

LSB 5488IC

Amend LSB 5488IC as follows:

1. Page 27, after line 5 by inserting:

<DIVISION

SUBACUTE CARE FACILITIES FOR PERSONS WITH SERIOUS AND
PERSISTENT MENTAL ILLNESS

Sec. _____. NEW SECTION. 135P.1 Definitions.

As used in this chapter, unless the context
otherwise requires:

1. "*Department*" means the department of inspections
and appeals.

2. "*Direction*" means authoritative policy or
procedural guidance for the accomplishment of a
function or an activity.

3. "*Licensee*" means the holder of a license issued
to operate a subacute care facility for persons with
serious and persistent mental illness.

4. "*Mental health professional*" means the same as
defined in section 228.1.

5. "*Physician*" means a person licensed under
chapter 148.

6. "*Psychiatric services*" means services provided
under the direction of a physician which address
mental, emotional, medical, or behavioral problems.

7. "*Rehabilitative services*" means services to
encourage and assist restoration of a resident's
optimum mental and physical capabilities.

8. "*Resident*" means a person who is eighteen years
of age or older and has been admitted by a physician to
a subacute care facility for persons with serious and
persistent mental illness.

9. "*Treatment care plan*" means a plan of care and
services designed to eliminate the need for acute care
by improving the condition of a person with serious and
persistent mental illness. Services must be based upon
a diagnostic evaluation, which includes an examination
of the medical, psychological, social, behavioral,
and developmental aspects of the person's situation,
reflecting the need for inpatient care.

10. "*Subacute care facility for persons with
serious and persistent mental illness*" or "*subacute
care facility*" means an institution, place, building,
or agency with restricted means of egress designed
to provide accommodation, board, and the services
of a licensed psychiatrist for a period exceeding
twenty-four consecutive hours to three or more
individuals who primarily have serious and persistent
mental illness, diagnosis of a co-occurring disorder,
and are not related to the owner within the third
degree of consanguinity.

11. "*Supervision*" means direct oversight and

1 inspection of the act of accomplishing a function or
2 activity.

3 Sec. _____. NEW SECTION. 135P.2 Purpose.

4 The purpose of this chapter is to provide for
5 the development, establishment, and enforcement of
6 basic standards for the operation, construction, and
7 maintenance of a subacute care facility which will
8 ensure the safe and adequate diagnosis, evaluation, and
9 treatment of the residents.

10 Sec. _____. NEW SECTION. 135P.3 Nature of care —
11 seclusion room — admissions.

12 1. A subacute care facility shall utilize a team
13 of professionals to direct an organized program
14 of diagnostic services, psychiatric services, and
15 rehabilitative services to meet the needs of residents
16 in accordance with a treatment care plan developed
17 for each resident under the supervision of a licensed
18 psychiatrist. The goal of a treatment care plan is to
19 transition residents to a less restrictive environment,
20 including a home-based community setting. Social and
21 rehabilitative services shall be provided under the
22 direction of a mental health professional.

23 2. The licensed psychiatrist providing supervision
24 of the subacute care facility shall evaluate the
25 condition of each resident no less than two times
26 each month and shall be available to residents of
27 the facility on an on-call basis at all other times.
28 The subacute care facility may employ a seclusion
29 room meeting the conditions described in 42 C.F.R. §
30 483.364(b) with approval of the licensed psychiatrist
31 of the facility or by order of the resident's
32 physician.

33 3. An admission to the subacute care facility is
34 subject to a physician's written order certifying
35 that the individual being admitted requires regular
36 oversight by a licensed psychiatrist and requires no
37 greater degree of care than that which the facility to
38 which the admission is made is licensed to provide and
39 is capable of providing.

40 4. A subacute care facility does not constitute an
41 "*institution for mental diseases*" within the meaning of
42 42 U.S.C. § 1396d(i).

43 Sec. _____. NEW SECTION. 135P.4 Licensure.

44 1. A person shall not establish, operate, or
45 maintain a subacute care facility unless the person
46 obtains a license for the subacute care facility under
47 this chapter.

48 2. An intermediate care facility for persons with
49 mental illness licensed under chapter 135C may convert
50 to a subacute care facility by providing written

1 notice to the department that the facility has employed
2 a full-time psychiatrist and desires to make the
3 conversion.

4 Sec. _____. NEW SECTION. 135P.5 Application for
5 license.

6 An application for a license under this chapter
7 shall be submitted on a form requesting information
8 required by the department, which may include
9 affirmative evidence of the applicant's ability to
10 comply with the rules for standards adopted pursuant to
11 this chapter. An application for a license shall be
12 accompanied by the required license fee which shall be
13 credited to the general fund of the state. The initial
14 and annual license fee is twenty-five dollars.

15 Sec. _____. NEW SECTION. 135P.6 Inspection —
16 conditions for issuance.

17 The department shall issue a license to an applicant
18 under this chapter if the department has ascertained
19 that the applicant's facilities and staff are adequate
20 to provide the care and services required of a subacute
21 care facility and if the applicant has been awarded a
22 certificate of need pursuant to chapter 135.

23 Sec. _____. NEW SECTION. 135P.7 Denial, suspension,
24 or revocation of license.

25 The department may deny an application or suspend
26 or revoke a license if the department finds that an
27 applicant or licensee has failed or is unable to comply
28 with this chapter or the rules establishing minimum
29 standards pursuant to this chapter or if any of the
30 following conditions apply:

31 1. It is shown that a resident is a victim of
32 cruelty or neglect due to the acts or omissions of the
33 licensee.

34 2. The licensee has permitted, aided, or abetted in
35 the commission of an illegal act in the subacute care
36 facility.

37 3. An applicant or licensee acted to obtain
38 or to retain a license by fraudulent means,
39 misrepresentation, or submitting false information.

40 4. The licensee has willfully failed or neglected
41 to maintain a continuing in-service education and
42 training program for persons employed by the subacute
43 care facility.

44 5. The application involves a person who has failed
45 to operate a subacute care facility in compliance with
46 the provisions of this chapter.

47 Sec. _____. NEW SECTION. 135P.8 Provisional license.

48 The department may issue a provisional license,
49 effective for not more than one year, to a licensee
50 whose subacute care facility does not meet the

1 requirements of this chapter if, prior to issuance of
2 the license, the applicant submits written plans to
3 achieve compliance with the applicable requirements and
4 the plans are approved by the department. The plans
5 shall specify the deadline for achieving compliance.

6 Sec. _____. **NEW SECTION. 135P.9 Notice and hearings.**

7 The procedure governing notice and hearing to deny
8 an application or suspend or revoke a license shall
9 be in accordance with rules adopted by the department
10 pursuant to chapter 17A. A full and complete record
11 shall be kept of the proceedings and of any testimony.
12 The record need not be transcribed unless judicial
13 review is sought. A copy or copies of a transcript may
14 be obtained by an interested party upon payment of the
15 cost of preparing the transcript or copies.

16 Sec. _____. **NEW SECTION. 135P.10 Rules.**

17 The department of inspections and appeals, in
18 consultation with the department of human services and
19 affected professional groups, shall adopt and enforce
20 rules setting out the standards for a subacute care
21 facility and the rights of the residents admitted to a
22 subacute care facility. The department of inspections
23 and appeals and the department of human services shall
24 coordinate the adoption of rules and the enforcement of
25 the rules in order to prevent duplication of effort by
26 the departments and of requirements of the licensee.

27 Sec. _____. **NEW SECTION. 135P.11 Complaints alleging**
28 **violations — confidentiality.**

29 1. A person may request an inspection of a subacute
30 care facility by filing with the department a complaint
31 of an alleged violation of an applicable requirement
32 of this chapter or a rule adopted pursuant to this
33 chapter. The complaint shall state in a reasonably
34 specific manner the basis of the complaint. A
35 statement of the nature of the complaint shall be
36 delivered to the subacute care facility involved at
37 the time of or prior to the inspection. The name of
38 the person who files a complaint with the department
39 shall be kept confidential and shall not be subject
40 to discovery, subpoena, or other means of legal
41 compulsion for its release to a person other than
42 department employees involved in the investigation of
43 the complaint.

44 2. Upon receipt of a complaint made in accordance
45 with subsection 1, the department shall make a
46 preliminary review of the complaint. Unless the
47 department concludes that the complaint is intended
48 to harass a subacute care facility or a licensee or
49 is without reasonable basis, it shall within twenty
50 working days of receipt of the complaint make or cause

1 to be made an on-site inspection of the subacute care
2 facility which is the subject of the complaint. The
3 department of inspections and appeals may refer to the
4 department of human services any complaint received
5 by the department of inspections and appeals if the
6 complaint applies to rules adopted by the department
7 of human services. The complainant shall also be
8 notified of the name, address, and telephone number
9 of the designated protection and advocacy agency if
10 the alleged violation involves a facility with one
11 or more residents with a developmental disability or
12 mental illness. In any case, the complainant shall be
13 promptly informed of the result of any action taken by
14 the department in the matter.

15 3. An inspection made pursuant to a complaint filed
16 under subsection 1 need not be limited to the matter
17 or matters referred to in the complaint; however, the
18 inspection shall not be a general inspection unless
19 the complaint inspection coincides with a scheduled
20 general inspection. Upon arrival at the subacute
21 care facility to be inspected, the inspector shall
22 show identification to the person in charge of the
23 subacute care facility and state that an inspection
24 is to be made, before beginning the inspection. Upon
25 request of either the complainant or the department,
26 the complainant or the complainant's representative
27 or both may be allowed the privilege of accompanying
28 the inspector during any on-site inspection made
29 pursuant to this section. The inspector may cancel the
30 privilege at any time if the inspector determines that
31 the privacy of a resident of the subacute care facility
32 to be inspected would be violated. The dignity of the
33 resident shall be given first priority by the inspector
34 and others.

35 Sec. _____. NEW SECTION. 135P.12 Information
36 **confidential.**

37 1. The department's final findings regarding
38 licensure shall be made available to the public in a
39 readily available form and place. Other information
40 relating to the subacute care facility is confidential
41 and shall not be made available to the public except in
42 proceedings involving licensure, a civil suit involving
43 a resident, or an administrative action involving a
44 resident.

45 2. The name of a person who files a complaint with
46 the department shall remain confidential and is not
47 subject to discovery, subpoena, or any other means of
48 legal compulsion for release to a person other than an
49 employee of the department or an agent involved in the
50 investigation of the complaint.

1 3. Information regarding a resident who has
2 received or is receiving care shall not be disclosed
3 directly or indirectly except as authorized under
4 section 217.30.

5 Sec. _____. NEW SECTION. 135P.13 Judicial review.
6 Judicial review of the action of the department
7 may be sought pursuant to the Iowa administrative
8 procedure Act, chapter 17A. Notwithstanding chapter
9 17A, a petition for judicial review of the department's
10 actions under this chapter may be filed in the district
11 court of the county in which the related subacute care
12 facility is located or is proposed to be located. The
13 status of the petitioner or the licensee shall be
14 preserved pending final disposition of the judicial
15 review.

16 Sec. _____. NEW SECTION. 135P.14 Penalty.
17 A person who establishes, operates, or manages a
18 subacute care facility without obtaining a license
19 under this chapter commits a serious misdemeanor. Each
20 day of continuing violation following conviction shall
21 be considered a separate offense.

22 Sec. _____. NEW SECTION. 135P.15 Injunction.
23 Notwithstanding the existence or pursuit of another
24 remedy, the department may maintain an action for
25 injunction or other process to restrain or prevent the
26 establishment, operation, or management of a subacute
27 care facility without a license.

28 Sec. _____. Section 249A.26, subsection 2, Code 2011,
29 is amended by adding the following new paragraph:
30 NEW PARAGRAPH. d. Notwithstanding any provision
31 of this chapter to the contrary, for services provided
32 to eligible persons in a subacute care facility for
33 persons with serious and persistent mental illness
34 licensed under chapter 135P, the daily rate shall be
35 equal to the sum of the direct care Medicare-certified
36 hospital-based nursing facility patient-day-weighted
37 median and the nondirect care Medicare-certified
38 hospital-based nursing facility patient-day-weighted
39 median.

40 Sec. _____. IMPLEMENTATION OF ACT. Section 25B.2,
41 subsection 3, shall not apply to this division of this
42 Act.>

43 2. By renumbering as necessary.

PROPOSED COMMITTEE AMENDMENT