohol~~ chemical substances.

7. Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of ~~alcoholics~~ substance abusers and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of ~~alcohol~~ chemical substances.

8. Organize and implement, in co-operation with local treatment programs, training programs for all persons engaged in treatment of ~~alcoholics~~ substance abusers and intoxicated persons.

9. Sponsor and implement, ~~in co-operation with local treatment programs,~~ research in cooperation with local treatment programs into the causes and nature of alcoholism substance abuse and treatment of ~~alcoholics~~ substance abusers and intoxicated persons, and serve as a clearing house for information relating to alcoholism substance abuse.

10. Specify uniform methods for keeping statistical information by public and private agencies, organizations and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

11. Develop and implement, with the counsel and approval of the commission, a comprehensive plan for treatment of ~~alcoholics~~ substance abusers and intoxicated persons, said plan to be co-ordinated with health systems agencies.

12. Assist in the development of, and co-operate with, ~~alcohol~~ substance abuse education and treatment programs for employees of state and local governments and businesses and industries in the state.

13. Utilize the support and assistance of interested

persons in the community, particularly recovered alcoholics substance abusers, to encourage alcoholics substance abusers to voluntarily undergo treatment.

14. Co-operate with the commissioner of public safety in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

15. Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics substance abusers and intoxicated persons and to provide them with adequate and appropriate treatment, and may negotiate and implement contracts with hospitals and other appropriate health facilities with adequate detoxification facilities.

16. Encourage all health and disability insurance programs to include alcoholism substance abuse as a covered illness.

17. Review all state health, welfare, education and treatment plans proposals to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism substance abuse and substance abusers and intoxicated persons.

Sec. 13. Section one hundred twenty-five point eleven (125.11), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

125.11 STATE ADVISORY COUNCIL--MEMBERSHIP.

1. There is established within the department a state advisory council which shall be composed of nine members and which shall advise the director in administering this chapter. The governor shall appoint the members of the advisory council, who shall serve at the pleasure of the governor, and shall designate the chairperson of the advisory council. The director or a designee shall serve as the advisory council's secretary. The advisory council shall be entirely advisory in character and may not exercise administrative authority.

2. Members of the substance abuse advisory council shall, to the extent practicable, be drawn from different geographical areas of the state, and shall provide representation for:

a. Nongovernmental organizations concerned directly or indirectly with substance abuse such as local citizen groups, employee groups, national groups, labor and management, and other provider, consumer, and consumer advocate groups.

b. Public agencies concerned directly or indirectly with substance abuse, such as local elected officials or representatives of health and mental health agencies, welfare

agencies, and law enforcement agencies.

c. The minority, poverty, and major population groups which are significantly affected by the problems of substance abuse.

d. At least one representative of the state health coordinating council.

3. Members of the council shall serve without compensation but shall receive reimbursement for travel and other necessary expenses actually incurred in the performance of their duties.

Sec. 14. Section one hundred twenty-five point twelve (125.12), Code 1977, is amended to read as follows:

125.12 COMPREHENSIVE PROGRAM FOR TREATMENT--REGIONAL FACILITIES.

1. The commission shall establish a comprehensive and co-ordinated program for the treatment of ~~alcoholics~~ substance abusers and intoxicated persons. Subject to the approval of the ~~commissioner~~ commission, the director shall divide the state into appropriate regions for the conduct of the program and establish standards for the development of the program on the regional level. In establishing the regions, consideration shall be given to city and county lines, population concentrations and existing ~~alcoholism~~ substance abuse treatment services. In determining the regions, the director shall not be required to follow the regional map as prepared by the office for planning and programming.

2. The program of the commission shall include:

a. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital.

b. Inpatient treatment.

c. Intermediate treatment.

d. Outpatient and follow-up treatment and rehabilitation.

e. Prevention and education.

3. The director shall provide for adequate and appropriate treatment for ~~alcoholics~~ substance abusers and intoxicated persons admitted under sections 125.16 to 125.19. Treatment shall not be provided at a correctional institution except for inmates.

4. The director shall maintain, supervise and control all facilities operated by ~~him~~ the director pursuant to this chapter. The administrator of each facility shall make ~~an annual~~ a report of the activities of the facility to the ~~director~~ commission in the form and manner the ~~director~~ commission specifies.

5. All appropriate public and private resources shall be co-ordinated with and utilized in the program if possible.

6. The director shall prepare, publish and distribute annually a list of all facilities.

7. The director may contract for the use of a facility if the director, subject to the policies of the commission and pursuant to section 125.27, considers this to be an effective and economical course to follow.

Sec. 15. Section one hundred twenty-five point thirteen (125.13), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

125.13 PROGRAMS LICENSED--EXCEPTIONS.

1. Except as provided in subsection two (2) of this section, a person may not maintain or conduct any chemical substitutes or antagonists program, residential program or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of substance abusers without having first obtained a written license for the program from the department.

2. The licensing requirements of this Act, except the requirements imposed by section twenty-four (24) of this Act, shall not apply to any of the following:

a. Hospitals providing any care or treatment to substance abusers required on January 1, 1978, by other provisions of law to be licensed.

b. Any practitioner of medicine and surgery or osteopathic medicine and surgery, in his or her private practice. However, a program shall not be exempted from licensing by the commission by virtue of its utilization of the services of a medical practitioner in its operation.

c. Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to substance abusers and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

d. Facilities, institutions, or programs which, in the discretion of the department, provide services which are only informational or educational in nature.

e. Alcoholics anonymous.

Sec. 16. Chapter one hundred twenty-five (125), Code 1977, is amended by adding sections seventeen (17) through twenty-four (24) of this Act after section one hundred twenty-five

point thirteen (125.13) of the Code.

Sec. 17. NEW SECTION. LICENSES--RENEWAL--FEES. The commission shall meet to consider all cases involving issuance, denial, suspension, or revocation of a license. Upon approval of an application for licensing by the commission, a license shall be issued by the department. Licenses shall expire one year from the date of issuance and shall be renewed upon timely application made in the same manner as for original issuance of a license unless notice of nonrenewal is given to the licensee at least thirty days prior to the expiration of the license. The department shall not charge a fee for licensing or renewal.

Sec. 18. NEW SECTION. INSPECTION OF LICENSEES. The department shall at least annually inspect the facilities and review the procedures utilized by each licensed program. The examination and review may include case record audits and interviews with staff and patients, consistent with the confidentiality safeguards of state and federal law.

Sec. 19. NEW SECTION. TRANSFER OF LICENSE OR CHANGE OF LOCATION PROHIBITED. A license issued under this chapter may not be transferred, and the location of the physical facilities occupied or utilized by any program licensed under this chapter shall not be changed without the prior written consent of the commission.

Sec. 20. NEW SECTION. LICENSE SUSPENSION OR REVOCATION. Violation of any of the requirements or restrictions of this chapter or of any of the rules properly established pursuant to this chapter is cause for suspension, revocation or refusal to renew a license. The director shall at the earliest time feasible notify a licensee whose license the commission is considering suspending or revoking and shall inform the licensee what changes must be made in the licensee's operation to avoid such action. The licensee shall be given a reasonable time for compliance, as determined by the director, after receiving such notice or a notice that the commission does not intend to renew the license. When the licensee believes compliance has been achieved, or if the licensee considers the proposed suspension, revocation or refusal to renew unjustified, the licensee may submit pertinent information to the commission who shall expeditiously make a decision in the matter and notify the licensee of the decision.

Sec. 21. NEW SECTION. HEARING BEFORE COMMISSION. If a licensee under this chapter makes a written request for

a hearing within thirty days of suspension, revocation or refusal to renew a license, a hearing before the commission shall be expeditiously arranged. If the role of a commission member is inconsistent with the member's job role or function, or if any commission member feels unable for any reason to disinterestedly weigh the merits of the case before the commission, the member shall not participate in the hearing and shall not be entitled to vote on the case. The commission shall issue a written statement of its findings within thirty days after conclusion of the hearing upholding or reversing the proposed suspension, revocation or refusal to renew a license. No action involving suspension, revocation or refusal to renew a license shall be taken by the commission unless a quorum of five of the nine members are present at the meeting. A copy of the decision shall be promptly transmitted to the affected licensee who may, if aggrieved by the decision, seek judicial review of the actions of the commission in accordance with the terms of the Iowa administrative procedure Act.

Sec. 22. NEW SECTION. REISSUANCE OR REINSTATEMENT. After suspension, revocation or refusal to renew a license pursuant to this chapter, the affected licensee shall not have the license reissued or reinstated within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the commission. After that time, proof of compliance with the requirements and restrictions of this chapter and the rules established pursuant to this chapter must be presented to the commission prior to reinstatement or reissuance of a license.

Sec. 23. NEW SECTION. RULES. The commission shall establish rules pursuant to chapter seventeen A (17A) of the Code requiring facilities to use reasonable accounting and reimbursement systems which recognize relevant cost-related factors for substance abuse patients. A facility shall not be licensed nor shall any payment be made under this chapter to a facility which fails to comply with those rules or which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the commission deems relevant to the establishment of such a system. However, rules issued pursuant to this paragraph shall not apply to any facility referred to in

section fifteen (15), subsection two (2) or section thirty-six (36) of this Act.

Sec. 24. NEW SECTION. CHEMICAL SUBSTITUTES AND ANTAGONISTS PROGRAMS. The commission shall have exclusive power in this state to approve and license chemical substitutes and antagonists programs, and monitor chemical substitutes and antagonists programs in this state to insure that the programs are operating within the rules established pursuant to this chapter and the commission shall be obliged to grant such approval and license if the requirements of the rules are met and no state funding is requested.

The department may:

1. Continuously study and evaluate chemical substitutes and antagonists programs in this state and annually report to the governor and the general assembly on the effectiveness and needs of the programs.

2. Provide advice, consultation, and technical assistance to chemical substitutes and antagonists programs.

3. In its discretion, approve local agencies or bodies to assist it in carrying out the provisions of this chapter.

Sec. 25. Section one hundred twenty-five point fifteen (125.15), Code 1977, is amended to read as follows:

125.15 ACCEPTANCE FOR TREATMENT--RULES. The commission shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, subject to the provisions of chapter 17A, considering available treatment resources and facilities, for the purpose of early and effective treatment of ~~alcoholics~~ substance abusers and intoxicated persons. In establishing the rules the commission shall be guided by the following standards:

1. If possible a patient shall be treated on a voluntary rather than an involuntary basis.

2. A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless ~~he~~ the patient is found to require inpatient treatment.

3. A person shall not be denied treatment solely because ~~he~~ the person has withdrawn from treatment against medical advice on a prior occasion or because ~~he~~ the person has relapsed after earlier treatment.

4. An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

5. Provision shall be made for a continuum of co-ordinated treatment services, so that a person who leaves a facility

or a form of treatment will have available and may utilize other appropriate treatment.

Sec. 26. Section one hundred twenty-five point sixteen (125.16), Code 1977, is amended to read as follows:

125.16 VOLUNTARY TREATMENT OF ~~ALCOHOLICS~~ SUBSTANCE ABUSERS.

1. ~~An alcoholic~~ A substance abuser may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, ~~he,~~ a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under his or her direction or supervision, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.

2. Subject to rules adopted by the commission, the administrator in charge of a facility may determine who shall be admitted for treatment or rehabilitation. If a person is refused admission, the administrator, subject to rules adopted by the commission, shall refer the person to another facility for treatment if possible and appropriate.

3. A substance abuser seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance shall first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon who shall prescribe a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon or facility to provide the prescribed treatment or

rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. Any facility providing or engaging in such treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in such treatment or rehabilitation; nor shall any person receiving or participating in such treatment or rehabilitation report or disclose the name of any other person engaged in or receiving such treatment or rehabilitation or that such program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, any person engaged in or receiving such treatment or rehabilitation may authorize the disclosure of his or her name and individual participation.

3 4. If a patient receiving inpatient care leaves a facility, he the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the facility that the patient is ~~an alcoholic~~ a substance abuser who requires help, the director may arrange for assistance in obtaining supportive services and residential facilities.

4 5. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for ~~his~~ the patient's transportation to another facility or to ~~his~~ the patient's home. If ~~he~~ the patient has no home ~~he~~ the patient shall be assisted in obtaining shelter. If ~~he~~ the patient is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if ~~he~~ the patient was the original applicant.

6. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or law enforcement agency or any person receiving treatment or rehabilitation services who discloses the name of any other person receiving treatment or rehabilitation services without the written consent of the person in violation of the provisions of this section shall upon conviction be guilty of a simple misdemeanor.

Sec. 27. Section one hundred twenty-five point seventeen (125.17), subsections one (1) and two (2), Code 1977, are

amended to read as follows:

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by ~~alcohol~~ a chemical substance in a public place and in need of help ~~may~~ shall be taken to a facility by a peace officer. If the person refuses the proffered help, ~~he~~ the person may be arrested and charged with intoxication.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking ~~him~~ the person to a facility, is taking ~~him~~ the person into protective custody and shall make every reasonable effort to protect ~~his~~ the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps ~~to protect himself for self-protection~~. A taking into protective custody under this section is not an arrest and no entry or other record shall be made to indicate that the person who is taken into protective custody has been arrested or charged with a crime.

Sec. 28. Section one hundred twenty-five point seventeen (125.17), subsection four (4), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

4. A person who is found to be intoxicated or incapacitated by a chemical substance after examination by a qualified health professional shall be required to remain at the facility until the qualified health professional determines that the person is not likely to inflict physical self harm or inflict physical harm on others. If the person is detained longer than twenty-four hours the qualified health professional shall examine him or her at least once every twelve hours to determine if further detention is necessary. The qualified health professional shall enter a written order for the person to be detained in custody. Such order shall state the circumstances under which the person was taken into custody and the grounds supporting the finding or probable cause to believe that he or she is sufficiently impaired or incapacitated by a chemical substance to cause physical injury to himself or herself or others if released. The order shall be filed in the district court of the area in which the person is detained.

Sec. 29. Section one hundred twenty-five point eighteen (125.18), subsection one (1), Code 1977, is amended to read as follows:

1. An intoxicated person who has threatened, attempted, or inflicted physical self harm on-himself or threatened, attempted or inflicted physical harm on another and is likely to inflict physical self harm on-himself or is likely to physically harm another unless committed, or who is incapacitated by ~~alcohol~~ a chemical substance, may be committed to a facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

Sec. 30. Section one hundred twenty-five point nineteen (125.19), subsections one (1), two (2), and five (5) and subsection nine (9), paragraphs a and b, Code 1977, are amended to read as follows:

1. A person may be committed to the custody of ~~the division~~ a facility by the district court upon the petition of his the person's spouse or guardian, a relative, the certifying physician, or the administrator in charge of a facility. The petition shall allege that the person is ~~an-alcoholic~~ a substance abuser who habitually lacks self-control as to the use of ~~alcoholic-beverages~~ chemical substances, and (a) that ~~he~~ the person has threatened, attempted or inflicted physical harm on another and that ~~he~~ the person is likely to inflict physical self harm on-himself or inflict physical harm on another unless committed; or (b) that ~~he~~ the person is incapacitated by ~~alcohol~~ a chemical substance. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination or was unavailable for examination, in which case the fact of refusal or unavailability shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the ~~division~~ department is not eligible to be the certifying physician.

2. Upon the filing of the petition, the court shall fix a date for a hearing no later than ten days after the date the petition was filed. If a judicial hospitalization referee

has been appointed under section two hundred twenty-nine point twenty-one (229.21) of the Code for the county in which the petition is filed, the clerk of the district court shall immediately notify the referee of the filing of the petition and the referee shall thereupon discharge all of the duties imposed upon judges of the district court by this section.

A copy of the petition and the notice of hearing shall be served in the manner of an original notice on the person whose commitment is sought and upon a parent or legal guardian if the person is a minor. A copy of the petition and the notice of hearing shall be mailed or delivered in the manner provided for motions in civil cases to the petitioner, the next of kin of the person other than the petitioner, the administrator of the facility to which the person has been committed for emergency care, and any other person the court believes should receive copies. A petition shall have attached a copy of the certificate specified in this section.

5. A person committed under this section shall remain in the custody of ~~the division~~ a facility for treatment for a period of thirty days unless sooner discharged. This section shall not be construed to require the ~~division~~ department to pay the cost of any medication or procedure provided the person during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of ~~alcoholism~~ substance abuse. At the end of the thirty-day period, ~~he~~ the person shall be discharged automatically unless the director before expiration of the period petitions the court for an order for ~~his~~ the person's recommitment upon the grounds set forth in subsection 1 for a further period not to exceed ninety days.

a. In case of ~~an alcoholic~~ a substance abuser committed under subsection 1, paragraph "a", that ~~he~~ the person is no longer ~~an alcoholic~~ a substance abuser or the likelihood no longer exists.

b. In case of ~~an alcoholic~~ a substance abuser committed under subsection 1, paragraph "b", that the incapacity no longer exists, that further treatment will not be likely to bring about significant improvement in the person's condition, or that treatment is no longer adequate or appropriate.

Sec. 31. Section one hundred twenty-five point twenty (125.20), subsection two (2), Code 1977, is amended to read as follows:

2. Notwithstanding subsection 1, the director may make

available information from patients' records for purposes of research into the causes and treatment of alcoholism substance abuse. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

Sec. 32. Section one hundred twenty-five point twenty (125.20), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. Notwithstanding the provisions of subsection one (1) of this section a patient's records may be disclosed to medical personnel in a medical emergency with or without the patient's consent.

Sec. 33. Section one hundred twenty-five point twenty-one (125.21), subsection two (2), Code 1977, is amended to read as follows:

2. Neither mail nor other communication to or from a patient in a facility may be intercepted, read or censored, except that the commission may adopt reasonable rules regarding the use of telephones by patients in facilities and the delivery of controlled chemical substances and other intoxicants.

Sec. 34. Section one hundred twenty-five point twenty-two (125.22), Code 1977, is amended to read as follows:

125.22 COMPOSITION OF FACILITIES BOARDS--TREATMENT PLANS FURNISHED.

1. In addition to other requirements established by this chapter, ~~no~~ a facility shall not be approved licensed pursuant to section ~~425-43~~ fifteen (15) of this Act unless it is either a political subdivision, a licensed hospital or a community mental health center operating under chapter 230A, or it is organized under the Iowa nonprofit corporation Act appearing as chapter 504A. In the latter case, one-third of the membership of the board of directors shall be representatives of such government units providing funds to the facility for treatment of alcoholism substance abuse.

2. A local governmental unit which is providing funds to a facility for treatment of alcoholism substance abuse may request from the facility a treatment program plan prior to authorizing payment of any claims filed by the facility. The governing body of the local governmental unit may review the plan, but shall not impose on the facility any requirement conflicting with the comprehensive treatment program requirements of section 125.28.

Sec. 35. Section one hundred twenty-five point twenty-three (125.23), subsection three (3), Code 1977, is amended to read as follows:

3. Nothing in this chapter affects any law, ordinance, resolution or rule against drunken driving, driving under the influence of alcohol or other chemical substance, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment, or regarding the sale, purchase, dispensing, possessing or use of alcoholic beverages or beer at stated times and places or by a particular class of persons or regarding the sale, purchase, possession or use of another chemical substance.

Sec. 36. Section one hundred twenty-five point twenty-six (125.26), Code 1977, is amended to read as follows:

125.26 FUNDING AT MENTAL HEALTH INSTITUTES. Chapter 230 shall govern the determination of the costs and payment for treatment provided to alcoholics substance abusers in a mental health institute under the department of social services, except that the charges shall not constitute a lien on any real estate owned by persons legally liable for support of the alcoholic substance abuser and the daily per diem shall be billed at twenty-five percent. Beginning July 1, ~~1976~~ 1977, the superintendent of a state hospital shall total only those expenditures which can be attributed to the cost of providing inpatient treatment to alcoholics-and-intoxicated persons substance abusers for purposes of determining the daily per diem. The provisions of section 125.31 shall govern the determination of who is legally liable for the cost of care, maintenance, and treatment of an-alcoholic a substance abuser and of the amount for which the person is liable.

Sec. 37. Section one hundred twenty-five point twenty-seven (125.27), Code 1977, is amended to read as follows:

125.27 CONTRACT FOR CARE--RULES ADOPTED. The director may, consistent with the comprehensive alcoholism substance abuse program, enter into written agreements with a facility as defined in section 125.2 to pay for seventy-five percent of the cost of the care, maintenance and treatment of an alcoholic a substance abuser. Such contracts shall be for a period of no more than one year. The commission shall review and evaluate at least once each year all such agreements and determine whether or not they shall be continued.

The contract may be in such form and contain provisions as agreed upon by the parties. Such contract shall provide

that the facility shall admit and treat ~~alcoholics~~ substance abusers regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable therefor within thirty days after discharge the payment shall be made by the ~~division~~ department directly to the facility. Payments shall be made each month and shall be based upon the facility's average daily per patient charge. Provisions of this section shall not pertain to patients treated at the mental health institutes.

If the appropriation to the ~~commission~~ department is insufficient to meet the requirements of this section, the ~~commission~~ department shall request a transfer of funds and section 8.39 shall apply.

Contracting facilities shall deliver to each patient upon discharge a statement of the costs of the care, maintenance and treatment for which that patient is liable, and shall retain a carbon copy or other similar copy of that statement for a period of not less than one year after the date of discharge of the patient to whom the statement refers. Every payment received by a contracting facility from or on behalf of a patient, whether received before or after costs have been billed to the ~~division~~ department or to a county, shall be identified by the facility as to patient and invoice or statement, and shall be reported to the ~~division~~ department. A contracting facility shall allow as a credit against a future billing to the ~~division~~ department or to a county, payments received during each month from or on behalf of a patient whose care, maintenance and treatment theretofore has been billed to and paid by the ~~division~~ department or a county. Failure by a contracting facility to comply with this paragraph, or with rules promulgated pursuant to section ~~125.137-subsection-47~~ twenty-three (23) of this Act shall constitute grounds for nonrenewal of the contract.

Sec. 38. Section one hundred twenty-five point twenty-eight (125.28), subsection one (1), Code 1977, is amended to read as follows:

1. Except as provided in section 125.26, each county shall pay for the remaining twenty-five percent of the cost of the care, maintenance, and treatment under this chapter of residents of that county from the county mental health and institutions fund as provided in section 444.12. The commission shall establish guidelines for use by the counties

in estimating the amount of expense which the county will incur each year. The facility shall certify to the county of residence once each month twenty-five percent of the unpaid cost of the care, maintenance, and treatment of ~~an alcoholic~~ a substance abuser. Such county shall pay the cost so certified to the facility from its county mental health and institutions fund. However, the approval of the board of supervisors shall be required before payment is made by a county for costs incurred which exceed a total of five hundred dollars for one year for treatment provided to any one ~~alcoholic-or-intoxicated-person~~ substance abuser, except that such approval is not required for the cost of treatment provided to ~~an alcoholic-or-intoxicated-person~~ a substance abuser who is committed pursuant to section 125.18 and 125.19. A facility may, upon approval of the board of supervisors, submit to a county a billing for the aggregate amount of all care, maintenance, and treatment of ~~alcoholics~~ substance abusers who are residents of that county for each month. The board of supervisors may demand an itemization of such billings at any time or may audit the same.

Sec. 39. Section one hundred twenty-five point twenty-nine (125.29), Code 1977, is amended to read as follows:

125.29 COUNTY OF RESIDENCE DETERMINED. The facility shall, when ~~an alcoholic~~ a substance abuser is admitted, or as soon thereafter as it receives the proper information, determine and enter upon its records the Iowa county of residence of ~~such alcoholic~~ the substance abuser, or that the person resides in some other state or country, or that the person is unclassified with respect to residence.

Sec. 40. Section one hundred twenty-five point thirty (125.30), Code 1977, is amended to read as follows:

125.30 DISPUTES OVER PAYMENT. In the event any county to which certification of the cost of care, maintenance, and treatment of ~~an alcoholic~~ a substance abuser is made, disputes that such ~~alcoholic~~ substance abuser has ~~his~~ residence in that county, it shall immediately notify the facility that such dispute exists. The director shall immediately investigate the facts and determine in which county the patient has residence. The director shall certify ~~his~~ the determination to the county, if any, wherein it is found the patient has residence and to the facility. A county certified by the director to be the county of residence shall reimburse the facility as provided in this chapter. If the director

finds that the residence of an alcoholic a substance abuser at the time of admission was in another state or country or that the person is unclassified with respect to residence, then the division department shall pay for that portion of his the patient's care, maintenance, and treatment that his the patient's county of residence would have been liable to pay. For purposes of this section, a "facility" does not include a mental health institute under the control of the department of social services.

Sec. 41. Section one hundred twenty-five point thirty-one (125.31), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

The alcoholic substance abuser and any person, firm, corporation, or insurance company bound by contract to provide support, hospitalization, or medical services for the alcoholic substance abuser shall be legally liable to the county of the alcoholic's substance abuser's residence for twenty-five percent of the total amount and to the division department for seventy-five percent of the total amount of the cost of providing care, maintenance, and treatment for the alcoholic substance abuser while a voluntary or committed patient in a facility, except when the state pays the total cost of care in which case liability of one hundred percent shall be to the state. Nothing in this section shall prohibit any individual from paying any portion of the cost of treatment.

Sec. 42. Section one hundred twenty-five point thirty-three (125.33), Code 1977, is amended to read as follows:

125.33 COUNTY AUDITOR TO KEEP ACCOUNTS. The auditor of each county shall keep an accurate account of the total cost to the county of the care, maintenance, and treatment of any alcoholic substance abuser and shall keep an index of the names of the alcoholics substance abusers for whose benefit county funds are expended pursuant to section 125.28 for those services. The index shall be used only for audit purposes by the state or county and shall not be considered a public record.

Sec. 43. Section one hundred twenty-five point thirty-four (125.34), Code 1977, is amended to read as follows:

125.34 COLLECTION OF CLAIMS BY BOARD OF SUPERVISORS. The board of supervisors shall collect the total amount of all such liabilities as they become due, from those persons whom the board has found, under section 125.28, subsection 2, are able to pay. The board shall direct the county attorney

to proceed with the collection of such liabilities as a part of the duties of that office. The county shall be entitled to keep the total amount of all such liabilities collected. The county attorney, with the consent of the board of supervisors, may execute an agreement providing for the acceptance of a lesser amount owed by ~~an alcoholic~~ a substance abuser, his or her spouse, or estate to the county. The execution of such agreement may provide that the same is in satisfaction of all moneys owed the county.

Sec. 44. Chapter one hundred twenty-five (125), Code 1977, is amended by adding the following new sections after section one hundred twenty-five point thirty-six (125.36):

NEW SECTION. USE OF FUNDS. The director shall not be required to distribute or guarantee funds:

1. To any program which does not meet licensing standards,
2. To any program providing unnecessary, duplicative or overlapping services within the same geographical area, or
3. To any program which has adequate resources at its disposal.

This section is effective January 1, 1978.

NEW SECTION. AUDITS. All licensed substance abuse programs shall be subject to regular audit by the auditor of state or to special audits requested by the director.

This section is effective January 1, 1978.

NEW SECTION. FUTURE STATUS OF DEPARTMENT. The provisions of chapter one hundred twenty-five (125) of the Code are repealed effective July 1, 1982. The first session of the Sixty-ninth General Assembly meeting in the year 1981 shall review the activities and performance of the department and shall not later than July 1, 1981 make a determination concerning the status and duties of the department.

This section is effective January 1, 1978.

Sec. 45. Section two hundred twenty-nine point twenty-one (229.21), subsection one (1), Code 1977, is amended to read as follows:

1. As soon as practicable after the adoption of this Act the judges in each judicial district shall meet and shall determine, individually for each county in the district, whether it appears that one or more district judges will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.20 and by ~~chapter-224~~ section thirty (30) of this Act. If the judges find that accessibility of

district court judges in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

Sec. 46. The governor shall make the initial appointments to the commission and the advisory council for terms for commencing July 1, 1977. The provisions of sections six (6) and thirteen (13) of this Act shall apply to the payment of per diem and expenses to commission and advisory council members as if the provisions of sections six (6) and thirteen (13) of this Act were in effect on July 1, 1977. The provisions of this section shall be effective July 1, 1977.

Sec. 47. Chapters two hundred twenty-four (224) and two hundred twenty-four A (224A) and sections one hundred twenty-five point one (125.1) and one hundred twenty-five point fourteen (125.14), Code 1977, are repealed.

Sec. 48. Sections one hundred twenty-five point thirty-seven (125.37) through one hundred twenty-five point forty-two (125.42), Code 1977, are repealed. Notwithstanding subsection one (1) of section four point one (4.1) of the Code, the repeal of section one hundred twenty-five point forty-two (125.42) of the Code shall not operate to repeal the provisions of chapter one hundred twenty-five (125) of the Code as they existed before the effective date of this section and as they are amended by this Act.

Sec. 49.

1. Sections two (2) through forty-three (43), sections forty-five (45), forty-seven (47) and sections fifty (50) through fifty-two (52) of this Act are effective January 1, 1978.

2. Section forty-eight (48) of this Act is effective July 1, 1977.

Sec. 50. The governor may by executive order delay the implementation of sections thirty-six (36) through forty-three (43) of this Act until July 1, 1978 if the governor finds that delayed implementation of sections thirty-six (36) through forty-three (43) of this Act would allow the state and local substance abuse programs the opportunity to solve any administrative and fiscal problems which may occur as

the result of implementation of the funding formula for substance abuse programs contained in sections thirty-six (36) through forty-three (43) of this Act. If the implementation of sections thirty-six (36) through forty-three (43) of this Act is delayed pursuant to this section, the provisions of sections one hundred twenty-five point twenty-six (125.26) through one hundred twenty-five point thirty-four (125.34) of the Code shall continue to be in force as they existed prior to January 1, 1978 until sections thirty-six (36) through forty-three (43) of this Act are implemented by the governor on July 1, 1978.

Sec. 51. The Code editor shall place sections seventeen (17) through twenty-four (24) of this Act following section one hundred twenty-five point thirteen (125.13) of the Code and shall renumber all sections in chapter one hundred twenty-five (125) of the Code and correct internal references in chapter one hundred twenty-five (125) of the Code in accordance with this Act.

Sec. 52. The Code editor shall change all references to the word "division" in chapter one hundred twenty-five (125) of the Code to the word "department".
Approved July 10, 1977

CHAPTER 75

HEALTH CARE FACILITIES COUNCIL

H. F. 354

AN ACT to require that a certificate of need be obtained as a condition of offering certain new health care services or developing certain new health care facilities in this state, to establish a state health facilities council within the department of health, to prescribe the procedures by which certificates of need shall be applied for and may be granted or denied, to require that hospitals and health care facilities submit uniform annual financial reports to the department of health, to require the department to compile, analyze and annually report upon the data so submitted, and providing sanctions against violations.

WHEREAS, it is the public policy of this state that the offering or development of new institutional health services be accomplished in a manner which is orderly, economical and consistent with the goal of providing the necessary and adequate institutional health services to all of the people of