

FILED MAY 14 1975

Reprinted

SENATE FILE 525

By COMMITTEE ON HUMAN RESOURCES

Passed Senate, Date 5-23-75 (1565) Passed House, Date _____

Vote: Ayes 36 Nays 3 Vote: Ayes _____ Nays _____

Approved 7-14

Motion to reconsider filed 5-27 (1587) withdrawn 6-2 (1664)

A BILL FOR

1 An Act relating to the licensing and regulation of health
2 care facilities, and prescribing penalties for violations.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section one hundred thirty-five C point one
2 (135C.1), Code 1975, is amended to read as follows:

3 135C.1 DEFINITIONS.

4 ~~1.---"Adult-foster-home"-means-any-private-dwelling-or-other~~
5 ~~suitable-place-providing-for-a-period-exceeding-twenty-four~~
6 ~~consecutive-hours-accommodation, board, and supervision, for~~
7 ~~which-a-charge-is-made, to-not-more-than-two-individuals,~~
8 ~~not-related-to-the-owner-or-occupant-of-the-dwelling-or-place~~
9 ~~within-the-third-degree-of-consanguinity, who-by-reason-of~~
10 ~~age, illness, disease, or-physical-or-mental-infirmity-are~~
11 ~~unable-to-suffieiently-or-properly-care-for-themselves, but~~
12 ~~who-are-essentially-capable-of-managing-their-own-affairs.~~

13 ~~2.---"Boarding-home"-means-any-institution, place, building,~~
14 ~~or-agency-providing-for-a-period-exceeding-twenty-four~~
15 ~~consecutive-hours-accommodation, board, and supervision to~~
16 ~~three-or-more-individuals, not-related-to-the-administrator~~
17 ~~or-owner-thereof-within-the-third-degree-of-consanguinity,~~
18 ~~who-by-reason-of-age, illness, disease, or-physical-or-mental~~
19 ~~infirmity-are-unable-to-suffieiently-or-properly-care-for~~
20 ~~themselves, but-who-are-essentially-capable-of-managing-their~~
21 ~~own-affairs.~~

22 ~~3.---"Custodial-home"~~ 1. "Residential care facility" means
23 any institution, place, building, or agency providing for
24 a period exceeding twenty-four consecutive hours accommodation,
25 board, and personal assistance ~~in-feeding, dressing,~~ and other
26 essential daily living activities to three or more individuals,
27 not related to the administrator or owner thereof within the
28 third degree of consanguinity, who by reason of age, illness,
29 disease, or physical or mental infirmity are unable to
30 sufficiently or properly care for themselves ~~or-manage-their~~
31 ~~own-affairs,~~ but who do not require the daily services of
32 a registered or licensed practical nurse except on an emergency
33 basis.

34 ~~4.---"Basic-nursing-home"-means-any-institution, place,~~
35 ~~building, or-agency-providing-for-a-period-exceeding-twenty-~~

1 four-consecutive-hours-accommodation,-board,-and-personal
2 care-and-treatment-or-simple-nursing-care-to-three-or-more
3 individuals,-not-related-to-the-administrator-or-owner-thereof
4 within-the-third-degree-of-consanguinity,-who-by-reason-of
5 age,-illness,-disease,-or-physical-or-mental-infirmity-require
6 domiciliary-care,-simple-nursing-care,-or-occasional-skilled
7 nursing-care,-but-who-do-not-require-hospital-or-skilled
8 nursing-home-care.

9 5 2. "Intermediate nursing-home care facility" means any
10 institution, place, building, or agency providing for a period
11 exceeding twenty-four consecutive hours accommodation, board,
12 and nursing care-and-supporting services as directed, the
13 need for which is certified by a physician, to three or more
14 individuals, not related to the administrator or owner thereof
15 within the third degree of consanguinity, who by reason of
16 age, illness, disease, or physical or mental infirmity require
17 continuous-nursing-care-and-related-medical-services,-or
18 occasional-skilled-nursing-care,-but-who-do-not-require
19 hospital-care nursing services which can be provided only
20 under the direction of a registered nurse or a licensed
21 practical nurse.

22 6 3. "Skilled nursing home facility" means any institution,
23 place, building, or agency providing for a period exceeding
24 twenty-four consecutive hours accommodation, board, and the
25 health-care nursing services necessary-for-certification-as
26 a-skilled-nursing-home-under-Title-XIX-of-the-United-States
27 Social-Security-Act-(Title-XLII,-United-States-Code,-sections
28 4396-through-4396g),-as-amended-to-January-4,-1970, the need
29 for which is certified by a physician, to three or more
30 individuals not related to the administrator or owner thereof
31 within the third degree of consanguinity who by reason of
32 age, illness, disease, or physical or mental infirmity require
33 continuous nursing care services and related medical services,
34 but do not require hospital care. The nursing care services
35 provided must be under the direction of a registered nurse

1 on a twenty-four-hours-per-day basis.

2 7.---"Extended-care facility" means any institution, place,
3 building, or agency providing for a period exceeding twenty-
4 four consecutive hours accommodation, board, and the health
5 care services necessary for certification as an extended-care
6 facility under Title XVIII of the United States Social Security
7 Act (Title XLII, United States Code, sections 1395 through
8 139544), as amended to January 1, 1970, to three or more
9 individuals not related to the administrator or owner thereof
10 within the third degree of consanguinity.

11 84. "Health care facility" or "facility" means any adult
12 foster home, boarding home, custodial home, basic nursing
13 home residential care facility, intermediate nursing home
14 care facility or, skilled nursing home, or extended-care
15 facility.

16 9.---"Patient" means an individual admitted to a basic
17 nursing home, intermediate nursing home, skilled nursing home,
18 or extended-care facility in the manner prescribed by section
19 135C.23 for care requiring, at a minimum, the daily services
20 of a registered or licensed practical nurse.

21 5. "Licensee" means the holder of a license issued for
22 the operation of a facility, pursuant to this chapter.

23 40 6. "Resident" means an individual admitted to a health
24 care facility in the manner prescribed by section 135C.23,
25 who does not require the daily services of a registered or
26 licensed practical nurse.---An employee of, or an individual
27 related within the third degree of consanguinity to the
28 administrator or owner of, a health care facility shall not
29 be deemed a resident thereof for the purposes of this chapter
30 solely by reason of being provided living quarters within
31 such facility.

32 44 7. "Physician" means a person licensed to practice
33 medicine and surgery, osteopathy and surgery or osteopathy
34 under the laws of this state has the meaning assigned that
35 term by section one hundred thirty-five point one (135.1),

1 subsection five (5) of the Code.

2 8. "House physician" means a physician who has entered
3 into a two-party contract with a health care facility to
4 provide services in that facility.

5 9. "Commissioner" means the commissioner of public
6 health appointed pursuant to section 135.2, or his designee.

7 10. "Department" means the state department of health.

8 11. "Person" means any individual, firm, partnership,
9 corporation, company, association or joint stock association;
10 and includes trustee, receiver, assignee or other similar
11 representative thereof.

12 12. "Governmental unit" means the state, or any county,
13 municipality, or other political subdivision or any department,
14 division, board or other agency of any of the foregoing.

15 13. "Direction" means authoritative policy or procedural
16 guidance for the accomplishment of a function or activity.

17 14. "Supervision" means direct oversight and inspection
18 of the act of accomplishing a function or activity.

19 Sec. 2. Section one hundred thirty-five C point two
20 (135C.2), subsection two (2), Code 1975, is amended to read
21 as follows:

22 2. Rules and standards prescribed, promulgated and enforced
23 under this chapter shall not be arbitrary, unreasonable or
24 confiscatory and the department or agency prescribing,
25 promulgating or enforcing such rules or standards shall have
26 the burden of proof to establish that such rules or standards
27 meet such requirements and are consistent with the economic
28 problems and conditions involved in the care and housing of
29 persons in ~~nursing-homes-and-custodial-homes~~ health care
30 facilities.

31 Sec. 3. Section one hundred thirty-five C point two
32 (135C.2), Code 1975, is amended by adding the following new
33 subsection:

34 NEW SUBSECTION. The department shall establish by
35 administrative rule, within the intermediate care facility

1 category, a special classification for facilities intended
2 to serve mentally retarded individuals. The department may
3 also establish by administrative rule other classifications
4 within that category, or special classifications within the
5 residential care facility or skilled nursing facility
6 categories, for facilities intended to serve individuals who
7 have special health care problems or conditions in common.
8 Rules establishing a special classification shall define the
9 problem or condition to which the classification is relevant
10 and establish requirements for an approved program of care
11 commensurate with such problem or condition, and may grant
12 special variances or considerations to facilities licensed
13 within the classification so established.

14 Sec. 4. Section one hundred thirty-five C point three
15 (135C.3), Code 1975, is amended to read as follows:

16 135C.3 NATURE OF CARE. Each facility licensed as an
17 ~~extended-care-facility~~, a skilled nursing ~~home~~, facility or
18 an intermediate ~~nursing-home~~, ~~or-a-basic-nursing-home~~, care
19 facility shall provide an organized continuing twenty-four
20 hour program of nursing ~~care~~ services commensurate with the
21 needs of ~~the-patients~~ its residents and under the immediate
22 direction of a licensed physician, licensed registered nurse
23 or licensed practical nurse licensed by the state of Iowa,
24 whose combined training and supervised experience is such
25 as to assure adequate and competent nursing direction. Med-
26 ical and nursing ~~care~~ services shall be under the direction
27 of either a "house physician" or individually selected
28 physicians, but surgery or obstetrical care shall not be
29 provided within the ~~home~~ facility. All admissions to ~~extended~~
30 ~~care-facilities~~, skilled nursing ~~homes~~, facilities or
31 intermediate ~~nursing-homes~~, ~~and-basic-nursing-homes~~ care
32 facilities shall be based on an order written by a physician
33 certifying that the individual being admitted requires no
34 greater degree of nursing care than the facility to which
35 the admission is made is licensed to provide and is capable

1 of providing.

2 Sec. 5. Section one hundred thirty-five C point four
3 (135C.4), Code 1975, is amended to read as follows:

4 135C.4 ~~EUSTODIAL-HOMES~~ RESIDENTIAL CARE FACILITIES. Each
5 facility licensed as a ~~eustodial-home-or-boarding-home~~ residen-
6 tial care facility shall provide an organized continuous
7 twenty-four hour program of care commensurate with the needs
8 of the residents of the home and under the immediate direction
9 of a person approved and certified by the department whose
10 combined training and supervised experience is such as to
11 ensure adequate and competent care. All admissions to
12 ~~eustodial-homes, boarding-homes, or adult-foster-homes~~
13 residential care facilities shall be based on an order written
14 by a physician certifying that the individual being admitted
15 does not require nursing care services.

16 Sec. 6. Section one hundred thirty-five C point five
17 (135C.5), Code 1975, is amended to read as follows:

18 135C.5 HEALTH CARE FACILITIES, ETC. No other business
19 or activity shall be carried on in a health care facility,
20 nor in the same physical structure with a health care facility
21 except as hereinafter provided, unless such business or
22 activity is under the control of and is directly related to
23 ~~or-necessary-for~~ and incidental to the operation of the health
24 care facility. No business or activity which is operated
25 within the limitations of this section shall interfere in
26 any manner with the use of the facility by the ~~patients-or~~
27 residents, nor be disturbing to them. ~~Any-part-of-such~~
28 ~~business-or-activity-open-to-customers-other-than-patients~~
29 ~~or-residents-of-the-health-care-facility-shall-be-physically~~
30 ~~separated-from-the-facility, and an entrance shall be provided~~
31 ~~for-such-customers-so-that-they-do-not-pass-through-the-health~~
32 ~~care-facility-in-entering-or-leaving-the-area-where-such~~
33 ~~business-or-activity-is-conducted.~~

34 Sec. 7. Section one hundred thirty-five C point six
35 (135C.6), subsections four (4) and five (5), Code 1975, are

1 amended to read as follows:

2 4. No department, agency, or officer of this state or
3 of any of its political subdivisions shall pay or approve
4 for payment from public funds any amount or amounts to a
5 health care facility under any program of state aid in
6 connection with services provided or to be provided an actual
7 or prospective ~~patient-or~~ resident in a health care facility,
8 unless the facility has a current license issued by the
9 department and meets such other requirements as may be in
10 effect pursuant to law.

11 5. No health care facility established and operated in
12 compliance with law prior to ~~July-17-1970~~ January 1, 1976,
13 shall be required to change its corporate or business name
14 by reason of the definitions prescribed in section 135C.1,
15 provided that no health care facility shall at any time
16 represent or hold out to the public or to any individual that
17 it is licensed as, or provides the services of, a health care
18 facility of a type offering a higher grade of care than such
19 health care facility is licensed to provide. Any health care
20 facility which, by virtue of this section, operates under
21 a name not accurately descriptive of the type of license which
22 it holds shall clearly indicate in any printed advertisement,
23 letterhead, or similar material, the type of license or
24 licenses which it has in fact been issued. No health care
25 facility established or renamed after ~~July-17-1974~~ January
26 1, 1976, shall use any name indicating that it holds a ~~higher~~
27 different type of license than it has been issued.

28 Sec. 8. Section one hundred thirty-five C point seven
29 (135C.7), Code 1975, is amended to read as follows:

30 135C.7 APPLICATION--FEES. Licenses shall be obtained
31 from the department. Applications shall be upon such forms
32 and shall include such information as the department may
33 reasonably require, which may include affirmative evidence
34 of compliance with such other statutes and local ordinances
35 as may be applicable. Each application for license shall

1 be accompanied by the annual license fee prescribed by this
2 section, subject to refund to the applicant if the license
3 is denied, which fee shall be paid over into the state treasury
4 and credited to the general fund if the license is issued.
5 There shall be an annual license fee based upon the bed
6 capacity of the health care facility, as follows:

7 ~~1.--For-extended-care-facilities,-skilled-nursing-homes,-~~
8 ~~intermediate-nursing-homes,-and-basic-nursing-homes-having~~
9 ~~a-total-of:~~

- 10 a 1. Ten beds or less, ~~ten~~ twenty dollars.
- 11 b 2. More than ten and not more than twenty-five beds,
12 ~~twenty~~ forty dollars.
- 13 e 3. More than twenty-five and not more than seventy-five
14 beds, ~~thirty~~ sixty dollars.
- 15 d 4. More than seventy-five and not more than one hundred
16 fifty beds, ~~forty~~ eighty dollars.
- 17 e 5. More than one hundred fifty beds, ~~fifty~~ one hundred
18 dollars.

19 ~~2.--For-adult-foster-homes,-boarding-homes,-and-custodial~~
20 ~~homes,-having-a-total-of:~~

- 21 ~~a.--Ten-beds-or-less,-five-dollars-~~
- 22 ~~b.--More-than-ten-and-not-more-than-twenty-five-beds,-ten~~
23 ~~dollars-~~
- 24 ~~c.--More-than-twenty-five-and-not-more-than-seventy-five~~
25 ~~beds,-fifteen-dollars-~~
- 26 ~~d.--More-than-seventy-five-and-not-more-than-one-hundred~~
27 ~~fifty-beds,-twenty-dollars-~~
- 28 ~~e.--More-than-one-hundred-fifty-beds,-twenty-five-dollars-~~

29 Sec. 9. Section one hundred thirty-five C point nine
30 (135C.9), Code 1975, is amended to read as follows:

31 135C.9 INSPECTION BEFORE ISSUANCE.

32 1. The department shall not issue a health care facility
33 license to any applicant until:

- 34 4 a. The department has ascertained that the staff and
35 equipment of the facility is adequate to provide the care

1 and services required of a health care facility of the category
2 for which the license is sought. Prior to the review and
3 approval of plans and specifications for any new facility
4 and the initial licensing under a new licensee, a resume of
5 the programs and services to be furnished and of the means
6 available to the applicant for providing the same and for
7 meeting requirements for staffing, equipment, and operation
8 of the health care facility, with particular reference to
9 the professional requirements for services to be rendered,
10 shall be submitted in writing to the department for review
11 and approval. The resume shall be reviewed by the department
12 and shall, upon the department's request, be revised as
13 appropriate by the facility from time to time after issuance
14 of a license.

15 2 b. The facility has been inspected by the state fire
16 marshal or a deputy appointed by him for that purpose, who
17 may be a member of a municipal fire department, and the
18 department has received either a certificate of compliance
19 or a ~~conditional~~ provisional certificate of compliance by
20 the facility with the fire-hazard and fire-safety rules and
21 standards of the department as promulgated by the fire marshal
22 and, where applicable, the fire safety standards required
23 for participation in programs authorized by either Title XVIII
24 or Title XIX of the United States Social Security Act (Title
25 XLII, United States Code, sections one thousand three hundred
26 ninety-five (1395) through one thousand three hundred ninety-
27 five 11 (139511) and one thousand three hundred ninety-six
28 (1396) through one thousand three hundred ninety-six g
29 (1396g)). The certificate or ~~conditional~~ provisional

30 certificate shall be signed by the fire marshal or his deputy
31 who made the inspection.

32 2. The rules and standards promulgated by the fire marshal
33 pursuant to subsection one (1), paragraph b of this section
34 shall be substantially in keeping with the latest generally
35 recognized safety criteria for the facilities covered, of

1 which the applicable criteria recommended and published from
2 time to time by the national fire protection association shall
3 be prima-facie evidence.

4 3. The state fire marshal or his deputy may issue a
5 ~~conditional-certificate~~ successive provisional certificates
6 of compliance for ~~a-period~~ periods of one year each to a
7 facility which is in substantial compliance with the applicable
8 fire-hazard and fire-safety rules and standards, upon
9 satisfactory evidence of an intent, in good faith, by the
10 owner or operator of the facility to correct the deficiencies
11 noted upon inspection within a reasonable period of time as
12 determined by the state fire marshal or his deputy. Renewal
13 of a ~~conditional~~ provisional certificate shall be based on
14 a showing of substantial progress in eliminating deficiencies
15 noted upon the last previous inspection of the facility without
16 the appearance of additional deficiencies other than those
17 arising from changes in the fire-hazard and fire-safety rules,
18 regulations and standards which have occurred since the last
19 previous inspection, except that substantial progress toward
20 achievement of a good-faith intent by the owner or operator
21 to replace the entire facility within a reasonable period
22 of time, as determined by the state fire marshal or his deputy,
23 may be accepted as a showing of substantial progress in
24 eliminating deficiencies, for the purposes of this section.

25 Sec. 10. Section one hundred thirty-five C point ten
26 (135C.10), Code 1975, is amended to read as follows:

27 135C.10 DENIAL, SUSPENSION OR REVOCATION. The department
28 shall have the authority to deny, suspend, or revoke a license
29 in any case where the department finds that there has been
30 a repeated failure on the part of the facility to comply with
31 the provisions of this chapter or the rules or minimum
32 standards promulgated hereunder, or for any of the following
33 reasons:

34 1. Cruelty or indifference to ~~the-welfare~~ of health care
35 facility residents ~~or-patients~~.

1 2. Appropriation or conversion of the property of a health
2 care facility resident ~~or-patient~~ without his written consent
3 or the written consent of his legal guardian.

4 ~~3.---Evidence-that-the-moral-character-of-the-applicant,~~
5 ~~manager-or-supervisor-of-the-health-care-facility-is-not~~
6 ~~reputable.~~

7 4 3. Permitting, aiding, or abetting the commission of
8 any illegal act in the health care facility.

9 5 4. Inability or failure to operate and conduct the
10 health care facility in accordance with the requirements of
11 this chapter and the minimum standards and rules issued
12 pursuant thereto.

13 6 5. Obtaining or attempting to obtain or retain a license
14 by fraudulent means, misrepresentation, or by submitting false
15 information.

16 7 6. Habitual intoxication or addiction to the use of
17 drugs by the applicant, manager or supervisor of the health
18 care facility.

19 8 7. Securing the devise or bequest of the property of
20 a ~~patient-in~~ resident of a health care facility by undue
21 influence.

22 8. Willful failure or neglect to maintain a continuing
23 in-service education and training program for all personnel
24 employed in the facility.

25 9. In the case of an application by an existing licensee
26 for a new or newly-acquired facility, continuing or repeated
27 failure of the licensee to operate any previously licensed
28 facility or facilities in compliance with the provisions of
29 this Act or of the rules adopted pursuant to it.

30 Sec. 11. Section one hundred thirty-five C point eleven
31 (135C.11), Code 1975, is amended to read as follows:

32 135C.11 NOTICE--HEARINGS. ~~Such-denial~~

33 1. The denial, suspension, or revocation of a license
34 shall be effected by mailing delivering to the applicant or
35 licensee by certified mail or by personal service of a notice

1 setting forth the particular reasons for such action. Such
2 denial, suspension, or revocation shall become effective
3 thirty days after the mailing or service of the notice, unless
4 the applicant or licensee, within such thirty-day period,
5 shall give written notice to the department requesting a
6 hearing, in which case the notice shall be deemed to be
7 suspended. If a hearing has been requested, the applicant
8 or licensee shall be given an opportunity for a prompt and
9 fair hearing before the department. At any time at or prior
10 to the hearing the department may rescind the notice of the
11 denial, suspension or revocation upon being satisfied that
12 the reasons for the denial, suspension or revocation have
13 been or will be removed. On the basis of any such hearing,
14 or upon default of the applicant or licensee, the determination
15 involved in the notice may be affirmed, modified, or set aside
16 by the department. A copy of such decision shall be sent
17 by certified mail, or served personally upon the applicant
18 or licensee. The applicant or licensee may seek judicial
19 review pursuant to section 135C.13.

20 2. The procedure governing hearings authorized by this
21 section shall be in accordance with the rules promulgated
22 by the department. A full and complete record shall be kept
23 of all proceedings, and all testimony shall be reported but
24 need not be transcribed unless judicial review is sought
25 pursuant to section 135C.13. A copy or copies of the
26 transcript may be obtained by an interested party upon payment
27 of the cost of preparing such copy or copies. Witnesses may
28 be subpoenaed by either party and shall be allowed fees at
29 a rate prescribed by the aforesaid rules. The commissioner
30 may, with the advice and consent of the care review committee
31 established pursuant to section 135C.25, remove all residents
32 ~~and-patients~~ and suspend the license or licenses of any health
33 care facility, prior to a hearing, when he finds that the
34 health or safety of residents ~~or-patients~~ of the health care
35 facility requires such action on an emergency basis. The

1 fact that no care review committee has been appointed for
2 a particular facility shall not bar the commissioner from
3 exercising the emergency powers granted by this subsection
4 with respect to that facility.

5 Sec. 12. Section one hundred thirty-five C point thirteen
6 (135C.13), Code 1975, is amended to read as follows:

7 135C.13 JUDICIAL REVIEW. Judicial review of any action
8 of the commissioner may be sought in accordance with the terms
9 of the Iowa administrative procedure Act. Notwithstanding
10 the terms of said Act, petitions for judicial review may be
11 filed in the district court of the county where the facility
12 or proposed facility is located, and pending final disposition
13 of the matter the status quo of the applicant or licensee
14 shall be preserved except when the commissioner, with the
15 advice and consent of the care review committee established
16 pursuant to section 135C.25, determines that the health,
17 safety or welfare of the residents ~~or-patients~~ of the facility
18 are in immediate danger, in which case he may order the
19 immediate removal of such residents ~~or-patients~~. The fact
20 that no care review committee has been appointed for a
21 particular facility shall not bar the commissioner from
22 exercising the emergency powers granted by this subsection
23 with respect to that facility.

24 Sec. 13. Section one hundred thirty-five C point fourteen
25 (135C.14), Code 1975, is amended to read as follows:

26 135C.14 RULES. The department ~~may~~ shall, in accordance
27 with chapter seventeen A (17A) of the Code, adopt ~~by-reference~~
28 ~~nationally-recognized-standards-and-rules-or-otherwise-amend,~~
29 ~~promulgate~~ and enforce rules setting minimum standards for
30 health care facilities. In so doing, the department may adopt
31 by reference, with or without amendment, nationally recognized
32 standards and rules, which shall be specified by title and
33 edition, date of publication, or similar information. Such
34 The rules and standards required by this section shall be
35 formulated in consultation with the commissioner of social

1 services or his designee, and shall be designed to further
2 the accomplishment of the purposes of this chapter and shall
3 relate to:

4 1. Location and construction of the facility, including
5 plumbing, heating, lighting, ventilation, and other housing
6 conditions, which shall ensure the health, safety and comfort
7 of residents and protection from fire hazards. Such rules
8 and standards regarding location and construction of the home
9 may impose requirements in excess of those provided in chapter
10 413 but shall not impose requirements less than those provided
11 by such chapter. The rules of the department relating to
12 protection from fire hazards and fire safety shall be
13 promulgated by the state fire marshal, and shall be in keeping
14 with the latest generally recognized safety criteria for the
15 facilities covered of which the applicable criteria recommended
16 and published from time to time by the national fire protection
17 association shall be prima facie evidence.

18 2. Number and qualifications of all personnel, including
19 management and nursing personnel, having responsibility for
20 any part of the care provided to residents ~~or~~-patients.

21 3. All sanitary conditions within the facility and its
22 surroundings including water supply, sewage disposal, food
23 handling, and general hygiene, which shall ensure the health
24 and comfort of residents ~~or~~-patients.

25 4. Diet related to the needs of each resident ~~or~~-patient
26 and based on good nutritional practice and on recommendations
27 which may be made by the physician attending the resident
28 ~~or~~-patient.

29 5. Equipment essential to the health and welfare of the
30 resident ~~or~~-patient.

31 6. Requirements that a specified number of registered
32 or licensed practical nurses and nurses' aides, relative to
33 the number of residents admitted, be employed by each licensed
34 facility.

35 7. Social services and rehabilitative services provided

1 for the residents.

2 Sec. 14. Section one hundred thirty-five C point fifteen
3 (135C.15), Code 1975, is amended to read as follows:

4 135C.15 TIME TO COMPLY.

5 1. Any health care facility which is in operation at the
6 time of adoption or promulgation of any applicable rules or
7 minimum standards under this chapter shall be given reasonable
8 time not to exceed twelve months from the date of such
9 promulgation to comply with such rules and minimum standards
10 as provided for by the department.

11 2. Renovation of an existing health care facility, not
12 already in compliance with all applicable standards, shall
13 be permitted only if the fixtures and equipment to be installed
14 and the services to be provided in the renovated portion of
15 the facility will conform substantially to current operational
16 standards. Construction of an addition to an existing health
17 care facility shall be permitted only if the design of the
18 structure, the fixtures and equipment to be installed, and
19 the services to be provided in the addition will conform
20 substantially to current construction and operational
21 standards.

22 Sec. 15. Section one hundred thirty-five C point sixteen
23 (135C.16), Code 1975, is amended to read as follows:

24 135C.16 INSPECTIONS.

25 1. ~~The~~ In addition to the inspections required by section
26 one hundred thirty-five C point nine (135C.9) of the Code
27 and by section twenty-five (25) of this Act, the department
28 shall make or cause to be made such further unannounced
29 inspections as it may deem necessary to adequately enforce
30 this chapter, and shall including at least one general
31 inspection in each calendar year of every licensed health
32 care facility in the state made without providing advance
33 notice of any kind to the facility being inspected. Any
34 employee of the department who gives unauthorized advance
35 notice of an inspection made or planned to be made under this

1 subsection or section twenty-five (25) of this Act shall be
2 disciplined as determined by the commissioner, except that
3 if the employee is employed pursuant to chapter nineteen A
4 (19A) of the Code the discipline shall not exceed that
5 authorized pursuant to that chapter.

6 2. The department shall prescribe by rule that any licensee
7 or applicant for license desiring to make specific types of
8 physical or functional alterations or additions to its facility
9 or to construct new facilities shall, before commencing such
10 alteration or additions or new construction, submit plans
11 and specifications therefor to the department for preliminary
12 inspection and approval or recommendations with respect to
13 the compliance with the rules and standards herein authorized.

14 3. An inspector of the department, ~~department of social~~
15 services, ~~county board of social welfare or fire marshal~~
16 may enter any licensed health care facility without a warrant,
17 and may examine all records pertaining to operation of the
18 facility and to the care provided residents of the facility.
19 An inspector of the department of social services shall have
20 the same right with respect to any facility where one or more
21 residents are cared for entirely or partially at public expense
22 and the state fire marshal or a deputy appointed pursuant
23 to section one hundred thirty-five C point nine (135C.9),
24 subsection one (1), paragraph b shall have the same right
25 of entry into any facility and the right to inspect any records
26 pertinent to fire safety practices and conditions within that
27 facility. If any such inspector has probable cause to believe
28 that any institution, place, building, or agency not licensed
29 as a health care facility is in fact a health care facility
30 as defined by this chapter, and upon properly identifying
31 himself he is denied entry thereto for the purpose of making
32 an inspection, he may, with the assistance of the county
33 attorney of the county in which the purported health care
34 facility is located, apply to the district court for an order
35 requiring the owner or occupant to permit entry and inspection

1 of the premises to determine whether there have been any
2 violations of this chapter.

3 Sec. 16. Section one hundred thirty-five C point seventeen
4 (135C.17), Code 1975, is amended to read as follows:

5 135C.17 DUTIES OF OTHER DEPARTMENTS. It shall be the
6 duty of the department of social services, state fire marshal,
7 and the officers and agents of other state and local
8 governmental units to assist the department in carrying out
9 the provisions of this chapter, insofar as the functions of
10 these respective offices and departments are concerned with
11 the health, welfare, and safety of any resident ~~or-patient~~
12 of any health care facility.

13 Sec. 17. Section one hundred thirty-five C point nineteen
14 (135C.19), Code 1975, is amended to read as follows:

15 135C.19 PUBLIC DISCLOSURE OF INSPECTION FINDINGS--POSTING
16 OF CITATIONS.

17 1. Following any inspection of a health care facility
18 by the department, the findings of the inspection with respect
19 to compliance by the facility with requirements for licensing
20 under this chapter shall be made public in a readily available
21 form and place forty-five days after the findings are made
22 available to the applicant or licensee. However, if the
23 applicant or licensee requests a hearing pursuant to section
24 135C.11, the findings of the inspection shall not be made
25 public until the hearing has been completed. Other information
26 relating to any health care facility, obtained by the
27 department through reports, investigations, complaints, or
28 as otherwise authorized by this chapter, which is not a part
29 of the department's findings from an inspection of the
30 facility, shall not be disclosed publicly except in proceedings
31 involving the citation of a facility for a violation, in the
32 manner provided by section twenty-seven (27) of this Act,
33 or the denial, suspension or revocation of a license under
34 this chapter.

35 2. Each citation for a class I or class II violation which

1 is issued to a health care facility and which has become
2 final, or a copy or copies thereof, shall be prominently
3 posted as prescribed in rules to be adopted by the department,
4 until the violation is corrected to the department's
5 satisfaction. The citation or copy shall be posted in a place
6 or places in plain view of the residents of the facility
7 cited, persons visiting the residents, and persons inquiring
8 about placement in the facility. A copy of each citation
9 required to be posted by this subsection shall be sent by
10 the department to the department of social services.

11 Sec. 18. Section one hundred thirty-five C point twenty-
12 one (135C.21), Code 1975, is amended to read as follows:

13 135C.21 ~~PENALTY~~ PENALTIES.

14 1. Any person establishing, conducting, managing, or oper-
15 ating any health care facility without a license shall be
16 guilty of a misdemeanor and, upon conviction thereof, shall
17 be fined not less than one hundred dollars nor more than one
18 thousand dollars or be imprisoned in the county jail for not
19 more than six months, or both. Each day of continuing
20 violation after conviction or notice from the department by
21 certified mail of a violation shall be considered a separate
22 offense. Any such person establishing, conducting, managing
23 or operating any health care facility without a license may
24 be by any court of competent jurisdiction temporarily or
25 permanently restrained therefrom in any action brought by
26 the state.

27 2. Any person who prevents or interferes with or attempts
28 to impede in any way any duly authorized representative of
29 the department or of any of the agencies referred to in section
30 one hundred thirty-five C point seventeen (135C.17) of the
31 Code in the lawful enforcement of this chapter or of the rules
32 adopted pursuant to it is guilty of a misdemeanor and, upon
33 conviction, shall be subject to a fine of not less than fifty
34 nor more than five hundred dollars or imprisonment in the
35 county jail for not more than ninety days or both. As used

1 in this subsection, lawful enforcement includes but is not
2 limited to:

3 a. Contacting or interviewing any resident of a health
4 care facility in private at any reasonable hour and without
5 advance notice.

6 b. Examining any relevant books or records of a health
7 care facility.

8 c. Preserving evidence of any violation of this chapter
9 or of the rules adopted pursuant to it.

10 Sec. 19. Section one hundred thirty-five C point twenty-
11 three (135C.23), Code 1975, is amended to read as follows:

12 135C.23 EXPRESS REQUIREMENTS FOR ADMISSION OR RESIDENCE.

13 No individual shall be admitted to or permitted to remain
14 in a health care facility as a ~~patient-or~~ resident, except
15 in accordance with the requirements of this section.

16 1. Each ~~patient-or~~ resident shall be covered by a contract
17 executed at the time of admission or prior thereto by the
18 ~~patient-or~~ resident, or his legal representative, and the
19 health care facility, except as otherwise provided by
20 subsection five (5) of this section with respect to residents
21 admitted at public expense to a county care facility operated
22 under chapter two hundred fifty-three (253) of the Code.

23 Each party to the contract shall be entitled to a duplicate
24 original thereof, and the health care facility shall keep
25 on file all contracts which it has with ~~patients-or~~ residents
26 and shall not destroy or otherwise dispose of any such contract
27 for at least one year after its expiration or such longer
28 period as the department may by rule require. Each such
29 contract shall expressly set forth:

30 a. The terms of the contract.

31 b. The services and accommodations to be provided by the
32 health care facility and the rates or charges therefor.

33 c. Specific descriptions of any duties and obligations
34 of the parties in addition to those required by operation
35 of law.

1 d. Any other matters deemed appropriate by the parties
2 to the contract. No contract or any provision thereof shall
3 be drawn or construed so as to relieve any health care facility
4 of any requirement or obligation imposed upon it by this
5 chapter or any standards or rules in force pursuant to this
6 chapter, nor contain any disclaimer of responsibility for
7 injury to the resident, or to relatives or other persons
8 visiting the resident, which occurs on the premises of the
9 facility or, with respect to injury to the resident, which
10 occurs while the resident is under the supervision of any
11 employee of the facility whether on or off the premises of
12 the facility.

13 2. No health care facility shall knowingly admit or retain
14 any ~~patient-or~~ resident:

15 a. Who is dangerous to himself or other ~~patients-or~~
16 residents.

17 b. Who is in an active or acute stage of alcoholism, drug
18 addiction, mental illness, or communicable disease.

19 c. Whose condition or conduct is such that he would be
20 unduly disturbing to other ~~patients-or~~ residents.

21 d. Who is in need of medical procedures, as determined
22 by a physician, or services, ~~as determined by the care review~~
23 ~~committee,~~ which cannot be or are not being carried out in
24 the facility.

25 3. Except in emergencies, a ~~patient-or~~ resident who is
26 not essentially capable of managing his own affairs shall
27 not be transferred out of a health care facility or discharged
28 for any reason ~~only-after~~ without prior notification to the
29 next of kin, legal representative, or agency acting on the
30 ~~patient's-or~~ resident's behalf. When such next of kin, legal
31 representative, or agency cannot be reached or refuses to
32 co-operate, proper arrangements shall be made by the home
33 facility for the welfare of the ~~patient-or~~ resident before
34 his transfer or discharge.

35 4. No owner, administrator, employee, or representative

1 of a health care facility, shall pay any commission, bonus,
2 or gratuity in any form whatsoever, directly or indirectly,
3 to any person for ~~patients-or~~ residents referred to such
4 facility, nor accept any commission, bonus, or gratuity in
5 any form whatsoever, directly or indirectly, for professional
6 or other services or supplies purchased by the facility or
7 by any resident, or by any third party on behalf of any
8 resident, of the facility.

9 5. Each county which maintains a county care facility
10 under chapter two hundred fifty-three (253) of the Code shall
11 develop a statement in lieu of, and setting forth substantially
12 the same items as, the contracts required of other health
13 care facilities by subsection one (1) of this section. The
14 statement must be approved by the county board of supervisors
15 and by the department. When so approved, the statement shall
16 be considered in force with respect to each resident of the
17 county care facility.

18 Sec. 20. Section one hundred thirty-five C point twenty-
19 four (135C.24), Code 1975, is amended to read as follows:

20 135C.24 PERSONAL PROPERTY OR AFFAIRS OF PATIENTS OR
21 RESIDENTS. The admission of a ~~patient-or~~ resident to a health
22 care facility and his presence therein shall not in and of
23 itself confer on such facility, its owner, administrator,
24 employees, or representatives any authority to manage, use,
25 or dispose of any property of the ~~patient-or~~ resident, nor
26 any authority or responsibility for the personal affairs of
27 the ~~patient-or~~ resident, except as may be necessary for the
28 safety and orderly management of the facility and as required
29 by this section.

30 1. No health care facility, and no owner, administrator,
31 employee or representative thereof shall act as guardian,
32 trustee or conservator for any ~~patient-or~~ resident of such
33 facility, or any of such ~~patient's-or~~ resident's property,
34 unless such ~~patient-or~~ resident is related to the person
35 acting as guardian within the third degree of consanguinity.

1 2. A health care facility shall provide for the safekeeping
2 of personal effects, funds and other property of its patients
3 ~~or~~ residents, provided that whenever necessary for the
4 protection of valuables or in order to avoid unreasonable
5 responsibility therefor, the facility may require that they
6 be excluded or removed from the premises of the facility and
7 kept at some place not subject to the control of the facility.

8 3. A health care facility shall keep complete and accurate
9 records of all funds and other effects and property of its
10 patients-~~or~~ residents received by it for safekeeping.

11 4. Any funds or other property belonging to or due a
12 patient-~~or~~ resident, or expendable for his account, which
13 are received by a health care facility shall be trust funds,
14 shall be kept separate from the funds and property of the
15 facility and of its other patients-~~or~~ residents, or
16 specifically credited to such patient-~~or~~ resident, and shall
17 be used or otherwise expended only for the account of the
18 patient-~~or~~ resident. Upon request the facility shall furnish
19 the patient-~~or~~ resident, the guardian, trustee or conservator,
20 if any, for any patient-~~or~~ resident, or any governmental unit
21 or private charitable agency contributing funds or other
22 property on account of any patient-~~or~~ resident, a complete
23 and certified statement of all funds or other property to
24 which this subsection applies detailing the amounts and items
25 received, together with their sources and disposition.

26 Sec. 21. Section one hundred thirty-five C point twenty-
27 five (135C.25), Code 1975, is amended to read as follows:

28 135C.25 CARE REVIEW COMMITTEE. Each health care facility
29 ~~shall~~ may have a care review committee whose members ~~shall~~
30 may be appointed by the area wide health planning council
31 recognized as such by this state acting through the office
32 for comprehensive health planning in the office for planning
33 and programming. The care review committee shall periodically
34 review the needs of each individual patient-~~or~~ resident of
35 the facility. The responsibilities of the care review

1 committee shall be in accordance with rules of the department,
2 which shall in formulating such rules give consideration to
3 the needs of ~~patients-and~~ residents of each license category
4 of health care facility and the services facilities of each
5 category are authorized to render.

6 Sec. 22. Chapter one hundred thirty-five C (135C), Code
7 1975, is amended by adding sections twenty-three (23) through
8 thirty-five (35) of this Act.

9 Sec. 23. NEW SECTION. VIOLATIONS CLASSIFIED. Every
10 violation by a health care facility of any provision of this
11 chapter or of the rules adopted pursuant to it shall be
12 classified by the department in accordance with this section.
13 The department shall adopt and may from time to time modify,
14 in accordance with chapter seventeen A (17A) of the Code,
15 rules setting forth so far as feasible the specific violations
16 included in each classification and stating criteria for the
17 classification of any violation not so listed.

18 1. A class I violation is one which presents an imminent
19 danger or a substantial probability of resultant death or
20 physical harm to the residents of the facility in which the
21 violation occurs. A physical condition or one or more
22 practices in a facility may constitute a class I violation.
23 A class I violation shall be abated or eliminated immediately
24 unless the department determines that a stated period of time,
25 specified in the citation issued under section twenty-seven
26 (27) of this Act, is required to correct the violation.
27 A licensee shall be subject to a penalty of not less than
28 five hundred nor more than five thousand dollars for each
29 class I violation for which the licensee's facility is cited.

30 2. A class II violation is one which has a direct or
31 immediate relationship to the health, safety or security of
32 residents of a health care facility, but which presents no
33 imminent danger nor substantial probability of death or
34 physical harm to them. A physical condition or one or more
35 practices within a facility, including either physical abuse

1 of any resident or failure to treat any resident with
2 consideration, respect and full recognition of the resident's
3 dignity and individuality, may constitute a class II violation.
4 A class II violation shall be corrected within a stated period
5 of time determined by the department and specified in the
6 citation issued under section twenty-seven (27) of this Act.
7 The stated period of time specified in the citation may
8 subsequently be modified by the department for good cause
9 shown. A licensee shall be subject to a penalty of not less
10 than one hundred nor more than five hundred dollars for each
11 class II violation for which the licensee's facility is cited,
12 however the commissioner may waive the penalty if the violation
13 is corrected within the time specified in the citation.

14 3. A class III violation is any violation of this chapter
15 or of the rules adopted pursuant to it which violation is
16 not classified in the department's rules nor classifiable
17 under the criteria stated in those rules as a class I or a
18 class II violation. A licensee shall not be subject to a
19 penalty for a class III violation, except as provided by
20 section twenty-seven (27), subsection one (1) of this Act
21 for failure to correct the violation within a reasonable time
22 specified by the department in the notice of the violation.

23 Sec. 24. NEW SECTION. COMPLAINTS ALLEGING VIOLATIONS.
24 Any person may request an inspection of any health care
25 facility by filing with the department a complaint of an
26 alleged violation of applicable requirements of this chapter
27 or the rules adopted pursuant to it. The complaint shall
28 state in a reasonably specific manner the basis of the
29 complaint.

30 Sec. 25. NEW SECTION. INSPECTIONS UPON COMPLAINTS. Upon
31 receipt of a complaint made in accordance with section twenty-
32 four (24) of this Act, the department shall assign a staff
33 member to make a preliminary review of the complaint. Unless
34 the department concludes that the complaint is intended to
35 harass a facility or a licensee or is without reasonable

1 basis, it shall within twenty working days of receipt of the
2 complaint cause an on-site inspection to be made of the health
3 care facility which is the subject of the complaint. In any
4 case, the complainant shall be promptly informed of the result
5 of any action taken by the department in the matter. Upon
6 request of either the complainant or the department, the
7 complainant or his or her representative or both may be allowed
8 the privilege of accompanying the inspector during any on-
9 site inspection made pursuant to this section. The inspector
10 may cancel the privilege at any time if the inspector
11 determines that the privacy of any resident of the facility
12 to be inspected would otherwise be violated.

13 Sec. 26. NEW SECTION. NO ADVANCE NOTICE OF INSPECTION-
14 -EXCEPTION. No advance notice of an on-site inspection made
15 pursuant to section twenty-five (25) of this Act shall be
16 given the health care facility or the licensee thereof unless
17 previously and specifically authorized in writing by the
18 commissioner or required by federal law. The facility or
19 the licensee, or both, shall be informed of the substance
20 of the complaint, but not earlier than at the commencement
21 of the on-site inspection.

22 Sec. 27. NEW SECTION. CITATIONS WHEN VIOLATIONS FOUND-
23 EXCEPTION.

24 1. When any inspection or investigation of a health care
25 facility made pursuant to this chapter finds the facility
26 in violation of any applicable requirement of this chapter
27 or the rules adopted pursuant to it, the commissioner shall
28 within five working days after a finding of a class I violation
29 is made, and within ten working days after a finding of a
30 class II or class III violation is made, issue a written
31 citation to the facility. The citation shall be served upon
32 the facility personally or by certified mail, except that
33 a citation for a class III violation may be sent by ordinary
34 mail. Each citation shall specifically describe the nature
35 of the violation, identifying the Code section or subsection

1 or the rule or standard violated, and the classification of
2 the violation under section twenty-three (23) of this Act.
3 Where appropriate, the citation shall also state the period
4 of time allowed for correction of the violation, which shall
5 in each case be the shortest period of time the department
6 deems feasible. Failure to correct a violation within the
7 time specified, unless the licensee shows that the failure
8 was due to circumstances beyond the licensee's control, shall
9 subject the facility to a further penalty of fifty dollars
10 for each day that the violation continues after the time
11 specified for correction.

12 2. When a citation is served upon or mailed to a health
13 care facility under subsection one (1) of this section, and
14 the licensee of the facility is not actually involved in the
15 daily operation of the facility, a copy of the citation shall
16 be mailed to the licensee. If the licensee is a corporation,
17 a copy of the citation shall be sent to the corporation's
18 office of record. If the citation was issued pursuant to
19 an inspection resulting from a complaint filed under section
20 twenty-four (24) of this Act, a copy of the citation shall
21 be sent to the complainant at the earliest time permitted
22 by section one hundred thirty-five C point nineteen (135C.19),
23 subsection one (1), of the Code.

24 3. No health care facility shall be cited for any violation
25 caused by any practitioner licensed pursuant to chapters one
26 hundred forty-eight (148), one hundred fifty (150) or one
27 hundred fifty A (150A) of the Code if that practitioner is
28 not the licensee of and is not otherwise financially interested
29 in the facility, and the licensee or the facility presents
30 evidence that reasonable care and diligence have been exercised
31 in notifying the practitioner of his duty to the patients
32 in the facility.

33 Sec. 28. NEW SECTION. LICENSEE'S RESPONSE TO CITATION.
34 Within five business days after service of a citation under
35 section twenty-seven (27) of this Act, a facility shall either:

1 1. If it does not desire to contest the citation:
2 a. Remit to the department the amount specified by the
3 department pursuant to section twenty-three (23) of this Act
4 as a penalty for each class I violation cited, and for each
5 class II violation unless the citation specifically waives
6 the penalty, which funds shall be paid by the department into
7 the state treasury and credited to the general fund; or

8 b. In the case of a class II violation for which the
9 penalty has been waived in accordance with the standards pre-
10 scribed in section twenty-three (23), subsection two (2) of
11 this Act, or a class III violation, send to the department
12 a written response acknowledging that the citation has been
13 received and stating that the violation will be corrected
14 within the specific period of time allowed by the citation;
15 or

16 2. Notify the commissioner that the facility desires to
17 contest the citation and, in the case of citations for class
18 II or class III violations, request an informal conference
19 with a representative of the department.

20 Sec. 29. NEW SECTION. INFORMAL CONFERENCE ON CONTESTED
21 CITATION. The commissioner shall assign a representative
22 of the department, other than the inspector upon whose
23 inspection the contested citation is based, to hold an informal
24 conference with the facility within ten working days after
25 receipt of a request made under section twenty-eight (28),
26 subsection two (2) of this Act. At the conclusion of the
27 conference the representative may affirm or may modify or
28 dismiss the citation. In the latter case, the representative
29 shall state in writing the specific reasons for the
30 modification or dismissal and immediately transmit copies
31 of the statement to the commissioner, and to the facility.
32 If the facility does not desire to further contest an affirmed
33 or modified citation, it shall within five working days after
34 the informal conference, or after receipt of the written
35 explanation of the representative, as the case may be, comply

1 with section twenty-eight (28), subsection one (1) of this
2 Act.

3 Sec. 30. NEW SECTION. FORMAL CONTEST--JUDICIAL REVIEW.

4 1. A facility which desires to contest a citation for
5 a class I violation, or to further contest an affirmed or
6 modified citation for a class II or class III violation, may
7 do so in the manner provided by chapter seventeen A (17A)
8 of the Code for contested cases. Notice of intent to formally
9 contest a citation shall be given the department in writing
10 within five days after service of a citation for a class I
11 violation, or within five days after the informal conference
12 or after receipt of the written explanation of the
13 representative delegated to hold the informal conference,
14 whichever is applicable, in the case of an affirmed or modified
15 citation for a class II or class III violation. A facility
16 which has exhausted all adequate administrative remedies and
17 is aggrieved by the final action of the department may petition
18 for judicial review in the manner provided by chapter seventeen
19 A (17A) of the Code.

20 2. Hearings on petitions for judicial review brought under
21 this section shall be set for trial at the earliest possible
22 date and shall take precedence on the court calendar over
23 all other cases except matters to which equal or superior
24 precedence is specifically granted by law. The times for
25 pleadings and for hearings in such actions shall be set by
26 the judge of the court with the object of securing a decision
27 in the matter at the earliest possible time.

28 Sec. 31. NEW SECTION. TREBLE FINES FOR REPEATED
29 VIOLATIONS. The penalties authorized by section twenty-three
30 (23) of this Act shall be trebled for a second or subsequent
31 class I or class II violation occurring within any twelve-
32 month period if a citation was issued for the same class I
33 or class II violation occurring within that period and a
34 penalty was assessed therefor.

35 Sec. 32. NEW SECTION. REFUND OF CIVIL PENALTY. If at

1 any time a contest or appeal of any citation issued a health
2 care facility under this Act results in an order or
3 determination that a penalty previously paid to or collected
4 by the department must be refunded to the facility, the refund
5 shall be made from any money in the state general fund not
6 otherwise appropriated.

7 Sec. 33. NEW SECTION. RETALIATION BY FACILITY PROHIBITED.

8 1. A facility shall not discriminate or retaliate in any
9 way against a resident or an employee of the facility who
10 has initiated or participated in any proceeding authorized
11 by this chapter. A facility which violates this section is
12 subject to a penalty of not less than two hundred fifty nor
13 more than five thousand dollars, to be assessed and collected
14 by the commissioner in substantially the manner prescribed
15 by sections twenty-seven (27) through thirty (30), inclusive,
16 of this Act and paid into the state treasury to be credited
17 to the general fund, or to immediate revocation of the
18 facility's license.

19 2. Any attempt to expel from a health care facility a
20 resident by whom or upon whose behalf a complaint has been
21 submitted to the department under section twenty-four (24)
22 of this Act, within one hundred twenty days after the filing
23 of the complaint or the conclusion of any proceeding resulting
24 from the complaint, shall raise a rebuttable presumption that
25 the action was taken by the licensee in retaliation for the
26 filing of the complaint.

27 Sec. 34. NEW SECTION. REPORT LISTING LICENSEES AND
28 CITATIONS. The state department shall annually prepare and
29 make available in its office at the seat of government a
30 report listing all licensees by name and address, indicating
31 (1) the number of citations and the nature of each citation
32 issued to each licensee during the previous twelve-month
33 period and the status of any action taken pursuant to each
34 citation, including penalties assessed, and (2) the nature
35 and status of action taken with respect to each uncorrected

1 violation for which a citation is outstanding.

2 Sec. 35. NEW SECTION. INFORMATION ABOUT COMPLAINT
3 PROCEDURE. The state department shall make a continuing
4 effort to inform the general public of the appropriate
5 procedure to be followed by any person who believes that a
6 complaint against a health care facility is justified and
7 should be made under section twenty-four (24) of this Act.

8 Sec. 36. A health care facility licensed prior to the
9 effective date of this Act under chapter one hundred thirty-
10 five C (135C) as it appears in the Code of 1975 may operate
11 by virtue of that license for one year from the date the
12 license is issued unless it is sooner suspended or revoked
13 in the manner provided by law. Any facility holding a license
14 on the effective date of this Act shall have not more than
15 one year from that date to achieve compliance with any
16 standards or requirements imposed by or pursuant to this Act
17 which are new or are more stringent than the comparable
18 standards or requirements previously in existence, but this
19 provision shall not be construed to exempt any facility from
20 operation of the citation and penalty procedure established
21 by this Act as a means of enforcing laws and rules to which
22 the facility is subject.

23 Sec. 37. After consultation with industry, professional
24 and consumer groups affected thereby, but not later than three
25 months after the effective date of this Act, the commissioner
26 shall initiate the procedure prescribed by section seventeen
27 A point four (17A.4) of the Code for adoption of the rules
28 required by section twenty-three (23) of this Act. The
29 adoption of those rules shall then be completed as
30 expeditiously as reasonably possible. It is the intent of
31 this Act that those rules the adoption of which is required
32 by this section shall serve only to classify violations of
33 and not to substantively change the department's existing
34 rules previously adopted under chapter one hundred thirty-
35 five C (135C) of the Code. Any substantive changes in such

1 existing rules shall be made in a proceeding separate from
2 the proceeding for adoption of the rules required by section
3 twenty-three (23) of this Act.

4 Sec. 38. Not later than July 1, 1978, the department shall
5 complete a review of the effectiveness of the citation and
6 penalty procedure established by this Act as a means of
7 enforcement of the provisions of chapter one hundred thirty-
8 five C (135C) of the Code and of the rules adopted pursuant
9 to it, and shall submit a report thereon to the legislative
10 council for transmission to the Sixty-eighth General Assembly
11 upon the convening of its first regular session. The report
12 shall include any recommendations for additional legisla-
13 tion which the department deems necessary to improve the
14 enforcement of the provisions of chapter one hundred thirty-
15 five C (135C) of the Code or to enhance the quality of care
16 provided in health care facilities in this state.

17 Sec. 39. This Act shall take effect January 1, 1976.

18 EXPLANATION

19 This bill has two major purposes. The first is to reduce
20 from seven to three the number of categories of health care
21 facilities licensed under chapter 135C of the Code. One
22 category, the adult foster home, is entirely deleted and the
23 remaining six--now called boarding homes, custodial homes,
24 basic nursing homes, intermediate nursing homes, skilled
25 nursing homes and extended care facilities--are consolidated
26 to three new categories. These are residential care
27 facilities, intermediate care facilities, and skilled nursing
28 facilities. Appropriate changes are made in a number of
29 existing sections in chapter 135C in keeping with this revision
30 in license categories.

31 The second primary purpose of this bill is establishment
32 of a system of citations and monetary penalties for violations
33 of the statutes and rules regulating licensing and operation
34 of health care facilities. It is believed these sanctions
35 will be more effective--particularly in controlling lesser

1 violations--than the suspension or revocation of a license,
2 which is a much more drastic step but is presently the only
3 legal sanction available to the Department of Health to enforce
4 health care facility laws and rules. A procedure for
5 administrative and judicial appeals of citations for violations
6 is included in the bill by reference to the Iowa Administrative
7 Procedure Act.

8 The bill also authorizes any person to file a complaint
9 that a health care facility is violating a law or rule.
10 Unless the Department of Health concludes the complaint is
11 without reasonable basis or is an attempt to harass a licensee,
12 it must make an unannounced on-site inspection of the facility
13 in response to the complaint. In any case, the bill requires
14 at least one unannounced inspection of each licensed facility
15 each year.

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SENATE FILE 525

S-3849

1 Amend Senate File 525 as follows:

- 2 1. Page 1, line 2, by inserting after the figure
3 "1975," the words and figures "as amended by Acts
4 of the Sixty-sixth General Assembly, 1975 Session,
5 Senate File one hundred ninety-three (193), section
6 one (1),".
- 7 2. Page 1, line 4, by inserting after the word
8 "~~foster~~" the word "family".
- 9 3. Page 1, line 7, by striking the word "two"
10 and inserting in lieu thereof the word "five".
- 11 4. Page 3, line 12, by inserting after the word
12 "~~foster~~" the word "family".
- 13 5. Page 6, line 3, by inserting after the figure
14 "1975," the words and figures "as amended by Acts
15 of the Sixty-sixth General Assembly, 1975 Session,
16 Senate File one hundred ninety-three (193), section
17 two (2),".
- 18 6. Page 6, line 12, by striking the first comma
19 in that line and inserting in lieu thereof the word
20 "or".
- 21 7. Page 6, line 12, by striking the words "~~or~~
22 ~~adult-foster~~" and inserting in lieu thereof the words
23 "and-all-placements-in-adult-foster-family".
- 24 8. Page 6, line 14, by inserting after the word
25 "admitted" the words "~~or-placed~~".
- 26 9. Page 7, line 29, by inserting after the figure
27 "1975," the words and figures "as amended by Acts
28 of the Sixty-sixth General Assembly, 1975 Session,
29 Senate File one hundred ninety-three (193), sections
30 three (3) and four (4),".
- 31 10. Page 8, line 19, by striking both the words
32 "~~adult-foster-homes,~~" and also the second comma in
33 that line.
- 34 11. Page 8, line 20, by striking the comma in
35 that line.
- 36 12. Page 8, by inserting after line 28 the
37 following:
38 "~~3---For-adult-foster-family-homes,-five-dollars-~~"
- 39 13. Page 15, line 24, by inserting after the word
40 "INSPECTIONS." the word "The".
- 41 14. Page 15, line 25, by striking the figure and
42 word "1. The" and inserting in lieu thereof the
43 figure "1.".

S-3849 FILED - *Adopted 5/23 (1975)* BY WILLIAM E. GLUBA
MAY 19, 1975

S-3882

- 1 Amend Senate File 525 as follows:
 2 1. Page 16, by inserting after line 13 the fol-
 3 lowing:
 4 "When plans and specifications submitted as re-
 5 quired by this subsection have been properly approved
 6 by the department or other appropriate state agency,
 7 the facility or the portion of the facility constructed
 8 or altered in accord with the plans so approved shall
 9 not for a period of at least five years from completion
 10 of the construction or alteration be considered
 11 deficient or ineligible for licensing by reason of
 12 failure to meet any rule or standard established
 13 subsequent to approval of the plans and specifi-
 14 cations, unless a clear and present danger exists
 15 that would adversely affect the residents of the
 16 facility."
 17 2. Page 18, by striking line 8 and inserting in
 18 lieu thereof the following:
 19 "about placement in the facility.
 20 3. A copy of each citation".
 21 3. Page 18, by inserting after line 10 the fol-
 22 lowing:
 23 "If the facility cited subsequently advises the
 24 department of social services that the violation has
 25 been corrected to the satisfaction of the department
 26 of health, the department of social services must
 27 maintain this advisory in the same file with the copy
 28 of the citation. The department of social services
 29 shall not disseminate to the public any information
 30 regarding citations issued by the department of health,
 31 but shall forward or refer such inquiries to the de-
 32 partment of health."
 33 4. Page 24, line 3, by inserting after the word
 34 "individuality," the words "in violation of a specific
 35 rule adopted by the department,".
 36 5. Page 25, line 5, by inserting after the period
 37 the following:
 38 "Upon arrival at the facility to be inspected,
 39 the inspector shall identify himself or herself to
 40 an employee of the facility and state that an inspec-
 41 tion is to be made, before beginning the inspection."
 42 6. Page 29, line 22, by striking the words "one
 43 hundred twenty" and inserting in lieu thereof the
 44 word "ninety".

S-3882 FILED - *Adopted as amended* BY WILLIAM E. GLUBA
 MAY 21, 1975 *by 3887 5/23 (1565)*

S-3924

- 1 Amend Senate File 525 as follows:
2 1. Page 1, line 28, by striking the word "age,".
3 2. Page 2, line 16, by striking the word "age,".
4 3. Page 2, line 32, by striking the word "age,".
5 4. Page 9, line 12, by striking the word "and"
6 and inserting in lieu thereof words "within ten work-
7 ing days and returned to the applicant. The resume"
8 5. Page 15, line 5, by striking the word "heath"
9 and inserting in lieu thereof the word "health".
10 6. Page 15, line 10, by inserting after the per-
11 iod the following:
12 "The commissioner may grant successive thirty-
13 day extensions of the time for compliance where evi-
14 dence of a good faith attempt to achieve compliance
15 is furnished, if the extensions will not place in un-
16 due jeopardy the residents of the facility to which the
17 extensions are granted."
18 7. Page 28, line 35, by striking the word "CIVIL".

S-3924 FILED - *Adopted 5/23 (1564)* BY CHARLES P. MILLER
MAY 23, 1975

SENATE FILE 525

S-3887

- 1 Amend the Gluba amendment S-3882 to Senate File
2 525 as follows:
3 1. By inserting after line 41 the following:
4 "6. Page 26, by striking from line 34 the word
5 "five" and inserting in lieu thereof the word "twenty".
6 2. By renumbering the succeeding section of the
7 amendment accordingly.

S-3887 FILED - *Adopted 5/23 (1565)* BY WILLIAM E. GLUBA
MAY 22, 1975

SENATE FILE 525

By COMMITTEE ON HUMAN RESOURCES

Substituted for H.F. 866 4/9 (2243)

(AS AMENDED AND PASSED BY THE SENATE ON MAY 23, 1975)

Passed Senate, ^{per House amendment} Date 6-13-75 (2026) Passed House, Date 6-9-75 (2253)

Vote: Ayes 38 Nays 6 Vote: Ayes 85 Nays 9

Approved 7-14-75

*Motion to reconsider filed 6-13 (2053)
Passed Senate per House amendment 6-19-75 (2194) 40-3
Passed House per Senate amendment 6-19-75 81-12 (2291)*

A BILL FOR

1 An Act relating to the licensing and regulation of health
2 care facilities, and prescribing penalties for violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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New language by _____
the Senate = _____

1 Section 1. Section one hundred thirty-five C point one
2 (135C.1), Code 1975, as amended by Acts of the Sixty-sixth
3 General Assembly, 1975 Session, Senate File one hundred ninety-
4 three (193), section one (1), is amended to read as follows:

5 135C.1 DEFINITIONS.

6 1.--"~~Adult-foster-family-home~~"-means-any-private-dwelling
7 or-other-suitable-place-providing-for-a-period-exceeding
8 twenty-four-consecutive-hours-accommodation,board,and
9 supervision,for-which-a-charge-is-made,to-not-more-than
10 five-individuals,not-related-to-the-owner-or-occupant-of
11 the-dwelling-or-place-within-the-third-degree-of-consanguinity,
12 who-by-reason-of-age,illness,disease,or-physical-or-mental
13 infirmity-are-unable-to-sufficiently-or-properly-care-for
14 themselves,but-who-are-essentially-capable-of-managing-their
15 own-affairs.

16 2.--"Boarding-home"-means-any-institution,place,building,
17 or-agency-providing-for-a-period-exceeding-twenty-four
18 consecutive-hours-accommodation,board,and-supervision-to
19 three-or-more-individuals,not-related-to-the-administrator
20 or-owner-thereof-within-the-third-degree-of-consanguinity,
21 who-by-reason-of-age,illness,disease,or-physical-or-mental
22 infirmity-are-unable-to-sufficiently-or-properly-care-for
23 themselves,but-who-are-essentially-capable-of-managing-their
24 own-affairs.

25 3.--"Custodial-home" 1. "Residential care facility" means
26 any institution, place, building, or agency providing for
27 a period exceeding twenty-four consecutive hours accommodation,
28 board, and personal assistance in-feeding,dressing, and other
29 essential daily living activities to three or more individuals,
30 not related to the administrator or owner thereof within the
31 third degree of consanguinity, who by reason of illness,
32 disease, or physical or mental infirmity are unable to
33 sufficiently or properly care for themselves ~~or-manage-their~~
34 ~~own-affairs~~, but who do not require the daily services of
35 a registered or licensed practical nurse except on an emergency

1 basis.

2 #:--"Basic-nursing-home"-means-any-institution, place,
3 building, or agency providing for a period exceeding twenty-
4 four consecutive hours accommodation, board, and personal
5 care and treatment or simple nursing care to three or more
6 individuals, not related to the administrator or owner thereof
7 within the third degree of consanguinity, who by reason of
8 age, illness, disease, or physical or mental infirmity require
9 domiciliary care, simple nursing care, or occasional skilled
10 nursing care, but who do not require hospital or skilled
11 nursing home care.

12 5 2. "Intermediate nursing home care facility" means any
13 institution, place, building, or agency providing for a period
14 exceeding twenty-four consecutive hours accommodation, board,
15 and nursing ~~care and supporting~~ services as directed, the
16 need for which is certified by a physician, to three or more
17 individuals, not related to the administrator or owner thereof
18 within the third degree of consanguinity, who by reason of
19 illness, disease, or physical or mental infirmity require
20 ~~continuous nursing care and related medical services, or~~
21 ~~occasional skilled nursing care, but who do not require~~
22 ~~hospital care~~ nursing services which can be provided only
23 under the direction of a registered nurse or a licensed
24 practical nurse.

25 6 3. "Skilled nursing home facility" means any institution,
26 place, building, or agency providing for a period exceeding
27 twenty-four consecutive hours accommodation, board, and ~~the~~
28 ~~health care~~ nursing services ~~necessary for certification as~~
29 ~~a skilled nursing home under Title XIX of the United States~~
30 ~~Social Security Act (Title XLIII, United States Code, sections~~
31 ~~4396 through 4396g), as amended to January 4, 1970, the need~~
32 for which is certified by a physician, to three or more
33 individuals not related to the administrator or owner thereof
34 within the third degree of consanguinity who by reason of
35 illness, disease, or physical or mental infirmity require

1 continuous nursing care services and related medical services,
2 but do not require hospital care. The nursing care services
3 provided must be under the direction of a registered nurse
4 on a twenty-four-hours-per-day basis.

5 7.---"Extended-care-facility"--means-any-institution, place,
6 building, or agency providing for a period exceeding twenty-
7 four consecutive hours accommodation, board, and the health
8 care services necessary for certification as an extended-care
9 facility under Title XVIII of the United States Social Security
10 Act (Title XLIII, United States Code, sections 4395 through
11 439544), as amended to January 1, 1970, to three or more
12 individuals not related to the administrator or owner thereof
13 within the third degree of consanguinity.

14 84. "Health care facility" or "facility" means any adult
15 foster family home, boarding home, custodial home, basic
16 nursing home residential care facility, intermediate nursing
17 home care facility or, skilled nursing home, or extended-care
18 facility.

19 9.---"Patient"--means-an-individual-admitted-to-a-basic
20 nursing-home, intermediate-nursing-home, skilled-nursing-home,
21 or extended-care-facility-in-the-manner-prescribed-by-section
22 435C.23-for-care-requiring, at-a-minimum, the-daily-services
23 of-a-registered-or-licensed-practical-nurse.

24 5. "Licensee" means the holder of a license issued for
25 the operation of a facility, pursuant to this chapter.

26 40 6. "Resident" means an individual admitted to a health
27 care facility in the manner prescribed by section 135C.23,
28 who does not require the daily services of a registered or
29 licensed practical nurse.---An-employee-of, or-an-individual
30 related-within-the-third-degree-of-consanguinity-to-the
31 administrator-or-owner-of, a-health-care-facility-shall-not
32 be-deemed-a-resident-thereof-for-the-purposes-of-this-chapter
33 solely-by-reason-of-being-provided-living-quarters-within
34 such-facility.

35 44 7. "Physician" means a person licensed to practice

1 ~~medicine-and-surgery,-osteopathy-and-surgery-or-osteopathy~~
2 ~~under-the-laws-of-this-state~~ has the meaning assigned that
3 term by section one hundred thirty-five point one (135.1),
4 subsection five (5) of the Code.

5 8. "House physician" means a physician who has entered
6 into a two-party contract with a health care facility to
7 provide services in that facility.

8 42 9. "Commissioner" means the commissioner of public
9 health appointed pursuant to section 135.2, or his designee.

10 43 10. "Department" means the state department of health.

11 44 11. "Person" means any individual, firm, partnership,
12 corporation, company, association or joint stock association;
13 and includes trustee, receiver, assignee or other similar
14 representative thereof.

15 45 12. "Governmental unit" means the state, or any county,
16 municipality, or other political subdivision or any department,
17 division, board or other agency of any of the foregoing.

18 13. "Direction" means authoritative policy or procedural
19 guidance for the accomplishment of a function or activity.

20 14. "Supervision" means direct oversight and inspection
21 of the act of accomplishing a function or activity.

22 Sec. 2. Section one hundred thirty-five C point two
23 (135C.2), subsection two (2), Code 1975, is amended to read
24 as follows:

25 2. Rules and standards prescribed, promulgated and enforced
26 under this chapter shall not be arbitrary, unreasonable or
27 confiscatory and the department or agency prescribing,
28 promulgating or enforcing such rules or standards shall have
29 the burden of proof to establish that such rules or standards
30 meet such requirements and are consistent with the economic
31 problems and conditions involved in the care and housing of
32 persons in ~~nursing-homes-and-custodial-homes~~ health care
33 facilities.

34 Sec. 3. Section one hundred thirty-five C point two
35 (135C.2), Code 1975, is amended by adding the following new

1 subsection:

2 NEW SUBSECTION. The department shall establish by
3 administrative rule, within the intermediate care facility
4 category, a special classification for facilities intended
5 to serve mentally retarded individuals. The department may
6 also establish by administrative rule other classifications
7 within that category, or special classifications within the
8 residential care facility or skilled nursing facility
9 categories, for facilities intended to serve individuals who
10 have special health care problems or conditions in common.
11 Rules establishing a special classification shall define the
12 problem or condition to which the classification is relevant
13 and establish requirements for an approved program of care
14 commensurate with such problem or condition, and may grant
15 special variances or considerations to facilities licensed
16 within the classification so established.

17 Sec. 4. Section one hundred thirty-five C point three
18 (135C.3), Code 1975, is amended to read as follows:

19 135C.3 NATURE OF CARE. Each facility licensed as ~~an~~
20 ~~extended-care-facility,~~ a skilled nursing ~~home,~~ facility or
21 an intermediate ~~nursing-home,-or-a-basic-nursing-home,~~ care
22 facility shall provide an organized continuing twenty-four
23 hour program of nursing ~~care~~ services commensurate with the
24 needs of ~~the-patients~~ its residents and under the immediate
25 direction of a licensed physician, licensed registered nurse
26 or licensed practical nurse licensed by the state of Iowa,
27 whose combined training and supervised experience is such
28 as to assure adequate and competent nursing direction. Med-
29 ical and nursing ~~care~~ services shall be under the direction
30 of either a "house physician" or individually selected
31 physicians, but surgery or obstetrical care shall not be
32 provided within the ~~home~~ facility. All admissions to ~~extended~~
33 ~~care-facilities,~~ skilled nursing ~~homes,~~ facilities or
34 intermediate ~~nursing-homes,-and-basic-nursing-homes~~ care
35 facilities shall be based on an order written by a physician

1 certifying that the individual being admitted requires no
2 greater degree of nursing care than the facility to which
3 the admission is made is licensed to provide and is capable
4 of providing.

5 Sec. 5. Section one hundred thirty-five C point four
6 (135C.4), Code 1975, as amended by Acts of the Sixty-sixth
7 General Assembly, 1975 Session, Senate File one hundred ninety-
8 three (193), section two (2), is amended to read as follows:

9 135C.4 ~~CUSTODIAL-HOMES~~ RESIDENTIAL CARE FACILITIES. Each
10 facility licensed as a ~~custodial-home-or-boarding-home~~ residen-
11 tial care facility shall provide an organized continuous
12 twenty-four hour program of care commensurate with the needs
13 of the residents of the home and under the immediate direction
14 of a person approved and certified by the department whose
15 combined training and supervised experience is such as to
16 ensure adequate and competent care. All admissions to
17 ~~custodial-homes-or-boarding-homes, and all placements in~~
18 adult-foster-family-homes residential care facilities shall
19 be based on an order written by a physician certifying that
20 the individual being admitted or placed does not require
21 nursing care services.

22 Sec. 6. Section one hundred thirty-five C point five
23 (135C.5), Code 1975, is amended to read as follows:

24 135C.5 HEALTH CARE FACILITIES, ETC. No other business
25 or activity shall be carried on in a health care facility,
26 nor in the same physical structure with a health care facility
27 except as hereinafter provided, unless such business or
28 activity is under the control of and is directly related to
29 or-necessary-for and incidental to the operation of the health
30 care facility. No business or activity which is operated
31 within the limitations of this section shall interfere in
32 any manner with the use of the facility by the ~~patients-or~~
33 residents, nor be disturbing to them. ~~Any-part-of-such~~
34 ~~business-or-activity-open-to-customers-other-than-patients~~
35 ~~or-residents-of-the-health-care-facility-shall-be-physically~~

1 ~~separated from the facility, and an entrance shall be provided~~
2 ~~for such customers so that they do not pass through the health~~
3 ~~care facility in entering or leaving the area where such~~
4 ~~business or activity is conducted.~~

5 Sec. 7. Section one hundred thirty-five C point six
6 (135C.6), subsections four (4) and five (5), Code 1975, are
7 amended to read as follows:

8 4. No department, agency or officer of this state or
9 of any of its political subdivisions shall pay or approve
10 for payment from public funds any amount or amounts to a
11 health care facility under any program of state aid in
12 connection with services provided or to be provided an actual
13 or prospective ~~patient or~~ resident in a health care facility,
14 unless the facility has a current license issued by the
15 department and meets such other requirements as may be in
16 effect pursuant to law.

17 5. No health care facility established and operated in
18 compliance with law prior to ~~July 1, 1970~~ January 1, 1976,
19 shall be required to change its corporate or business name
20 by reason of the definitions prescribed in section 135C.1,
21 provided that no health care facility shall at any time
22 represent or hold out to the public or to any individual that
23 it is licensed as, or provides the services of, a health care
24 facility of a type offering a higher grade of care than such
25 health care facility is licensed to provide. Any health care
26 facility which, by virtue of this section, operates under
27 a name not accurately descriptive of the type of license which
28 it holds shall clearly indicate in any printed advertisement,
29 letterhead, or similar material, the type of license or
30 licenses which it has in fact been issued. No health care
31 facility established or renamed after ~~July 1, 1974~~ January
32 1, 1976, shall use any name indicating that it holds a ~~higher~~
33 different type of license than it has been issued.

34 Sec. 8. Section one hundred thirty-five C point seven
35 (135C.7), Code 1975, as amended by Acts of the Sixty-sixth

1 General Assembly, 1975 Session, Senate File one hundred ninety-
2 three (193), sections three (3) and four (4), is amended to
3 read as follows:

4 135C.7 APPLICATION--FEES. Licenses shall be obtained
5 from the department. Applications shall be upon such forms
6 and shall include such information as the department may
7 reasonably require, which may include affirmative evidence
8 of compliance with such other statutes and local ordinances
9 as may be applicable. Each application for license shall
10 be accompanied by the annual license fee prescribed by this
11 section, subject to refund to the applicant if the license
12 is denied, which fee shall be paid over into the state treasury
13 and credited to the general fund if the license is issued.
14 There shall be an annual license fee based upon the bed
15 capacity of the health care facility, as follows:

16 ~~4.---For-extended-care-facilities, skilled-nursing-homes,~~
17 ~~intermediate-nursing-homes, and basic-nursing-homes-having~~
18 ~~a-total-of:~~

19 a 1. Ten beds or less, ten twenty dollars.

20 b 2. More than ten and not more than twenty-five beds,
21 twenty forty dollars.

22 e 3. More than twenty-five and not more than seventy-five
23 beds, thirty sixty dollars.

24 d 4. More than seventy-five and not more than one hundred
25 fifty beds, forty eighty dollars.

26 e 5. More than one hundred fifty beds, fifty one hundred
27 dollars.

28 ~~2.---For-boarding-homes-and-custodial-homes-having-a-total~~
29 ~~of:~~

30 ~~a.---Ten-beds-or-less, five-dollars.~~

31 ~~b.---More-than-ten-and-not-more-than-twenty-five-beds, ten~~
32 ~~dollars.~~

33 ~~c.---More-than-twenty-five-and-not-more-than-seventy-five~~
34 ~~beds, fifteen-dollars.~~

35 ~~d.---More-than-seventy-five-and-not-more-than-one-hundred~~

1 ~~fifty-beds, twenty-dollars.~~

2 ~~e.--More-than-one-hundred-fifty-beds, twenty-five-dollars.~~

3 ~~3.--For-adult-foster-family-homes, five-dollars.~~

4 Sec. 9. Section one hundred thirty-five C point nine
5 (135C.9), Code 1975, is amended to read as follows:

6 135C.9 INSPECTION BEFORE ISSUANCE.

7 1. The department shall not issue a health care facility
8 license to any applicant until:

9 4 a. The department has ascertained that the staff and
10 equipment of the facility is adequate to provide the care
11 and services required of a health care facility of the category
12 for which the license is sought. Prior to the review and
13 approval of plans and specifications for any new facility
14 and the initial licensing under a new licensee, a resume of
15 the programs and services to be furnished and of the means
16 available to the applicant for providing the same and for
17 meeting requirements for staffing, equipment, and operation
18 of the health care facility, with particular reference to
19 the professional requirements for services to be rendered,
20 shall be submitted in writing to the department for review
21 and approval. The resume shall be reviewed by the department
22 within ten working days and returned to the applicant. The
23 resume shall, upon the department's request, be revised as
24 appropriate by the facility from time to time after issuance
25 of a license.

26 2 b. The facility has been inspected by the state fire
27 marshal or a deputy appointed by him for that purpose, who
28 may be a member of a municipal fire department, and the
29 department has received either a certificate of compliance
30 or a ~~conditional~~ provisional certificate of compliance by
31 the facility with the fire-hazard and fire-safety rules and
32 standards of the department as promulgated by the fire marshal
33 and, where applicable, the fire safety standards required
34 for participation in programs authorized by either Title XVIII
35 or Title XIX of the United States Social Security Act (Title

1 XLII, United States Code, sections one thousand three hundred
2 ninety-five (1395) through one thousand three hundred ninety-
3 five 11 (139511) and one thousand three hundred ninety-six
4 (1396) through one thousand three hundred ninety-six g
5 (1396g)). The certificate or ~~conditional~~ provisional
6 certificate shall be signed by the fire marshal or his deputy
7 who made the inspection.

8 2. The rules and standards promulgated by the fire marshal
9 pursuant to subsection one (1), paragraph b of this section
10 shall be substantially in keeping with the latest generally
11 recognized safety criteria for the facilities covered, of
12 which the applicable criteria recommended and published from
13 time to time by the national fire protection association shall
14 be prima-facie evidence.

15 3. The state fire marshal or his deputy may issue a
16 ~~conditional-certificate~~ successive provisional certificates
17 of compliance for ~~a-period~~ periods of one year each to a
18 facility which is in substantial compliance with the applicable
19 fire-hazard and fire-safety rules and standards, upon
20 satisfactory evidence of an intent, in good faith, by the
21 owner or operator of the facility to correct the deficiencies
22 noted upon inspection within a reasonable period of time as
23 determined by the state fire marshal or his deputy. Renewal
24 of a ~~conditional~~ provisional certificate shall be based on
25 a showing of substantial progress in eliminating deficiencies
26 noted upon the last previous inspection of the facility without
27 the appearance of additional deficiencies other than those
28 arising from changes in the fire-hazard and fire-safety rules,
29 regulations and standards which have occurred since the last
30 previous inspection, except that substantial progress toward
31 achievement of a good-faith intent by the owner or operator
32 to replace the entire facility within a reasonable period
33 of time, as determined by the state fire marshal or his deputy,
34 may be accepted as a showing of substantial progress in
35 eliminating deficiencies, for the purposes of this section.

1 Sec. 10. Section one hundred thirty-five C point ten
2 (135C.10), Code 1975, is amended to read as follows:

3 135C.10 DENIAL, SUSPENSION OR REVOCATION. The department
4 shall have the authority to deny, suspend, or revoke a license
5 in any case where the department finds that there has been
6 a repeated failure on the part of the facility to comply with
7 the provisions of this chapter or the rules or minimum
8 standards promulgated hereunder, or for any of the following
9 reasons:

10 1. Cruelty or indifference to ~~the-welfare-of~~ health care
11 facility residents ~~or-patients~~.

12 2. Appropriation or conversion of the property of a health
13 care facility resident ~~or-patient~~ without his written consent
14 or the written consent of his legal guardian.

15 ~~3. Evidence that the moral character of the applicant,~~
16 ~~manager or supervisor of the health care facility is not~~
17 ~~reputable.~~

18 4 3. Permitting, aiding, or abetting the commission of
19 any illegal act in the health care facility.

20 5 4. Inability or failure to operate and conduct the
21 health care facility in accordance with the requirements of
22 this chapter and the minimum standards and rules issued
23 pursuant thereto.

24 6 5. Obtaining or attempting to obtain or retain a license
25 by fraudulent means, misrepresentation, or by submitting false
26 information.

27 7 6. Habitual intoxication or addiction to the use of
28 drugs by the applicant, manager or supervisor of the health
29 care facility.

30 8 7. Securing the devise or bequest of the property of
31 a ~~patient-in~~ resident of a health care facility by undue
32 influence.

33 8. Willful failure or neglect to maintain a continuing
34 in-service education and training program for all personnel
35 employed in the facility.

1 9. In the case of an application by an existing licensee
2 for a new or newly-acquired facility, continuing or repeated
3 failure of the licensee to operate any previously licensed
4 facility or facilities in compliance with the provisions of
5 this Act or of the rules adopted pursuant to it.

6 Sec. 11. Section one hundred thirty-five C point eleven
7 (135C.11), Code 1975, is amended to read as follows:

8 135C.11 NOTICE--HEARINGS. ~~Such-denial~~

9 1. The denial, suspension, or revocation of a license
10 shall be effected by ~~mailing~~ delivering to the applicant or
11 licensee by certified mail or by personal service ~~of~~ a notice
12 setting forth the particular reasons for such action. Such
13 denial, suspension, or revocation shall become effective
14 thirty days after the mailing or service of the notice, unless
15 the applicant or licensee, within such thirty-day period,
16 shall give written notice to the department requesting a
17 hearing, in which case the notice shall be deemed to be
18 suspended. If a hearing has been requested, the applicant
19 or licensee shall be given an opportunity for a prompt and
20 fair hearing before the department. At any time at or prior
21 to the hearing the department may rescind the notice of the
22 denial, suspension or revocation upon being satisfied that
23 the reasons for the denial, suspension or revocation have
24 been or will be removed. On the basis of any such hearing,
25 or upon default of the applicant or licensee, the determination
26 involved in the notice may be affirmed, modified, or set aside
27 by the department. A copy of such decision shall be sent
28 by certified mail, or served personally upon the applicant
29 or licensee. The applicant or licensee may seek judicial
30 review pursuant to section 135C.13.

31 2. The procedure governing hearings authorized by this
32 section shall be in accordance with the rules promulgated
33 by the department. A full and complete record shall be kept
34 of all proceedings, and all testimony shall be reported but
35 need not be transcribed unless judicial review is sought

1 pursuant to section 135C.13. A copy or copies of the
2 transcript may be obtained by an interested party upon payment
3 of the cost of preparing such copy or copies. Witnesses may
4 be subpoenaed by either party and shall be allowed fees at
5 a rate prescribed by the aforesaid rules. The commissioner
6 may, with the advice and consent of the care review committee
7 established pursuant to section 135C.25, remove all residents
8 ~~and-patients~~ and suspend the license or licenses of any health
9 care facility, prior to a hearing, when he finds that the
10 health or safety of residents ~~or-patients~~ of the health care
11 facility requires such action on an emergency basis. The
12 fact that no care review committee has been appointed for
13 a particular facility shall not bar the commissioner from
14 exercising the emergency powers granted by this subsection
15 with respect to that facility.

16 Sec. 12. Section one hundred thirty-five C point thirteen
17 (135C.13), Code 1975, is amended to read as follows:

18 135C.13 JUDICIAL REVIEW. Judicial review of any action
19 of the commissioner may be sought in accordance with the terms
20 of the Iowa administrative procedure Act. Notwithstanding
21 the terms of said Act, petitions for judicial review may be
22 filed in the district court of the county where the facility
23 or proposed facility is located, and pending final disposition
24 of the matter the status quo of the applicant or licensee
25 shall be preserved except when the commissioner, with the
26 advice and consent of the care review committee established
27 pursuant to section 135C.25, determines that the health,
28 safety or welfare of the residents ~~or-patients~~ of the facility
29 are in immediate danger, in which case he may order the
30 immediate removal of such residents ~~or-patients~~. The fact
31 that no care review committee has been appointed for a
32 particular facility shall not bar the commissioner from
33 exercising the emergency powers granted by this subsection
34 with respect to that facility.

35 Sec. 13. Section one hundred thirty-five C point fourteen

1 (135C.14), Code 1975, is amended to read as follows:

2 135C.14 RULES. The department ~~may~~ shall, in accordance
3 with chapter seventeen A (17A) of the Code, adopt ~~by-reference~~
4 ~~nationally-recognized-standards-and-rules-or-otherwise-amend,~~
5 ~~promulgate~~ and enforce rules setting minimum standards for
6 health care facilities. In so doing, the department may adopt
7 by reference, with or without amendment, nationally recognized
8 standards and rules, which shall be specified by title and
9 edition, date of publication, or similar information. Such
10 The rules and standards required by this section shall be
11 formulated in consultation with the commissioner of social
12 services or his designee, and shall be designed to further
13 the accomplishment of the purposes of this chapter and shall
14 relate to:

15 1. Location and construction of the facility, including
16 plumbing, heating, lighting, ventilation, and other housing
17 conditions, which shall ensure the health, safety and comfort
18 of residents and protection from fire hazards. Such rules
19 and standards regarding location and construction of the home
20 may impose requirements in excess of those provided in chapter
21 413 but shall not impose requirements less than those provided
22 by such chapter. The rules of the department relating to
23 protection from fire hazards and fire safety shall be
24 promulgated by the state fire marshal, and shall be in keeping
25 with the latest generally recognized safety criteria for the
26 facilities covered of which the applicable criteria recommended
27 and published from time to time by the national fire protection
28 association shall be prima facie evidence.

29 2. Number and qualifications of all personnel, including
30 management and nursing personnel, having responsibility for
31 any part of the care provided to residents ~~or-patients~~.

32 3. All sanitary conditions within the facility and its
33 surroundings including water supply, sewage disposal, food
34 handling, and general hygiene, which shall ensure the health
35 and comfort of residents ~~or-patients~~.

1 4. Diet related to the needs of each resident ~~or-patient~~
2 and based on good nutritional practice and on recommendations
3 which may be made by the physician attending the resident
4 ~~or-patient~~.

5 5. Equipment essential to the health and welfare of the
6 resident ~~or-patient~~.

7 6. Requirements that a specified number of registered
8 or licensed practical nurses and nurses' aides, relative to
9 the number of residents admitted, be employed by each licensed
10 facility.

11 7. Social services and rehabilitative services provided
12 for the residents.

13 Sec. 14. Section one hundred thirty-five C point fifteen
14 (135C.15), Code 1975, is amended to read as follows:

15 135C.15 TIME TO COMPLY.

16 1. Any health care facility which is in operation at the
17 time of adoption or promulgation of any applicable rules or
18 minimum standards under this chapter shall be given reasonable
19 time not to exceed twelve months from the date of such
20 promulgation to comply with such rules and minimum standards
21 as provided for by the department. The commissioner may
22 grant successive thirty-day extensions of the time for
23 compliance where evidence of a good faith attempt to achieve
24 compliance is furnished, if the extensions will not place
25 in undue jeopardy the residents of the facility to which
26 the extensions are granted.

27 2. Renovation of an existing health care facility, not
28 already in compliance with all applicable standards, shall
29 be permitted only if the fixtures and equipment to be installed
30 and the services to be provided in the renovated portion of
31 the facility will conform substantially to current operational
32 standards. Construction of an addition to an existing health
33 care facility shall be permitted only if the design of the
34 structure, the fixtures and equipment to be installed, and
35 the services to be provided in the addition will conform

1 substantially to current construction and operational
2 standards.

3 Sec. 15. Section one hundred thirty-five C point sixteen
4 (135C.16), Code 1975, is amended to read as follows:

5 135C.16 INSPECTIONS. The

6 1. In addition to the inspections required by section one
7 hundred thirty-five C point nine (135C.9) of the Code and
8 by section twenty-five (25) of this Act, the department shall
9 make or cause to be made such further unannounced inspections
10 as it may deem necessary to adequately enforce this chapter,
11 and shall including at least one general inspection in each
12 calendar year of every licensed health care facility in the
13 state made without providing advance notice of any kind to
14 the facility being inspected. Any employee of the department
15 who gives unauthorized advance notice of an inspection made
16 or planned to be made under this subsection or section twenty-
17 five (25) of this Act shall be disciplined as determined by
18 the commissioner, except that if the employee is employed
19 pursuant to chapter nineteen A (19A) of the Code the discipline
20 shall not exceed that authorized pursuant to that chapter.

21 2. The department shall prescribe by rule that any licensee
22 or applicant for license desiring to make specific types of
23 physical or functional alterations or additions to its facility
24 or to construct new facilities shall, before commencing such
25 alteration or additions or new construction, submit plans
26 and specifications therefor to the department for preliminary
27 inspection and approval or recommendations with respect to
28 the compliance with the rules and standards herein authorized.

29 When plans and specifications submitted as required by
30 this subsection have been properly approved by the department
31 or other appropriate state agency, the facility or the portion
32 of the facility constructed or altered in accord with the
33 plans so approved shall not for a period of at least five
34 years from completion of the construction or alteration be
35 considered deficient or ineligible for licensing by reason

1 of failure to meet any rule or standard established subsequent
2 to approval of the plans and specifications, unless a clear
3 and present danger exists that would adversely affect the
4 residents of the facility.

5 3. An inspector of the department, ~~department of social~~
6 ~~services, county board of social welfare or fire marshal,~~
7 may enter any licensed health care facility without a warrant,
8 and may examine all records pertaining to operation of the
9 facility and to the care provided residents of the facility.
10 An inspector of the department of social services shall have
11 the same right with respect to any facility where one or more
12 residents are cared for entirely or partially at public expense
13 and the state fire marshal or a deputy appointed pursuant
14 to section one hundred thirty-five C point nine (135C.9),
15 subsection one (1), paragraph b shall have the same right
16 of entry into any facility and the right to inspect any records
17 pertinent to fire safety practices and conditions within that
18 facility. If any such inspector has probable cause to believe
19 that any institution, place, building, or agency not licensed
20 as a health care facility is in fact a health care facility
21 as defined by this chapter, and upon properly identifying
22 himself he is denied entry thereto for the purpose of making
23 an inspection, he may, with the assistance of the county
24 attorney of the county in which the purported health care
25 facility is located, apply to the district court for an order
26 requiring the owner or occupant to permit entry and inspection
27 of the premises to determine whether there have been any
28 violations of this chapter.

29 Sec. 16. Section one hundred thirty-five C point seventeen
30 (135C.17), Code 1975, is amended to read as follows:

31 135C.17 DUTIES OF OTHER DEPARTMENTS. It shall be the
32 duty of the department of social services, state fire marshal,
33 and the officers and agents of other state and local
34 governmental units to assist the department in carrying out
35 the provisions of this chapter, insofar as the functions of

1 these respective offices and departments are concerned with
2 the health, welfare, and safety of any resident ~~or-patient~~
3 of any health care facility.

4 Sec. 17. Section one hundred thirty-five C point nineteen
5 (135C.19), Code 1975, is amended to read as follows:

6 135C.19 PUBLIC DISCLOSURE OF INSPECTION FINDINGS--POSTING
7 OF CITATIONS.

8 1. Following any inspection of a health care facility
9 by the department, the findings of the inspection with respect
10 to compliance by the facility with requirements for licensing
11 under this chapter shall be made public in a readily available
12 form and place forty-five days after the findings are made
13 available to the applicant or licensee. However, if the
14 applicant or licensee requests a hearing pursuant to section
15 135C.11, the findings of the inspection shall not be made
16 public until the hearing has been completed. Other information
17 relating to any health care facility, obtained by the
18 department through reports, investigations, complaints, or
19 as otherwise authorized by this chapter, which is not a part
20 of the department's findings from an inspection of the
21 facility, shall not be disclosed publicly except in proceedings
22 involving the citation of a facility for a violation, in the
23 manner provided by section twenty-seven (27) of this Act,
24 or the denial, suspension or revocation of a license under
25 this chapter.

26 2. Each citation for a class I or class II violation which
27 is issued to a health care facility and which has become
28 final, or a copy or copies thereof, shall be prominently
29 posted as prescribed in rules to be adopted by the department,
30 until the violation is corrected to the department's
31 satisfaction. The citation or copy shall be posted in a place
32 or places in plain view of the residents of the facility
33 cited, persons visiting the residents, and persons inquiring
34 about placement in the facility.

35 3. A copy of each citation required to be posted by this

1 subsection shall be sent by the department to the department
2 of social services.

3 If the facility cited subsequently advises the department
4 of social services that the violation has been corrected to
5 the satisfaction of the department of health, the department
6 of social services must maintain this advisory in the same
7 file with the copy of the citation. The department of social
8 services shall not disseminate to the public any information
9 regarding citations issued by the department of health, but
10 shall forward or refer such inquiries to the department of
11 health.

12 Sec. 18. Section one hundred thirty-five C point twenty-
13 one (135C.21), Code 1975, is amended to read as follows:

14 135C.21 ~~PENALTY~~ PENALTIES.

15 1. Any person establishing, conducting, managing, or oper-
16 ating any health care facility without a license shall be
17 guilty of a misdemeanor and, upon conviction thereof, shall
18 be fined not less than one hundred dollars nor more than one
19 thousand dollars or be imprisoned in the county jail for not
20 more than six months, or both. Each day of continuing
21 violation after conviction or notice from the department by
22 certified mail of a violation shall be considered a separate
23 offense. Any such person establishing, conducting, managing
24 or operating any health care facility without a license may
25 be by any court of competent jurisdiction temporarily or
26 permanently restrained therefrom in any action brought by
27 the state.

28 2. Any person who prevents or interferes with or attempts
29 to impede in any way any duly authorized representative of
30 the department or of any of the agencies referred to in section
31 one hundred thirty-five C point seventeen (135C.17) of the
32 Code in the lawful enforcement of this chapter or of the rules
33 adopted pursuant to it is guilty of a misdemeanor and, upon
34 conviction, shall be subject to a fine of not less than fifty
35 nor more than five hundred dollars or imprisonment in the

1 county jail for not more than ninety days or both. As used
2 in this subsection, lawful enforcement includes but is not
3 limited to:

4 a. Contacting or interviewing any resident of
5 a health care facility in private at any reasonable hour and
6 without advance notice.

7 b. Examining any relevant books or records of a health
8 care facility.

9 c. Preserving evidence of any violation of this chapter
10 or of the rules adopted pursuant to it.

11 Sec. 19. Section one hundred thirty-five C point twenty-
12 three (135C.23), Code 1975, is amended to read as follows:

13 135C.23 EXPRESS REQUIREMENTS FOR ADMISSION OR RESIDENCE.

14 No individual shall be admitted to or permitted to remain
15 in a health care facility as a ~~patient-or~~ resident, except
16 in accordance with the requirements of this section.

17 1. Each ~~patient-or~~ resident shall be covered by a contract
18 executed at the time of admission or prior thereto by the
19 ~~patient-or~~ resident, or his legal representative, and the
20 health care facility, except as otherwise provided by
21 subsection five (5) of this section with respect to residents
22 admitted at public expense to a county care facility operated
23 under chapter two hundred fifty-three (253) of the Code.

24 Each party to the contract shall be entitled to a duplicate
25 original thereof, and the health care facility shall keep
26 on file all contracts which it has with ~~patients-or~~ residents
27 and shall not destroy or otherwise dispose of any such contract
28 for at least one year after its expiration or such longer
29 period as the department may by rule require. Each such
30 contract shall expressly set forth:

31 a. The terms of the contract.

32 b. The services and accommodations to be provided by the
33 health care facility and the rates or charges therefor.

34 c. Specific descriptions of any duties and obligations
35 of the parties in addition to those required by operation

1 of law.

2 d. Any other matters deemed appropriate by the parties
3 to the contract. No contract or any provision thereof shall
4 be drawn or construed so as to relieve any health care facility
5 of any requirement or obligation imposed upon it by this
6 chapter or any standards or rules in force pursuant to this
7 chapter, nor contain any disclaimer of responsibility for
8 injury to the resident, or to relatives or other persons
9 visiting the resident, which occurs on the premises of the
10 facility or, with respect to injury to the resident, which
11 occurs while the resident is under the supervision of any
12 employee of the facility whether on or off the premises of
13 the facility.

14 2. No health care facility shall knowingly admit or retain
15 any ~~patient-or~~ resident:

16 a. Who is dangerous to himself or other ~~patients-or~~
17 residents.

18 b. Who is in an active or acute stage of alcoholism, drug
19 addiction, mental illness, or communicable disease.

20 c. Whose condition or conduct is such that he would be
21 unduly disturbing to other ~~patients-or~~ residents.

22 d. Who is in need of medical procedures, as determined
23 by a physician, or ~~services, as determined by the care review~~
24 ~~committee,~~ which cannot be or are not being carried out in
25 the facility.

26 3. Except in emergencies, a ~~patient-or~~ resident who is
27 not essentially capable of managing his own affairs shall
28 not be transferred out of a health care facility or discharged
29 for any reason ~~only-after~~ without prior notification to the
30 next of kin, legal representative, or agency acting on the
31 ~~patient's-or~~ resident's behalf. When such next of kin, legal
32 representative, or agency cannot be reached or refuses to
33 co-operate, proper arrangements shall be made by the home
34 facility for the welfare of the ~~patient-or~~ resident before
35 his transfer or discharge.

1 4. No owner, administrator, employee, or representative
2 of a health care facility shall pay any commission, bonus,
3 or gratuity in any form whatsoever, directly or indirectly,
4 to any person for ~~patients-or~~ residents referred to such
5 facility, nor accept any commission, bonus, or gratuity in
6 any form whatsoever, directly or indirectly, for professional
7 or other services or supplies purchased by the facility or
8 by any resident, or by any third party on behalf of any
9 resident, of the facility.

10 5. Each county which maintains a county care facility
11 under chapter two hundred fifty-three (253) of the Code shall
12 develop a statement in lieu of, and setting forth substantially
13 the same items as, the contracts required of other health
14 care facilities by subsection one (1) of this section. The
15 statement must be approved by the county board of supervisors
16 and by the department. When so approved, the statement shall
17 be considered in force with respect to each resident of the
18 county care facility.

19 Sec. 20. Section one hundred thirty-five C point twenty-
20 four (135C.24), Code 1975, is amended to read as follows:

21 135C.24 PERSONAL PROPERTY OR AFFAIRS OF PATIENTS OR
22 RESIDENTS. The admission of a ~~patient-or~~ resident to a health
23 care facility and his presence therein shall not in and of
24 itself confer on such facility, its owner, administrator,
25 employees, or representatives any authority to manage, use,
26 or dispose of any property of the ~~patient-or~~ resident, nor
27 any authority or responsibility for the personal affairs of
28 the ~~patient-or~~ resident, except as may be necessary for the
29 safety and orderly management of the facility and as required
30 by this section.

31 1. No health care facility, and no owner, administrator,
32 employee or representative thereof shall act as guardian,
33 trustee or conservator for any ~~patient-or~~ resident of such
34 facility, or any of such ~~patient's-or~~ resident's property,
35 unless such ~~patient-or~~ resident is related to the person

1 acting as guardian within the third degree of consanguinity.

2 2. A health care facility shall provide for the safekeeping
3 of personal effects, funds and other property of its ~~patients~~
4 ~~or~~ residents, provided that whenever necessary for the
5 protection of valuables or in order to avoid unreasonable
6 responsibility therefor, the facility may require that they
7 be excluded or removed from the premises of the facility and
8 kept at some place not subject to the control of the facility.

9 3. A health care facility shall keep complete and accurate
10 records of all funds and other effects and property of its
11 ~~patients-or~~ residents received by it for safekeeping.

12 4. Any funds or other property belonging to or due a
13 ~~patient-or~~ resident, or expendable for his account, which
14 are received by a health care facility shall be trust funds,
15 shall be kept separate from the funds and property of the
16 facility and of its other ~~patients-or~~ residents, or
17 specifically credited to such ~~patient-or~~ resident, and shall
18 be used or otherwise expended only for the account of the
19 ~~patient-or~~ resident. Upon request the facility shall furnish
20 the ~~patient-or~~ resident, the guardian, trustee or conservator,
21 if any, for any ~~patient-or~~ resident, or any governmental unit
22 or private charitable agency contributing funds or other
23 property on account of any ~~patient-or~~ resident, a complete
24 and certified statement of all funds or other property to
25 which this subsection applies detailing the amounts and items
26 received, together with their sources and disposition.

27 Sec. 21. Section one hundred thirty-five C point twenty-
28 five (135C.25), Code 1975, is amended to read as follows:

29 135C.25 CARE REVIEW COMMITTEE. Each health care facility
30 ~~shall~~ may have a care review committee whose members ~~shall~~
31 may be appointed by the area wide health planning council
32 recognized as such by this state acting through the office
33 for comprehensive health planning in the office for planning
34 and programming. The care review committee shall periodically
35 review the needs of each individual ~~patient-or~~ resident of

1 the facility. The responsibilities of the care review
2 committee shall be in accordance with rules of the department,
3 which shall in formulating such rules give consideration to
4 the needs of ~~patients-and~~ residents of each license category
5 of health care facility and the services facilities of each
6 category are authorized to render.

7 Sec. 22. Chapter one hundred thirty-five C (135C), Code
8 1975, is amended by adding sections twenty-three (23) through
9 thirty-five (35) of this Act.

10 Sec. 23. NEW SECTION. VIOLATIONS CLASSIFIED. Every
11 violation by a health care facility of any provision of this
12 chapter or of the rules adopted pursuant to it shall be
13 classified by the department in accordance with this section.
14 The department shall adopt and may from time to time modify,
15 in accordance with chapter seventeen A (17A) of the Code,
16 rules setting forth so far as feasible the specific violations
17 included in each classification and stating criteria for the
18 classification of any violation not so listed.

19 1. A class I violation is one which presents an imminent
20 danger or a substantial probability of resultant death or
21 physical harm to the residents of the facility in which the
22 violation occurs. A physical condition or one or more
23 practices in a facility may constitute a class I violation.
24 A class I violation shall be abated or eliminated immediately
25 unless the department determines that a stated period of time,
26 specified in the citation issued under section twenty-seven
27 (27) of this Act, is required to correct the violation. A
28 licensee shall be subject to a penalty of not less than five
29 hundred nor more than five thousand dollars for each class
30 I violation for which the licensee's facility is cited.

31 2. A class II violation is one which has a direct or
32 immediate relationship to the health, safety or security of
33 residents of a health care facility, but which presents no
34 imminent danger nor substantial probability of death or
35 physical harm to them. A physical condition or one or more

1 practices within a facility, including either physical abuse
2 of any resident or failure to treat any resident with
3 consideration, respect and full recognition of the resident's
4 dignity and individuality, in violation of a specific rule
5 adopted by the department, may constitute a class II violation.
6 A class II violation shall be corrected within a stated period
7 of time determined by the department and specified in the
8 citation issued under section twenty-seven (27) of this Act.
9 The stated period of time specified in the citation may
10 subsequently be modified by the department for good cause
11 shown. A licensee shall be subject to a penalty of not less
12 than one hundred nor more than five hundred dollars for each
13 class II violation for which the licensee's facility is cited,
14 however the commissioner may waive the penalty if the violation
15 is corrected within the time specified in the citation.

16 3. A class III violation is any violation of this chapter
17 or of the rules adopted pursuant to it which violation is
18 not classified in the department's rules nor classifiable
19 under the criteria stated in those rules as a class I or a
20 class II violation. A licensee shall not be subject to a
21 penalty for a class III violation, except as provided by
22 section twenty-seven (27), subsection one (1) of this Act
23 for failure to correct the violation within a reasonable time
24 specified by the department in the notice of the violation.

25 Sec. 24. NEW SECTION. COMPLAINTS ALLEGING VIOLATIONS.
26 Any person may request an inspection of any health care
27 facility by filing with the department a complaint of an
28 alleged violation of applicable requirements of this chapter
29 or the rules adopted pursuant to it. The complaint shall
30 state in a reasonably specific manner the basis of the
31 complaint.

32 Sec. 25. NEW SECTION. INSPECTIONS UPON COMPLAINTS. Upon
33 receipt of a complaint made in accordance with section twenty-
34 four (24) of this Act, the department shall assign a staff
35 member to make a preliminary review of the complaint. Unless

1 the department concludes that the complaint is intended to
2 harass a facility or a licensee or is without reasonable
3 basis, it shall within twenty working days of receipt of the
4 complaint cause an on-site inspection to be made of the health
5 care facility which is the subject of the complaint. In any
6 case, the complainant shall be promptly informed of the result
7 of any action taken by the department in the matter.

8 Upon arrival at the facility to be inspected, the inspector
9 shall identify himself or herself to an employee of the
10 facility and state that an inspection is to be made, before
11 beginning the inspection. Upon request of either the
12 complainant or the department, the complainant or his or her
13 representative or both may be allowed the privilege of
14 accompanying the inspector during any on-site inspection made
15 pursuant to this section. The inspector may cancel the
16 privilege at any time if the inspector determines that the
17 privacy of any resident of the facility to be inspected would
18 otherwise be violated.

19 Sec. 26. NEW SECTION. NO ADVANCE NOTICE OF INSPECTION-
20 -EXCEPTION. No advance notice of an on-site inspection made
21 pursuant to section twenty-five (25) of this Act shall be
22 given the health care facility or the licensee thereof unless
23 previously and specifically authorized in writing by the
24 commissioner or required by federal law. The facility or
25 the licensee, or both, shall be informed of the substance
26 of the complaint, but not earlier than at the commencement
27 of the on-site inspection.

28 Sec. 27. NEW SECTION. CITATIONS WHEN VIOLATIONS FOUND-
29 EXCEPTION.

30 1. When any inspection or investigation of a health care
31 facility made pursuant to this chapter finds the facility
32 in violation of any applicable requirement of this chapter
33 or the rules adopted pursuant to it, the commissioner shall
34 within five working days after a finding of a class I violation
35 is made, and within ten working days after a finding of a

1 class II or class III violation is made, issue a written
2 citation to the facility. The citation shall be served upon
3 the facility personally or by certified mail, except that
4 a citation for a class III violation may be sent by ordinary
5 mail. Each citation shall specifically describe the nature
6 of the violation, identifying the Code section or subsection
7 or the rule or standard violated, and the classification of
8 the violation under section twenty-three (23) of this Act.
9 Where appropriate, the citation shall also state the period
10 of time allowed for correction of the violation, which shall
11 in each case be the shortest period of time the department
12 deems feasible. Failure to correct a violation within the
13 time specified, unless the licensee shows that the failure
14 was due to circumstances beyond the licensee's control, shall
15 subject the facility to a further penalty of fifty dollars
16 for each day that the violation continues after the time
17 specified for correction.

18 2. When a citation is served upon or mailed to a health
19 care facility under subsection one (1) of this section, and
20 the licensee of the facility is not actually involved in the
21 daily operation of the facility, a copy of the citation shall
22 be mailed to the licensee. If the licensee is a corporation,
23 a copy of the citation shall be sent to the corporation's
24 office of record. If the citation was issued pursuant to
25 an inspection resulting from a complaint filed under section
26 twenty-four (24) of this Act, a copy of the citation shall
27 be sent to the complainant at the earliest time permitted
28 by section one hundred thirty-five C point nineteen (135C.19),
29 subsection one (1), of the Code.

30 3. No health care facility shall be cited for any violation
31 caused by any practitioner licensed pursuant to chapters one
32 hundred forty-eight (148), one hundred fifty (150) or one
33 hundred fifty A (150A) of the Code if that practitioner is
34 not the licensee of and is not otherwise financially interested
35 in the facility, and the licensee or the facility presents

1 evidence that reasonable care and diligence have been exercised
2 in notifying the practitioner of his duty to the patients
3 in the facility.

4 Sec. 28. NEW SECTION. LICENSEE'S RESPONSE TO CITATION.
5 Within twenty business days after service of a citation under
6 section twenty-seven (27) of this Act, a facility shall either:

7 1. If it does not desire to contest the citation:

8 a. Remit to the department the amount specified by the
9 department pursuant to section twenty-three (23) of this Act
10 as a penalty for each class I violation cited, and for each
11 class II violation unless the citation specifically waives
12 the penalty, which funds shall be paid by the department into
13 the state treasury and credited to the general fund; or

14 b. In the case of a class II violation for which the
15 penalty has been waived in accordance with the standards pre-
16 scribed in section twenty-three (23), subsection two (2) of
17 this Act, or a class III violation, send to the department
18 a written response acknowledging that the citation has been
19 received and stating that the violation will be corrected
20 within the specific period of time allowed by the citation;
21 or

22 2. Notify the commissioner that the facility desires to
23 contest the citation and, in the case of citations for class
24 II or class III violations, request an informal conference
25 with a representative of the department.

26 Sec. 29. NEW SECTION. INFORMAL CONFERENCE ON CONTESTED
27 CITATION. The commissioner shall assign a representative
28 of the department, other than the inspector upon whose
29 inspection the contested citation is based, to hold an informal
30 conference with the facility within ten working days after
31 receipt of a request made under section twenty-eight (28),
32 subsection two (2) of this Act. At the conclusion of the
33 conference the representative may affirm or may modify or
34 dismiss the citation. In the latter case, the representative
35 shall state in writing the specific reasons for the

1 modification or dismissal and immediately transmit copies
2 of the statement to the commissioner, and to the facility.
3 If the facility does not desire to further contest an affirmed
4 or modified citation, it shall within five working days after
5 the informal conference, or after receipt of the written
6 explanation of the representative, as the case may be, comply
7 with section twenty-eight (28), subsection one (1) of this
8 Act.

9 Sec. 30. NEW SECTION. FORMAL CONTEST--JUDICIAL REVIEW.

10 1. A facility which desires to contest a citation for
11 a class I violation, or to further contest an affirmed or
12 modified citation for a class II or class III violation, may
13 do so in the manner provided by chapter seventeen A (17A)
14 of the Code for contested cases. Notice of intent to formally
15 contest a citation shall be given the department in writing
16 within five days after service of a citation for a class I
17 violation, or within five days after the informal conference
18 or after receipt of the written explanation of the
19 representative delegated to hold the informal conference,
20 whichever is applicable, in the case of an affirmed or modified
21 citation for a class II or class III violation. A facility
22 which has exhausted all adequate administrative remedies and
23 is aggrieved by the final action of the department may petition
24 for judicial review in the manner provided by chapter seventeen
25 A (17A) of the Code.

26 2. Hearings on petitions for judicial review brought under
27 this section shall be set for trial at the earliest possible
28 date and shall take precedence on the court calendar over
29 all other cases except matters to which equal or superior
30 precedence is specifically granted by law. The times for
31 pleadings and for hearings in such actions shall be set by
32 the judge of the court with the object of securing a decision
33 in the matter at the earliest possible time.

34 Sec. 31. NEW SECTION. TREBLE FINES FOR REPEATED
35 VIOLATIONS. The penalties authorized by section twenty-three

1 (23) of this Act shall be trebled for a second or subsequent
2 class I or class II violation occurring within any twelve-
3 month period if a citation was issued for the same class I
4 or class II violation occurring within that period and a
5 penalty was assessed therefor.

6 Sec. 32. NEW SECTION. REFUND OF PENALTY. If at any time
7 a contest or appeal of any citation issued a health care
8 facility under this Act results in an order or determination
9 that a penalty previously paid to or collected by the
10 department must be refunded to the facility, the refund shall
11 be made from any money in the state general fund not otherwise
12 appropriated.

13 Sec. 33. NEW SECTION. RETALIATION BY FACILITY PROHIBITED.

14 1. A facility shall not discriminate or retaliate in any
15 way against a resident or an employee of the facility who
16 has initiated or participated in any proceeding authorized
17 by this chapter. A facility which violates this section is
18 subject to a penalty of not less than two hundred fifty nor
19 more than five thousand dollars, to be assessed and collected
20 by the commissioner in substantially the manner prescribed
21 by sections twenty-seven (27) through thirty (30), inclusive,
22 of this Act and paid into the state treasury to be credited
23 to the general fund, or to immediate revocation of the
24 facility's license.

25 2. Any attempt to expel from a health care facility a
26 resident by whom or upon whose behalf a complaint has been
27 submitted to the department under section twenty-four (24)
28 of this Act, within ninety days after the filing of the
29 complaint or the conclusion of any proceeding resulting from
30 the complaint, shall raise a rebuttable presumption that the
31 action was taken by the licensee in retaliation for the filing
32 of the complaint.

33 Sec. 34. NEW SECTION. REPORT LISTING LICENSEES AND
34 CITATIONS. The state department shall annually prepare and
35 make available in its office at the seat of government a

1 report listing all licensees by name and address, indicating
2 (1) the number of citations and the nature of each citation
3 issued to each licensee during the previous twelve-month
4 period and the status of any action taken pursuant to each
5 citation, including penalties assessed, and (2) the nature
6 and status of action taken with respect to each uncorrected
7 violation for which a citation is outstanding.

8 Sec. 35. NEW SECTION. INFORMATION ABOUT COMPLAINT
9 PROCEDURE. The state department shall make a continuing
10 effort to inform the general public of the appropriate
11 procedure to be followed by any person who believes that a
12 complaint against a health care facility is justified and
13 should be made under section twenty-four (24) of this Act.

14 Sec. 36. A health care facility licensed prior to the
15 effective date of this Act under chapter one hundred thirty-
16 five C (135C) as it appears in the Code of 1975 may operate
17 by virtue of that license for one year from the date the
18 license is issued unless it is sooner suspended or revoked
19 in the manner provided by law. Any facility holding a license
20 on the effective date of this Act shall have not more than
21 one year from that date to achieve compliance with any
22 standards or requirements imposed by or pursuant to this Act
23 which are new or are more stringent than the comparable
24 standards or requirements previously in existence, but this
25 provision shall not be construed to exempt any facility from
26 operation of the citation and penalty procedure established
27 by this Act as a means of enforcing laws and rules to which
28 the facility is subject.

29 Sec. 37. After consultation with industry, professional
30 and consumer groups affected thereby, but not later than three
31 months after the effective date of this Act, the commissioner
32 shall initiate the procedure prescribed by section seventeen
33 A point four (17A.4) of the Code for adoption of the rules
34 required by section twenty-three (23) of this Act. The
35 adoption of those rules shall then be completed as

1 expeditiously as reasonably possible. It is the intent of
2 this Act that those rules the adoption of which is required
3 by this section shall serve only to classify violations of
4 and not to substantively change the department's existing
5 rules previously adopted under chapter one hundred thirty-
6 five C (135C) of the Code. Any substantive changes in such
7 existing rules shall be made in a proceeding separate from
8 the proceeding for adoption of the rules required by section
9 twenty-three (23) of this Act.

10 Sec. 38. Not later than July 1, 1978, the department shall
11 complete a review of the effectiveness of the citation and
12 penalty procedure established by this Act as a means of
13 enforcement of the provisions of chapter one hundred thirty-
14 five C (135C) of the Code and of the rules adopted pursuant
15 to it, and shall submit a report thereon to the legislative
16 council for transmission to the Sixty-eighth General Assembly
17 upon the convening of its first regular session. The report
18 shall include any recommendations for additional legisla-
19 tion which the department deems necessary to improve the
20 enforcement of the provisions of chapter one hundred thirty-
21 five C (135C) of the Code or to enhance the quality of care
22 provided in health care facilities in this state.

23 Sec. 39. This Act shall take effect January 1, 1976.

24 EXPLANATION

25 This bill has two major purposes. The first is to reduce
26 from seven to three the number of categories of health care
27 facilities licensed under chapter 135C of the Code. One
28 category, the adult foster home, is entirely deleted and the
29 remaining six--now called boarding homes, custodial homes,
30 basic nursing homes, intermediate nursing homes, skilled
31 nursing homes and extended care facilities--are consolidated
32 to three new categories. These are residential care
33 facilities, intermediate care facilities, and skilled nursing
34 facilities. Appropriate changes are made in a number of
35 existing sections in chapter 135C in keeping with this revision

1 in license categories.

2 The second primary purpose of this bill is establishment
3 of a system of citations and monetary penalties for violations
4 of the statutes and rules regulating licensing and operation
5 of health care facilities. It is believed these sanctions
6 will be more effective--particularly in controlling lesser
7 violations--than the suspension or revocation of a license,
8 which is a much more drastic step but is presently the only
9 legal sanction available to the Department of Health to enforce
10 health care facility laws and rules. A procedure for
11 administrative and judicial appeals of citations for violations
12 is included in the bill by reference to the Iowa Administrative
13 Procedure Act.

14 The bill also authorizes any person to file a complaint
15 that a health care facility is violating a law or rule.
16 Unless the Department of Health concludes the complaint is
17 without reasonable basis or is an attempt to harass a licensee,
18 it must make an unannounced on-site inspection of the facility
19 in response to the complaint. In any case, the bill requires
20 at least one unannounced inspection of each licensed facility
21 each year.

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LSB 444B

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SLC SF 525/46

CPA-34946 1/71

S-4145

1 Amend Senate File 525 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 31, by inserting after the
4 second word "of" the word "age7".

5 2. Page 2, line 18, by inserting after the second
6 word "of" the word "age7".

7 3. Page 4, by inserting after line 21 the
8 following new subsections:

9 "15. "Nursing care" means those services which
10 can be provided only under the direction of a reg-
11 istered nurse or a licensed practical nurse.

12 16. "Social services" means services relating
13 to the psychological and social needs of the
14 individual in adjusting to living in a health care
15 facility, and minimizing stress arising from that
16 circumstance.

17 17. "Rehabilitative services" means services to
18 encourage and assist restoration of optimum mental
19 and physical capabilities of the individual resident
20 of a health care facility."

21 4. Page 14, line 12, by striking the word
22 "designee" and inserting in lieu thereof the words
23 "or her designee and with industry, professional and
24 consumer groups affected thereby".

25 5. Page 15, line 10, by inserting after the
26 period the words "Staff-to-resident ratios established
27 under this subsection need not be the same for
28 facilities holding different types of licenses, nor
29 for facilities holding the same type of license if
30 there are significant differences in the needs of
31 residents which the respective facilities are
32 servng or intend to serve."

33 6. Page 15, line 7, by striking the word
34 "specified" and inserting in lieu thereof the word
35 "minimum".

36 7. Page 15, line 19, by striking the words
37 "not to exceed twelve months".

38 8. Page 16, line 14, by inserting after the period
39 the following new sentence: "The inspector shall
40 identify himself or herself to the person in charge of
41 the facility and state that an inspection is to be
42 made before beginning the inspection."

43 9. Page 17, lines 8 and 9 by striking the words "to
44 operation of the facility and".

45 10. Page 18, line 16, by inserting after the period
46 the following:

47 "When the findings are made public, they shall include
48 no reference to any cited violation which has been
49 corrected to the department's satisfaction unless the
50 same reference also clearly notes that the violation has

1 been corrected."

2 11. Page 19, line 23, by inserting after the
3 word "offense" the words "or chargeable offense".

4 12. Page 20, lines 28 and 29, by striking the
5 words "or such longer period as the department may
6 by rule require" and inserting in lieu thereof the
7 words "or-such-longer-period-as-the-department
8 may-by-rule-require".

9 13. Page 23, by inserting after line 26 the
10 following:

11 "5. a. The provisions of this section not-
12 withstanding, the district court may enter an
13 order appointing the administrator of a county care
14 facility as guardian of the person or of the
15 property, or both, of a resident of the county care
16 facility, if the county board of supervisors has so
17 petitioned the court. Notice and hearing on the
18 petition and order are not required. The admin-
19 istrator of a county care facility may establish
20 either separate or consolidated bank accounts for
21 cash funds of residents over whom guardianship has
22 been granted to the administrator. The administrator
23 shall maintain records as required by the auditor
24 of state to account for receipts and disbursements
25 of the residents' cash or property, and shall file
26 a report on the status of the people and property
27 over which he or she has been granted guardianship
28 with the county care facility's care review
29 committee on July first and January first of each
30 year.

31 b. The board of supervisors shall not petition
32 the district court for appointment of the county
33 care facility administrator as guardian of the
34 person or the property, or both, of a resident of
35 the facility unless the county has made every
36 reasonable effort to have guardianship assumed by
37 a person related to the resident within the third
38 degree of consanguinity. The board may so petition
39 the court not less than ninety days after sending to
40 all of the resident's known relatives of that degree
41 a notice stating that it is proposed that the county
42 care facility administrator be appointed guardian.
43 The court may grant limited guardianship, having
44 due regard for the needs of the resident and the
45 extent of the efforts required of the county care
46 facility administrator to properly manage the
47 resident's affairs. The resident, if competent,
48 or the resident's relatives shall have the right
49 to appear before the court in opposition to the
50 county board's petition to appoint the county care

- 1 facility administrator as guardian."
2 14. Page 23, by striking lines 29 through 35,
3 inclusive, and page 24, by striking line 1, and
4 inserting in lieu thereof the following:
5 "135C.25 CARE REVIEW COMMITTEE--APPOINTMENT--
6 DUTIES.
7 1. Each health care facility shall have a care
8 review committee whose members shall be appointed
9 by as follows:
10 a. By the areawide health planning council
11 recognized as such by this state acting through the
12 office for comprehensive health planning in the office
13 for planning and programming; or
14 b. If the appropriate areawide health planning
15 council has failed to make any appointment necessary
16 under this subsection within thirty days after being
17 notified of a vacancy by the administrator of the
18 facility involved, by the commissioner; or
19 c. If the commissioner has failed to act within
20 thirty days after being notified by the administrator
21 of the facility involved of a vacancy which has not
22 been filled by the appropriate areawide health
23 planning council within the time prescribed by this
24 subsection, the appointment may be made by the
25 administrator.
26 2. The care review committee shall periodically
27 review the needs of each individual patient-or
28 resident of the facility, and shall perform the
29 functions delegated to it by section twenty-five (25)
30 of this Act. The responsibilities of the care
31 review".
32 15. Page 25, line 27, by inserting after the word
33 "department" the words "or care review committee of
34 the facility".
35 16. Page 25, line 31, by inserting after the word
36 "complaint" the words ", and a copy thereof shall
37 be forwarded to the facility involved within twenty-
38 four hours of receipt of the complaint by the
39 department or the committee".
40 17. Page 25, by striking line 32 and inserting
41 in lieu thereof the following:
42 "Sec. 25. NEW SECTION. INSPECTIONS UPON COMPLAINTS.
43 1. Upon".
44 18. Page 25, lines 34 and 35, by striking the
45 words "shall assign a staff member to" and inserting
46 in lieu thereof the words "or care review committee
47 shall".
48 19. Page 26, line 1, by inserting after the word
49 "department" the words "or committee".
50 20. Page 26, line 4, by striking the words "cause

1 an on-site inspection to be made" and inserting in
2 lieu thereof the words "make or cause to be made an
3 on-site inspection".

4 21. Page 26, line 5, by inserting after the
5 period the words "The department may refer to the
6 care review committee of a facility any complaint
7 received by the department regarding that facility,
8 for initial evaluation and appropriate action by
9 the committee."

10 22. Page 26, line 7, by inserting after the
11 word "department" the words "or committee".

12 23. Page 26, by inserting after line 7 the
13 following:

14 "2. An inspection made pursuant to a complaint
15 filed under section twenty-four (24) of this Act
16 shall be limited to the matter or matters complained
17 of, and shall not be a general inspection."

18 24. Page 26, line 12, by inserting after the
19 word "department" the words "or committee".

20 25. Page 26, line 18, by inserting after the
21 period the words "The dignity of the resident shall
22 be given first priority by the inspector and others."

23 26. Page 26, by inserting after line 18 the
24 following:

25 "3. If upon an inspection of a facility by its
26 care review committee, pursuant to this section, the
27 committee advises the department of any circumstance
28 believed to constitute a violation of this chapter
29 or of any rule adopted pursuant to it, the
30 committee shall similarly advise the facility at the
31 same time. If the facility's licensee or administrator
32 disagrees with the conclusion of the committee regarding
33 the supposed violation, an informal conference may be
34 requested and if requested shall be arranged by the
35 department as provided in section twenty-nine (29) of
36 this Act before a citation is issued. If the
37 department thereafter issues a citation pursuant to
38 the committee's finding, the facility shall not be
39 entitled to a second informal conference on the same
40 violation and the citation shall be considered
41 affirmed. The facility cited may proceed under
42 section thirty (30) of this Act if it so desires."

43 27. Page 26, by striking all after the period
44 in line 24 and all of lines 25 through 27 and in-
45 serting in lieu thereof the following: "The person
46 in charge of the facility shall be informed of the
47 substance of the complaint at the commencement of
48 the on-site inspection."

49 28. Page 31, line 20 by striking the words "not
50 more than".

PAGE 4

1 29. Page 31, line 21, by inserting after the
2 word "date" the following: ", subject to such
3 provisional certificates or other extensions as
4 may be granted in accordance with this Act,".

S-4145 FILED
JUNE 11, 1975

RECEIVED FROM THE HOUSE

Senate concurred 6/13 (2025)

6/10 (2194)

SENATE FILE 525

S-4261

1 Amend the House amendment, S-4145, to Senate File
2 525, as amended, passed and reprinted by the Senate,
3 as follows:

4 1. Page 2, by striking lines 11 through 50 and
5 inserting in lieu thereof the following:

6 "5. The provisions of this section notwithstanding,
7 upon the verified petition of the county board
8 of supervisors the district court may appoint the
9 administrator of a county care facility as conserva-
10 tor or guardian, or both, of a resident of such
11 county care facility, in accordance with the provi-
12 sions of Chapter 633 of the Code. Such administra-
13 tor shall serve as conservator or guardian, or both,
14 without fee. The county attorney shall serve as
15 attorney for the administrator in such conservator-
16 ship or guardianship, or both, without fee. The
17 administrator may establish either separate or
18 common bank accounts for cash funds of such resident
19 wards."

20 2. Page 3, by striking line 1.

S-4261 FILED - *Adopted 6/19 (2194)* BY WILLIAM E. GLUBA
JUNE 18, 1975 E. KEVIN KELLY

Senate Amendment to House Amendment
to Senate File 525

H-4348

1 Amend the House amendment, S-4145, to Senate
2 File 525, as amended, passed and reprinted by
3 the Senate, as follows:

4 1. Page 2, by striking lines 11 through 50
5 and inserting in lieu thereof the following:

6 "5. The provisions of this section notwithstanding,
7 upon the verified petition of the county board
8 of supervisors the district court may appoint the
9 administrator of a county care facility as conserva-
10 tor or guardian, or both, of a resident of such
11 county care facility, in accordance with the provi-
12 sions of Chapter 633 of the Code. Such administra-
13 tor shall serve as conservator or guardian, or both,
14 without fee. The county attorney shall serve as
15 attorney for the administrator in such conservator-
16 ship or guardianship, or both, without fee. The
17 administrator may establish either separate or
18 common bank accounts for cash funds of such resident
19 wards."

20 2. Page 3, by striking line 1.

H-4348 FILED, RECEIVED FROM SENATE, HOUSE CONCURS (2691)
JUNE 19, 1975

H-4057

1 Amend Senate File 525 as amended and passed by
2 the Senate, as follows:
3 1. Page 14, line 1, by striking the word "designee"
4 and inserting in lieu thereof the words "or her
5 designee, with industry, professional and consumer
6 groups affected thereby".
7 2. Page 14, line 34, by inserting after the period
8 the words "Staff-to-resident ratios established under
9 this subsection need not be the same for facilities
10 holding different types of licenses, nor for facilities
11 holding the same type of license if there are significant
12 differences in the needs of residents which the respective
13 facilities are serving or intend to serve."

H-4057 FILED - *Withdrawn 6/9 (2249)* BY HARGRAVE of Johnson
JUNE 4, 1975

Senate File 525

H-4110

1 Amend Senate File 525 as amended, passed and
2 reprinted by the Senate, page 31, by inserting after
3 line 13 the following new section and renumbering
4 the succeeding sections accordingly:
5 "Sec. ____ . NEW SECTION. PENALTIES PRORATED AMONG
6 FACILITY RESIDENTS. When a penalty is assessed against
7 any facility under sections twenty-three (23) through
8 thirty-one (31) of this Act, the facility may prorate
9 the amount of the penalty equally among all of its
10 residents and add the prorated amount to the first
11 succeeding periodic payment for services which is
12 due the facility from or on behalf of each respective
13 resident. If any prorated amount which may be so
14 added to the payment due from any resident increases
15 the amount of that payment by more than five per-
16 cent, the facility shall divide the prorated amount
17 into two or more equal installments and add the
18 installments to the appropriate number of successive
19 periodic payments due from or on behalf of that
20 patient. The successive installments shall be so
21 computed that no installment increases the amount
22 of the payment to which it is added by more than five
23 percent."

H-4110 FILED - *Last 6/9 (2252)* BY DAGGETT of Adams
JUNE 6, 1975

Senate File 525

H-4109

1 Amend Senate File 525 as amended, passed and
2 reprinted by the Senate, as follows:
3 1. Page 14, line 12, by striking the word
4 "designee" and inserting in lieu thereof the words
5 "or her designee and with industry, professional and
6 consumer groups affected thereby".
7 2. Page 15, line 10, by inserting after the period
8 the words "Staff-to-resident ratios established under
9 this subsection need not be the same for facilities
10 holding different types of licenses, nor for facilities
11 holding the same type of license if there are
12 significant differences in the needs of residents
13 which the respective facilities are serving or intend
14 to serve."

H-4109 FILED - *Adopted 6/9 (2250)* BY HARGRAVE of Johnson
JUNE 6, 1975

H-4117

1 Amend Senate File 525 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 31, by inserting after the second
A 4 word "of" the word "age7".

5 2. Page 2, line 18, by inserting after the second
6 word "of" the word "age7".

7 3. Page 4, by inserting after line 21 the fol-
8 lowing new subsections:

9 "15. "Nursing care" means those services which
10 can be provided only under the direction of a reg-
11 istered nurse or a licensed practical nurse.

12 16. "Social services" means services relating
B 13 to the psychological and social needs of the individual
14 in adjusting to living in a health care facility,
15 and minimizing stress arising from that circumstance.

16 17. "Rehabilitative services" means services to
17 encourage and assist restoration of optimum mental
18 and physical capabilities of the individual resident
19 of a health care facility."

20 4. Page 18, line 16, by inserting after the period
C 21 the following:

22 "When the findings are made public, they shall
23 include no reference to any cited violation which
24 has been corrected to the department's satisfaction
25 unless the same reference also clearly notes that
26 the violation has been corrected."

27 5. Page 20, lines 28 and 29, by striking the words
D 28 "or such longer period as the department may by rule
29 require" and inserting in lieu thereof the words "~~er~~
30 ~~such-longer-period-as-the-department-may-by-rule~~
31 require".

32 6. Page 21, by striking lines 7 through 13, in-
E 33 clusive, and inserting in lieu thereof the word
34 "chapter."

35 7. Page 23, by inserting after line 26 the fol-
36 lowing:

37 "5. a. The provisions of this section notwith-
38 standing, the district court may enter an order
F 39 appointing the administrator of a county care facility
40 as guardian of the person or of the property, or both,
41 of a resident of the county care facility, if the
42 county board of supervisors has so petitioned the
43 court. Notice and hearing on the petition and order
44 are not required. The administrator of a county care
45 facility may establish either separate or consolidated
46 bank accounts for cash funds of residents over whom
47 guardianship has been granted to the administrator.
48 The administrator shall maintain records as required
49 by the auditor of state to account for receipts and
50 disbursements of the residents' cash or property,

1 and shall file a report on the status of the people
2 and property over which he or she has been granted
3 guardianship with the county care facility's care
4 review committee on July first and January first of
5 each year.

6 b. The board of supervisors shall not petition
7 the district court for appointment of the county care
8 facility administrator as guardian of the person or
9 the property, or both, of a resident of the facility
10 unless the county has made every reasonable effort
11 to have guardianship assumed by a person related to
12 the resident within the third degree of consanguinity.
13 The board may so petition the court not less than
14 ninety days after sending to all of the resident's
15 known relatives of that degree a notice stating that
16 it is proposed that the county care facility
17 administrator be appointed guardian. The court may
18 grant limited guardianship, having due regard for
19 the needs of the resident and the extent of the efforts
20 required of the county care facility administrator
21 to properly manage the resident's affairs. The
22 resident, if competent, or the resident's relatives
23 shall have the right to appear before the court in
24 opposition to the county board's petition to appoint
25 the county care facility administrator as guardian."

26 8. Page 23, by striking lines 29 through 35,
27 inclusive, and page 24, by striking line 1, and
28 inserting in lieu thereof the following:

29 "135C.25 CARE REVIEW COMMITTEE--APPOINTMENT--
30 DUTIES.

31 1. Each health care facility shall have a care
32 review committee whose members shall be appointed
33 by as follows:

34 a. By the areawide health planning council
35 recognized as such by this state acting through the
36 office for comprehensive health planning in the office
37 for planning and programming; or

38 b. If the appropriate areawide health planning
39 council has failed to make any appointment necessary
40 under this subsection within thirty days after being
41 notified of a vacancy by the administrator of the
42 facility involved, by the commissioner; or

43 c. If the commissioner has failed to act within
44 thirty days after being notified by the administrator
45 of the facility involved of a vacancy which has not
46 been filled by the appropriate areawide health planning
47 council within the time prescribed by this subsection,
48 the appointment may be made by the administrator.

49 2. The care review committee shall periodically
50 review the needs of each individual patient-or resident

1 of the facility, and shall perform the functions
2 delegated to it by section twenty-five (25) of this
3 Act. The responsibilities of the care review".

4 9. Page 25, line 27, by inserting after the word
5 "department" the words "or care review committee of
6 the facility".

7 10. Page 25, line 31, by inserting after the word
I 8 "complaint" the words ", and a copy thereof shall
9 be forwarded to the facility involved within twenty-
10 four hours of receipt of the complaint by the
11 department or the committee".

12 11. Page 25, by striking line 32 and inserting
13 in lieu thereof the following:

14 "Sec. 25. NEW SECTION. INSPECTIONS UPON
15 COMPLAINTS.

16 1. Upon".

17 12. Page 25, lines 34 and 35, by striking the
18 words "shall assign a staff member to" and inserting
19 in lieu thereof the words "or care review committee shall".

20 13. Page 26, line 1, by inserting after the word
21 "department" the words "or committee".

22 14. Page 26, line 4, by striking the words "cause
23 an on-site inspection to be made" and inserting in
24 lieu thereof the words "make or cause to be made an
25 on-site inspection".

26 15. Page 26, line 5, by inserting after the period
27 the words "The department may refer to the care review
28 committee of a facility any complaint received by
29 the department regarding that facility, for initial
30 evaluation and appropriate action by the committee."

31 16. Page 26, line 7, by inserting after the word
32 "department" the words "or committee".

33 17. Page 26, by inserting after line 7 the
34 following:

35 "2. An inspection made pursuant to a complaint
36 filed under section twenty-four (24) of this Act shall
37 be limited to the matter or matters complained of,
38 and shall not be a general inspection."

39 18. Page 26, line 12, by inserting after the word
40 "department" the words "or committee".

41 19. Page 26, line 18, by inserting after the
H 42 period the words "The dignity of the resident shall
43 be given first priority by the inspector and others."

44 20. Page 26, by inserting after line 18 the fol-
45 lowing:

46 "3. If upon an inspection of a facility by its
47 care review committee, pursuant to this section, the
48 committee advises the department of any circumstance
49 believed to constitute a violation of this chapter
50 or of any rule adopted pursuant to it, the committee

1 shall similarly advise the facility at the same time.
2 If the facility's licensee or administrator disagrees
3 with the conclusion of the committee regarding the
4 supposed violation, an informal conference may be
5 requested and if requested shall be arranged by the
6 department as provided in section twenty-nine (29)
7 of this Act before a citation is issued. If the
8 department thereafter issues a citation pursuant to
9 the committee's finding, the facility shall not be
10 entitled to a second informal conference on the same
11 violation and the citation shall be considered
12 affirmed. The facility cited may proceed under section
13 thirty (30) of this Act if it so desires."

H-4117 FILED, H-4117A ADOPTED, (2247) BY HARGRAVE of Johnson
H-4117B ADOPTED, (2247) H-4117C ADOPTED, (2247) LIPSKY of Linn
H-4117D ADOPTED, H-4117E LOST, (2247) WEST of Marshall
H-4117F ADOPTED, H-4117G ADOPTED, (2248) HUTCHINS of Guthrie
H-4117I ADOPTED, H-4117H ADOPTED (2249)
JUNE 9, 1975

H-4123

1 Amend Senate File 525, as passed by the Senate
2 and reprinted, page 15, line 19, by striking the
3 words "not to exceed twelve months".

H-4123 FILED - *Adopted* (2250) BY WELDEN of Hardin
JUNE 9, 1975

H-4125

1 Amend Senate File 525, as passed by the Senate
2 and reprinted, as follows:
3 Page 4, by inserting after line 33 the following:
4 "Such rules and standards of the department, pro-
5 visions of chapter seventeen A (17A) of the Code not-
6 withstanding, shall be submitted to and approved by
7 both houses of the general assembly before they shall
8 become effective. If the general assembly is not
9 in session when such rules and standards are promul-
10 gated, the rule shall be effective until thirty days
11 after the convening of the next regular session of
12 the general assembly, and shall continue to be
13 effective only upon submission to and approval by
14 both houses of the general assembly."

H-4125 FILED, LOST (2249)
JUNE 9, 1975

BY BRANSTAD of Winnebago

Senate File 525

H-4118

1 Amend Senate File 525, as passed by the Senate
2 and reprinted, as follows:
A 3 1. Page 15, line 7, by striking the word
4 "specified" and inserting in lieu thereof the
5 word "minimum".
6 2. Page 16, line 14, by inserting after the
B 7 period the following new sentence: "The inspector
8 shall identify himself or herself to the person in
9 charge of the facility and state that an inspection
10 is to be made before beginning the inspection."
C 11 3. Page 17, lines 8 and 9 by striking the
12 words "to operation of the facility and".
13 4. Page 19, line 23, by inserting after the
D 14 word "offense" the words "or chargeable offense".
15 5. Page 26, by striking all after the period
E 16 in line 24 and all of lines 25 through 27 and in-
17 sserting in lieu thereof the following: "The per-
18 son in charge of the facility shall be informed of
19 the substance of the complaint at the commencement
20 of the on-site inspection."
21 6. Page 31, line 20 by striking the words "not
22 more than".
F 23 7. Page 31, line 21, by inserting after the
24 word "date" the following: ",subject to such pro-
25 visional certificates or other extensions as may
26 be granted in accordance with this Act,".

H-4118 FILED, H-4118A, B, C, D, BY WELDEN of Hardin
E, AND F ADOPTED (2250-2251)
JUNE 9, 1975

H-4122

1 Amend the amendment H-4117 to Senate File 525,
2 page 1, by striking all of line 11 and inserting
3 in lieu thereof the words "istered nurse."

H-4122 FILED, LOST (2248)
JUNE 9, 1975

BY KOOGLER of Mahaska

SENATE FILE 525

AN ACT

RELATING TO THE LICENSING AND REGULATION OF HEALTH CARE FACILITIES, AND PRESCRIBING PENALTIES FOR VIOLATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section one hundred thirty-five C point one (135C.1), Code 1975, as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, Senate File one hundred ninety-three (193), section one (1), is amended to read as follows:

135C.1 DEFINITIONS.

1.--"Adult foster family home" means any private dwelling or other suitable place providing for a period exceeding twenty-four consecutive hours accommodation, board, and supervision, for which a charge is made, to not more than five individuals, not related to the owner or occupant of the dwelling or place within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves, but who are essentially capable of managing their own affairs.

2.--"Boarding home" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and supervision to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves, but who are essentially capable of managing their own affairs.

3.--"Custodial home" 1. "Residential care facility" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and personal assistance in feeding, dressing, and other essential daily living activities to three or more individuals,

not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves ~~or manage their own affairs~~, but who do not require the daily services of a registered or licensed practical nurse except on an emergency basis.

4.--"Basic nursing home" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and personal care and treatment or simple nursing care to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity require domiciliary care, simple nursing care, or occasional skilled nursing care, but who do not require hospital or skilled nursing home care.

5 2. "Intermediate nursing home care facility" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and nursing care and supporting services as directed, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity require continuous nursing care and related medical services, or occasional skilled nursing care, but who do not require hospital care nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

6 3. "Skilled nursing home facility" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and the health care nursing services necessary for certification as a skilled nursing home under Title XIX of the United States Social Security Act (Title XVIII, United States Code, sections 1396 through 1396g), as amended to January 1, 1970, the need

for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a twenty-four-hours-per-day basis.

~~7.--"Extended-care-facility"-means-any-institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and the health care services necessary for certification as an extended care facility under Title XVIII of the United States Social Security Act (Title XLII, United States Code, sections 1395 through 139544), as amended to January 1, 1970, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity.~~

8 4. "Health care facility" or "facility" means any adult ~~feeder family home, boarding home, custodial home, basic nursing home residential care facility, intermediate nursing home care facility or, skilled nursing home, or extended care facility.~~

~~9.--"Patient"-means-an-individual-admitted-to-a-basic nursing home, intermediate nursing home, skilled nursing home, or extended care facility in the manner prescribed by section 135C.23 for care requiring, at a minimum, the daily services of a registered or licensed practical nurse.~~

5. "Licensee" means the holder of a license issued for the operation of a facility, pursuant to this chapter.

40 6. "Resident" means an individual admitted to a health care facility in the manner prescribed by section 135C.23, ~~who does not require the daily services of a registered or licensed practical nurse.--An employee of, or an individual related within the third degree of consanguinity to the administrator or owner of, a health care facility shall not be deemed a resident thereof for the purposes of this chapter solely by reason of being provided living quarters within~~

~~such-facility.~~

44 7. "Physician" means ~~a person licensed to practice medicine and surgery, osteopathy and surgery or osteopathy under the laws of this state~~ has the meaning assigned that term by section one hundred thirty-five point one (135.1), subsection five (5) of the Code.

8. "House physician" means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

42 9. "Commissioner" means the commissioner of public health appointed pursuant to section 135.2, or his designee.

43 10. "Department" means the state department of health.

44 11. "Person" means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

45 12. "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

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

14. "Supervision" means direct oversight and inspection of the act of accomplishing a function or activity.

15. "Nursing care" means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

16. "Social services" means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

17. "Rehabilitative services" means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

Sec. 2. Section one hundred thirty-five C point two (135C.2), subsection two (2), Code 1975, is amended to read as follows:

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in ~~nursing-homes-and-custodial-homes~~ health care facilities.

Sec. 3. Section one hundred thirty-five C point two (135C.2), Code 1975, is amended by adding the following new subsection:

NEW SUBSECTION. The department shall establish by administrative rule, within the intermediate care facility category, a special classification for facilities intended to serve mentally retarded individuals. The department may also establish by administrative rule other classifications within that category, or special classifications within the residential care facility or skilled nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the classification is relevant and establish requirements for an approved program of care commensurate with such problem or condition, and may grant special variances or considerations to facilities licensed within the classification so established.

Sec. 4. Section one hundred thirty-five C point three (135C.3), Code 1975, is amended to read as follows:

135C.3 NATURE OF CARE. Each facility licensed as an ~~extended-care-facility~~, a skilled nursing home, facility or an intermediate nursing-home, or a basic-nursing-home, care facility shall provide an organized continuing twenty-four hour program of nursing care services commensurate with the needs of ~~the-patients~~ its residents and under the immediate direction of a licensed physician, licensed registered nurse or licensed practical nurse licensed by the state of Iowa,

whose combined training and supervised experience is such as to assure adequate and competent nursing direction. Medical and nursing care services shall be under the direction of either a "house physician" or individually selected physicians, but surgery or obstetrical care shall not be provided within the home facility. All admissions to ~~extended care-facilities, skilled nursing homes, facilities or intermediate nursing-homes, and basic-nursing-homes~~ care facilities shall be based on an order written by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing.

Sec. 5. Section one hundred thirty-five C point four (135C.4), Code 1975, as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, Senate File one hundred ninety-three (193), section two (2), is amended to read as follows:

135C.4 ~~CUSTODIAL-HOMES~~ RESIDENTIAL CARE FACILITIES. Each facility licensed as a ~~custodial-home-or-bearding-home~~ residential care facility shall provide an organized continuous twenty-four hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care. All admissions to ~~custodial-homes-or-bearding-homes, and all placements in adult-foster-family-homes~~ residential care facilities shall be based on an order written by a physician certifying that the individual being admitted ~~or-placed~~ does not require nursing care services.

Sec. 6. Section one hundred thirty-five C point five (135C.5), Code 1975, is amended to read as follows:

135C.5 HEALTH CARE FACILITIES, ETC. No other business or activity shall be carried on in a health care facility, nor in the same physical structure with a health care facility except as hereinafter provided, unless such business or activity is under the control of and is directly related to

~~er-necessary-for and incidental to~~ the operation of the health care facility. No business or activity which is operated within the limitations of this section shall interfere in any manner with the use of the facility by the patients or residents, nor be disturbing to them. ~~Any part of such business or activity open to customers other than patients or residents of the health care facility shall be physically separated from the facility, and an entrance shall be provided for such customers so that they do not pass through the health care facility in entering or leaving the area where such business or activity is conducted.~~

Sec. 7. Section one hundred thirty-five C point six (135C.6), subsections four (4) and five (5), Code 1975, are amended to read as follows:

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective patient or resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to ~~July 1, 1970~~ January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care

facility established or renamed after ~~July 1, 1974~~ January 1, 1976, shall use any name indicating that it holds a higher different type of license than it has been issued.

Sec. 8. Section one hundred thirty-five C point seven (135C.7), Code 1975, as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, Senate File one hundred ninety-three (193), sections three (3) and four (4), is amended to read as follows:

135C.7 APPLICATION--FEES. Licenses shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with such other statutes and local ordinances as may be applicable. Each application for license shall be accompanied by the annual license fee prescribed by this section, subject to refund to the applicant if the license is denied, which fee shall be paid over into the state treasury and credited to the general fund if the license is issued. There shall be an annual license fee based upon the bed capacity of the health care facility, as follows:

~~1.--For extended care facilities, skilled nursing homes, intermediate nursing homes, and basic nursing homes having a total of:~~

- a 1. Ten beds or less, ten twenty dollars.
- b 2. More than ten and not more than twenty-five beds, twenty forty dollars.
- e 3. More than twenty-five and not more than seventy-five beds, thirty sixty dollars.
- d 4. More than seventy-five and not more than one hundred fifty beds, forty eighty dollars.
- e 5. More than one hundred fifty beds, fifty one hundred dollars.

~~2.--For boarding homes and custodial homes having a total of:~~

- a ~~1~~. ~~Ten beds or less, five dollars.~~
- b ~~2~~. ~~More than ten and not more than twenty-five beds, ten dollars.~~

~~e.---More-than-twenty-five-and-not-more-than-seventy-five
beds,-fifteen-dollars-~~

~~d.---More-than-seventy-five-and-not-more-than-one-hundred
fifty-beds,-twenty-dollars-~~

~~e.---More-than-one-hundred-fifty-beds,-twenty-five-dol-
lars-~~

~~3.---For-adult-foster-family-homes,-five-dollars-~~

Sec. 9. Section one hundred thirty-five C point nine (135C.9), Code 1975, is amended to read as follows:

135C.9 INSPECTION BEFORE ISSUANCE.

1. The department shall not issue a health care facility license to any applicant until:

4 a. The department has ascertained that the staff and equipment of the facility is adequate to provide the care and services required of a health care facility of the category for which the license is sought. Prior to the review and approval of plans and specifications for any new facility and the initial licensing under a new licensee, a resume of the programs and services to be furnished and of the means available to the applicant for providing the same and for meeting requirements for staffing, equipment, and operation of the health care facility, with particular reference to the professional requirements for services to be rendered, shall be submitted in writing to the department for review and approval. The resume shall be reviewed by the department within ten working days and returned to the applicant. The resume shall, upon the department's request, be revised as appropriate by the facility from time to time after issuance of a license.

2 b. The facility has been inspected by the state fire marshal or a deputy appointed by him for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a conditional provisional certificate of compliance by the facility with the fire-hazard and fire-safety rules and standards of the department as promulgated by the fire marshal and, where applicable, the fire safety standards required

for participation in programs authorized by either Title XVIII or Title XIX of the United States Social Security Act (Title XLII, United States Code, sections one thousand three hundred ninety-five (1395) through one thousand three hundred ninety-five 11 (139511) and one thousand three hundred ninety-six (1396) through one thousand three hundred ninety-six g (1396g)). The certificate or conditional provisional certificate shall be signed by the fire marshal or his deputy who made the inspection.

2. The rules and standards promulgated by the fire marshal pursuant to subsection one (1), paragraph b of this section shall be substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima-facie evidence.

3. The state fire marshal or his deputy may issue a conditional-certificate successive provisional certificates of compliance for a-period periods of one year each to a facility which is in substantial compliance with the applicable fire-hazard and fire-safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the facility to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or his deputy. Renewal of a conditional provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the facility without the appearance of additional deficiencies other than those arising from changes in the fire-hazard and fire-safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good-faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or his deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

Sec. 10. Section one hundred thirty-five C point ten (135C.10), Code 1975, is amended to read as follows:

135C.10 DENIAL, SUSPENSION OR REVOCATION. The department shall have the authority to deny, suspend, or revoke a license in any case where the department finds that there has been a repeated failure on the part of the facility to comply with the provisions of this chapter or the rules or minimum standards promulgated hereunder, or for any of the following reasons:

1. Cruelty or indifference to ~~the-welfare-of~~ health care facility residents ~~or-patients~~.

2. Appropriation or conversion of the property of a health care facility resident ~~or-patient~~ without his written consent or the written consent of his legal guardian.

~~3--Evidence-that-the-moral-character-of-the-applicant, manager-or-supervisor-of-the-health-care-facility-is-not reputable-~~

4 3. Permitting, aiding, or abetting the commission of any illegal act in the health care facility.

5 4. Inability or failure to operate and conduct the health care facility in accordance with the requirements of this chapter and the minimum standards and rules issued pursuant thereto.

6 5. Obtaining or attempting to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.

7 6. Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the health care facility.

8 7. Securing the devise or bequest of the property of a patient-in resident of a health care facility by undue influence.

9. Willful failure or neglect to maintain a continuing in-service education and training program for all personnel employed in the facility.

10. In the case of an application by an existing licensee for a new or newly-acquired facility, continuing or repeated

failure of the licensee to operate any previously licensed facility or facilities in compliance with the provisions of this Act or of the rules adopted pursuant to it.

Sec. 11. Section one hundred thirty-five C point eleven (135C.11), Code 1975, is amended to read as follows:

135C.11 NOTICE--HEARINGS. ~~Such-denial~~

1. The denial, suspension, or revocation of a license shall be effected by ~~mailing~~ delivering to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The applicant or licensee may seek judicial review pursuant to section 135C.13.

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. A copy or copies of the transcript may be obtained by an interested party upon payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at

a rate prescribed by the aforesaid rules. The commissioner may, with the advice and consent of the care review committee established pursuant to section 135C.25, remove all residents ~~and-patients~~ and suspend the license or licenses of any health care facility, prior to a hearing, when he finds that the health or safety of residents ~~or-patients~~ of the health care facility requires such action on an emergency basis. The fact that no care review committee has been appointed for a particular facility shall not bar the commissioner from exercising the emergency powers granted by this subsection with respect to that facility.

Sec. 12. Section one hundred thirty-five C point thirteen (135C.13), Code 1975, is amended to read as follows:

135C.13 JUDICIAL REVIEW. Judicial review of any action of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be preserved except when the commissioner, with the advice and consent of the care review committee established pursuant to section 135C.25, determines that the health, safety or welfare of the residents ~~or-patients~~ of the facility are in immediate danger, in which case he may order the immediate removal of such residents ~~or-patients~~. The fact that no care review committee has been appointed for a particular facility shall not bar the commissioner from exercising the emergency powers granted by this subsection with respect to that facility.

Sec. 13. Section one hundred thirty-five C point fourteen (135C.14), Code 1975, is amended to read as follows:

135C.14 RULES. The department ~~may shall, in accordance with chapter seventeen A (17A) of the Code, adopt by-reference nationally-recognized-standards-and-rules-or-otherwise-amend, promulgate and enforce rules setting minimum standards for health care facilities. In so doing, the department may adopt~~

by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. Such The rules and standards required by this section shall be formulated in consultation with the commissioner of social services or his or her designee and with industry, professional and consumer groups affected thereby, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. Such rules and standards regarding location and construction of the home may impose requirements in excess of those provided in chapter 413 but shall not impose requirements less than those provided by such chapter. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents ~~or-patients~~.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents ~~or-patients~~.

4. Diet related to the needs of each resident ~~or-patient~~ and based on good nutritional practice and on recommendations which may be made by the physician attending the resident ~~or-patient~~.

5. Equipment essential to the health and welfare of the resident ~~or-patient~~.

6. Requirements that a minimum number of registered or

licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

Sec. 14. Section one hundred thirty-five C point fifteen (135C.15), Code 1975, is amended to read as follows:

135C.15 TIME TO COMPLY.

1. Any health care facility which is in operation at the time of adoption or promulgation of any applicable rules or minimum standards under this chapter shall be given reasonable time from the date of such promulgation to comply with such rules and minimum standards as provided for by the department. The commissioner may grant successive thirty-day extensions of the time for compliance where evidence of a good faith attempt to achieve compliance is furnished, if the extensions will not place in undue jeopardy the residents of the facility to which the extensions are granted.

2. Renovation of an existing health care facility, not already in compliance with all applicable standards, shall be permitted only if the fixtures and equipment to be installed and the services to be provided in the renovated portion of the facility will conform substantially to current operational standards. Construction of an addition to an existing health care facility shall be permitted only if the design of the structure, the fixtures and equipment to be installed, and the services to be provided in the addition will conform substantially to current construction and operational standards.

Sec. 15. Section one hundred thirty-five C point sixteen (135C.16), Code 1975, is amended to read as follows:

135C.16 INSPECTIONS. ~~The~~

1. In addition to the inspections required by section one hundred thirty-five C point nine (135C.9) of the Code and by section twenty-five (25) of this Act, the department shall make or cause to be made such further unannounced inspections as it may deem necessary to adequately enforce this chapter, and shall including at least one general inspection in each calendar year of every licensed health care facility in the state made without providing advance notice of any kind to the facility being inspected. The inspector shall identify himself or herself to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. Any employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section twenty-five (25) of this Act shall be disciplined as determined by the commissioner, except that if the employee is employed pursuant to chapter nineteen A (19A) of the Code the discipline shall not exceed that authorized pursuant to that chapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing such alteration or additions or new construction, submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to the compliance with the rules and standards herein authorized.

When plans and specifications submitted as required by this subsection have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans so approved shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications, unless a clear and present danger exists that would adversely affect the residents of the facility.

3. An inspector of the department, ~~department of social services, county board of social welfare or fire marshal,~~ may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department of social services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense and the state fire marshal or a deputy appointed pursuant to section one hundred thirty-five C point nine (135C.9), subsection one (1), paragraph b shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, place, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon properly identifying himself he is denied entry thereto for the purpose of making an inspection, he may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

Sec. 16. Section one hundred thirty-five C point seventeen (135C.17), Code 1975, is amended to read as follows:

135C.17 DUTIES OF OTHER DEPARTMENTS. It shall be the duty of the department of social services, state fire marshal, and the officers and agents of other state and local governmental units to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident ~~or patient~~ of any health care facility.

Sec. 17. Section one hundred thirty-five C point nineteen (135C.19), Code 1975, is amended to read as follows:

135C.19 PUBLIC DISCLOSURE OF INSPECTION FINDINGS--POSTING

OF CITATIONS.

1. Following any inspection of a health care facility by the department, the findings of the inspection with respect to compliance by the facility with requirements for licensing under this chapter shall be made public in a readily available form and place forty-five days after the findings are made available to the applicant or licensee. However, if the applicant or licensee requests a hearing pursuant to section 135C.11, the findings of the inspection shall not be made public until the hearing has been completed. When the findings are made public, they shall include no reference to any cited violation which has been corrected to the department's satisfaction unless the same reference also clearly notes that the violation has been corrected. Other information relating to any health care facility, obtained by the department through reports, investigations, complaints, or as otherwise authorized by this chapter, which is not a part of the department's findings from an inspection of the facility, shall not be disclosed publicly except in proceedings involving the citation of a facility for a violation, in the manner provided by section twenty-seven (27) of this Act, or the denial, suspension or revocation of a license under this chapter.

2. Each citation for a class I or class II violation which is issued to a health care facility and which has become final, or a copy or copies thereof, shall be prominently posted as prescribed in rules to be adopted by the department, until the violation is corrected to the department's satisfaction. The citation or copy shall be posted in a place or places in plain view of the residents of the facility cited, persons visiting the residents, and persons inquiring about placement in the facility.

3. A copy of each citation required to be posted by this subsection shall be sent by the department to the department of social services.

If the facility cited subsequently advises the department of social services that the violation has been corrected to

the satisfaction of the department of health, the department of social services must maintain this advisory in the same file with the copy of the citation. The department of social services shall not disseminate to the public any information regarding citations issued by the department of health, but shall forward or refer such inquiries to the department of health.

Sec. 18. Section one hundred thirty-five C point twenty-one (135C.21), Code 1975, is amended to read as follows:

135C.21 ~~PENALTY~~ PENALTIES.

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months, or both. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section one hundred thirty-five C point seventeen (135C.17) of the Code in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than fifty nor more than five hundred dollars or imprisonment in the county jail for not more than ninety days or both. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

Sec. 19. Section one hundred thirty-five C point twenty-three (135C.23), Code 1975, is amended to read as follows:

135C.23 EXPRESS REQUIREMENTS FOR ADMISSION OR RESIDENCE. No individual shall be admitted to or permitted to remain in a health care facility as a ~~patient-or~~ resident, except in accordance with the requirements of this section.

1. Each ~~patient-or~~ resident shall be covered by a contract executed at the time of admission or prior thereto by the ~~patient-or~~ resident, or his legal representative, and the health care facility, except as otherwise provided by subsection five (5) of this section with respect to residents admitted at public expense to a county care facility operated under chapter two hundred fifty-three (253) of the Code. Each party to the contract shall be entitled to a duplicate original thereof, and the health care facility shall keep on file all contracts which it has with ~~patients-or~~ residents and shall not destroy or otherwise dispose of any such contract for at least one year after its expiration ~~or such longer period as the department may by rule require.~~ Each such contract shall expressly set forth:

- a. The terms of the contract.
- b. The services and accommodations to be provided by the health care facility and the rates or charges therefor.
- c. Specific descriptions of any duties and obligations of the parties in addition to those required by operation of law.
- d. Any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter, nor contain any disclaimer of responsibility for injury to the resident, or to relatives or other persons

visiting the resident, which occurs on the premises of the facility or, with respect to injury to the resident, which occurs while the resident is under the supervision of any employee of the facility whether on or off the premises of the facility.

2. No health care facility shall knowingly admit or retain any ~~patient-or~~ resident:

- a. Who is dangerous to himself or other ~~patients-or~~ residents.
- b. Who is in an active or acute stage of alcoholism, drug addiction, mental illness, or communicable disease.
- c. Whose condition or conduct is such that he would be unduly disturbing to other ~~patients-or~~ residents.
- d. Who is in need of medical procedures, as determined by a physician, or services, ~~as determined by the care review committee,~~ which cannot be or are not being carried out in the facility.

3. Except in emergencies, a ~~patient-or~~ resident who is not essentially capable of managing his own affairs shall not be transferred out of a health care facility or discharged for any reason ~~only-after~~ without prior notification to the next of kin, legal representative, or agency acting on the ~~patient's-or~~ resident's behalf. When such next of kin, legal representative, or agency cannot be reached or refuses to co-operate, proper arrangements shall be made by the home facility for the welfare of the ~~patient-or~~ resident before his transfer or discharge.

4. No owner, administrator, employee, or representative of a health care facility shall pay any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, to any person for ~~patients-or~~ residents referred to such facility, nor accept any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, for professional or other services or supplies purchased by the facility or by any resident, or by any third party on behalf of any resident, of the facility.

5. Each county which maintains a county care facility

under chapter two hundred fifty-three (253) of the Code shall develop a statement in lieu of, and setting forth substantially the same items as, the contracts required of other health care facilities by subsection one (1) of this section. The statement must be approved by the county board of supervisors and by the department. When so approved, the statement shall be considered in force with respect to each resident of the county care facility.

Sec. 20. Section one hundred thirty-five C point twenty-four (135C.24), Code 1975, is amended to read as follows:

135C.24 PERSONAL PROPERTY OR AFFAIRS OF PATIENTS OR RESIDENTS. The admission of a ~~patient-or~~ resident to a health care facility and his presence therein shall not in and of itself confer on such facility, its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the ~~patient-or~~ resident, nor any authority or responsibility for the personal affairs of the ~~patient-or~~ resident, except as may be necessary for the safety and orderly management of the facility and as required by this section.

1. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee or conservator for any ~~patient-or~~ resident of such facility, or any of such ~~patient's-or~~ resident's property, unless such ~~patient-or~~ resident is related to the person acting as guardian within the third degree of consanguinity.

2. A health care facility shall provide for the safekeeping of personal effects, funds and other property of its ~~patients or~~ residents, provided that whenever necessary for the protection of valuables or in order to avoid unreasonable responsibility therefor, the facility may require that they be excluded or removed from the premises of the facility and kept at some place not subject to the control of the facility.

3. A health care facility shall keep complete and accurate records of all funds and other effects and property of its ~~patients-or~~ residents received by it for safekeeping.

4. Any funds or other property belonging to or due a

~~patient-or~~ resident, or expendable for his account, which are received by a health care facility shall be trust funds, shall be kept separate from the funds and property of the facility and of its other ~~patients-or~~ residents, or specifically credited to such ~~patient-or~~ resident, and shall be used or otherwise expended only for the account of the ~~patient-or~~ resident. Upon request the facility shall furnish the ~~patient-or~~ resident, the guardian, trustee or conservator, if any, for any ~~patient-or~~ resident, or any governmental unit or private charitable agency contributing funds or other property on account of any ~~patient-or~~ resident, a complete and certified statement of all funds or other property to which this subsection applies detailing the amounts and items received, together with their sources and disposition.

5. The provisions of this section notwithstanding, upon the verified petition of the county board of supervisors the district court may appoint the administrator of a county care facility as conservator or guardian, or both, of a resident of such county care facility, in accordance with the provisions of Chapter 633 of the Code. Such administrator shall serve as conservator or guardian, or both, without fee. The county attorney shall serve as attorney for the administrator in such conservatorship or guardianship, or both, without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards.

Sec. 21. Section one hundred thirty-five C point twenty-five (135C.25), Code 1975, is amended to read as follows:

135C.25 CARE REVIEW COMMITTEE--APPOINTMENT--DUTIES.

1. Each health care facility shall have a care review committee whose members shall be appointed by as follows:

a. By the areawide health planning council recognized as such by this state acting through the office for comprehensive health planning in the office for planning and programming; or

b. If the appropriate areawide health planning council has failed to make any appointment necessary under this subsection within thirty days after being notified of a vacancy

by the administrator of the facility involved, by the commissioner; or

c. If the commissioner has failed to act within thirty days after being notified by the administrator of the facility involved of a vacancy which has not been filled by the appropriate areawide health planning council within the time prescribed by this subsection, the appointment may be made by the administrator.

2. The care review committee shall periodically review the needs of each individual ~~patient-or~~ resident of the facility, and shall perform the functions delegated to it by section twenty-five (25) of this Act. The responsibilities of the care review committee shall be in accordance with rules of the department, which shall in formulating such rules give consideration to the needs of ~~patients-and~~ residents of each license category of health care facility and the services facilities of each category are authorized to render.

Sec. 22. Chapter one hundred thirty-five C (135C), Code 1975, is amended by adding sections twenty-three (23) through thirty-five (35) of this Act.

Sec. 23. NEW SECTION. VIOLATIONS CLASSIFIED. Every violation by a health care facility of any provision of this chapter or of the rules adopted pursuant to it shall be classified by the department in accordance with this section. The department shall adopt and may from time to time modify, in accordance with chapter seventeen A (17A) of the Code, rules setting forth so far as feasible the specific violations included in each classification and stating criteria for the classification of any violation not so listed.

1. A class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a class I violation. A class I violation shall be abated or eliminated immediately unless the department determines that a stated period of time, specified in the citation issued under section twenty-seven

(27) of this Act, is required to correct the violation. A licensee shall be subject to a penalty of not less than five hundred nor more than five thousand dollars for each class I violation for which the licensee's facility is cited.

2. A class II violation is one which has a direct or immediate relationship to the health, safety or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a class II violation. A class II violation shall be corrected within a stated period of time determined by the department and specified in the citation issued under section twenty-seven (27) of this Act. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown. A licensee shall be subject to a penalty of not less than one hundred nor more than five hundred dollars for each class II violation for which the licensee's facility is cited, however the commissioner may waive the penalty if the violation is corrected within the time specified in the citation.

3. A class III violation is any violation of this chapter or of the rules adopted pursuant to it which violation is not classified in the department's rules nor classifiable under the criteria stated in those rules as a class I or a class II violation. A licensee shall not be subject to a penalty for a class III violation, except as provided by section twenty-seven (27), subsection one (1) of this Act for failure to correct the violation within a reasonable time specified by the department in the notice of the violation.

Sec. 24. NEW SECTION. COMPLAINTS ALLEGING VIOLATIONS. Any person may request an inspection of any health care facility by filing with the department or care review committee of the facility a complaint of an alleged violation of

applicable requirements of this chapter or the rules adopted pursuant to it. The complaint shall state in a reasonably specific manner the basis of the complaint, and a copy thereof shall be forwarded to the facility involved within twenty-four hours of receipt of the complaint by the department or the committee.

Sec. 25. NEW SECTION. INSPECTIONS UPON COMPLAINTS.

1. Upon receipt of a complaint made in accordance with section twenty-four (24) of this Act, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee. In any case, the complainant shall be promptly informed of the result of any action taken by the department or committee in the matter.

2. An inspection made pursuant to a complaint filed under section twenty-four (24) of this Act shall be limited to the matter or matters complained of, and shall not be a general inspection. Upon arrival at the facility to be inspected, the inspector shall identify himself or herself to an employee of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or his or her representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The dignity of the resident shall be given first priority by the inspector and

others.

3. If upon an inspection of a facility by its care review committee, pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section twenty-nine (29) of this Act before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section thirty (30) of this Act if it so desires.

Sec. 26. NEW SECTION. NO ADVANCE NOTICE OF INSPECTION--EXCEPTION. No advance notice of an on-site inspection made pursuant to section twenty-five (25) of this Act shall be given the health care facility or the licensee thereof unless previously and specifically authorized in writing by the commissioner or required by federal law. The person in charge of the facility shall be informed of the substance of the complaint at the commencement of the on-site inspection.

Sec. 27. NEW SECTION. CITATIONS WHEN VIOLATIONS FOUND--EXCEPTION.

1. When any inspection or investigation of a health care facility made pursuant to this chapter finds the facility in violation of any applicable requirement of this chapter or the rules adopted pursuant to it, the commissioner shall within five working days after a finding of a class I violation is made, and within ten working days after a finding of a class II or class III violation is made, issue a written citation to the facility. The citation shall be served upon the facility personally or by certified mail, except that a citation for a class III violation may be sent by ordinary

mail. Each citation shall specifically describe the nature of the violation, identifying the Code section or subsection or the rule or standard violated, and the classification of the violation under section twenty-three (23) of this Act. Where appropriate, the citation shall also state the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible. Failure to correct a violation within the time specified, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of fifty dollars for each day that the violation continues after the time specified for correction.

2. When a citation is served upon or mailed to a health care facility under subsection one (1) of this section, and the licensee of the facility is not actually involved in the daily operation of the facility, a copy of the citation shall be mailed to the licensee. If the licensee is a corporation, a copy of the citation shall be sent to the corporation's office of record. If the citation was issued pursuant to an inspection resulting from a complaint filed under section twenty-four (24) of this Act, a copy of the citation shall be sent to the complainant at the earliest time permitted by section one hundred thirty-five C point nineteen (135C.19), subsection one (1), of the Code.

3. No health care facility shall be cited for any violation caused by any practitioner licensed pursuant to chapters one hundred forty-eight (148), one hundred fifty (150) or one hundred fifty A (150A) of the Code if that practitioner is not the licensee of and is not otherwise financially interested in the facility, and the licensee or the facility presents evidence that reasonable care and diligence have been exercised in notifying the practitioner of his duty to the patients in the facility.

Sec. 28. NEW SECTION. LICENSEE'S RESPONSE TO CITATION. Within twenty business days after service of a citation under section twenty-seven (27) of this Act, a facility shall either:

1. If it does not desire to contest the citation:

a. Remit to the department the amount specified by the department pursuant to section twenty-three (23) of this Act as a penalty for each class I violation cited, and for each class II violation unless the citation specifically waives the penalty, which funds shall be paid by the department into the state treasury and credited to the general fund; or

b. In the case of a class II violation for which the penalty has been waived in accordance with the standards prescribed in section twenty-three (23), subsection two (2) of this Act, or a class III violation, send to the department a written response acknowledging that the citation has been received and stating that the violation will be corrected within the specific period of time allowed by the citation; or

2. Notify the commissioner that the facility desires to contest the citation and, in the case of citations for class II or class III violations, request an informal conference with a representative of the department.

Sec. 29. NEW SECTION. INFORMAL CONFERENCE ON CONTESTED CITATION. The commissioner shall assign a representative of the department, other than the inspector upon whose inspection the contested citation is based, to hold an informal conference with the facility within ten working days after receipt of a request made under section twenty-eight (28), subsection two (2) of this Act. At the conclusion of the conference the representative may affirm or may modify or dismiss the citation. In the latter case, the representative shall state in writing the specific reasons for the modification or dismissal and immediately transmit copies of the statement to the commissioner, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the representative, as the case may be, comply with section twenty-eight (28), subsection one (1) of this Act.

Sec. 30. NEW SECTION. FORMAL CONTEST--JUDICIAL REVIEW.

1. A facility which desires to contest a citation for a class I violation, or to further contest an affirmed or modified citation for a class II or class III violation, may do so in the manner provided by chapter seventeen A (17A) of the Code for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days after service of a citation for a class I violation, or within five days after the informal conference or after receipt of the written explanation of the representative delegated to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation for a class II or class III violation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter seventeen A (17A) of the Code.

2. Hearings on petitions for judicial review brought under this section shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. The times for pleadings and for hearings in such actions shall be set by the judge of the court with the object of securing a decision in the matter at the earliest possible time.

Sec. 31. NEW SECTION. TREBLE FINES FOR REPEATED VIOLATIONS. The penalties authorized by section twenty-three (23) of this Act shall be trebled for a second or subsequent class I or class II violation occurring within any twelve-month period if a citation was issued for the same class I or class II violation occurring within that period and a penalty was assessed therefor.

Sec. 32. NEW SECTION. REFUND OF PENALTY. If at any time a contest or appeal of any citation issued a health care facility under this Act results in an order or determination that a penalty previously paid to or collected by the department must be refunded to the facility, the refund shall

be made from any money in the state general fund not otherwise appropriated.

Sec. 33. NEW SECTION. RETALIATION BY FACILITY PROHIBITED.

1. A facility shall not discriminate or retaliate in any way against a resident or an employee of the facility who has initiated or participated in any proceeding authorized by this chapter. A facility which violates this section is subject to a penalty of not less than two hundred fifty nor more than five thousand dollars, to be assessed and collected by the commissioner in substantially the manner prescribed by sections twenty-seven (27) through thirty (30), inclusive, of this Act and paid into the state treasury to be credited to the general fund, or to immediate revocation of the facility's license.

2. Any attempt to expel from a health care facility a resident by whom or upon whose behalf a complaint has been submitted to the department under section twenty-four (24) of this Act, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint.

Sec. 34. NEW SECTION. REPORT LISTING LICENSEES AND CITATIONS. The state department shall annually prepare and make available in its office at the seat of government a report listing all licensees by name and address, indicating (1) the number of citations and the nature of each citation issued to each licensee during the previous twelve-month period and the status of any action taken pursuant to each citation, including penalties assessed, and (2) the nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding.

Sec. 35. NEW SECTION. INFORMATION ABOUT COMPLAINT PROCEDURE. The state department shall make a continuing effort to inform the general public of the appropriate procedure to be followed by any person who believes that a complaint against a health care facility is justified and

should be made under section twenty-four (24) of this Act.

Sec. 36. A health care facility licensed prior to the effective date of this Act under chapter one hundred thirty-five C (135C) as it appears in the Code of 1975 may operate by virtue of that license for one year from the date the license is issued unless it is sooner suspended or revoked in the manner provided by law. Any facility holding a license on the effective date of this Act shall have one year from that date, subject to such provisional certificates or other extensions as may be granted in accordance with this Act, to achieve compliance with any standards or requirements imposed by or pursuant to this Act which are new or are more stringent than the comparable standards or requirements previously in existence, but this provision shall not be construed to exempt any facility from operation of the citation and penalty procedure established by this Act as a means of enforcing laws and rules to which the facility is subject.

Sec. 37. After consultation with industry, professional and consumer groups affected thereby, but not later than three months after the effective date of this Act, the commissioner shall initiate the procedure prescribed by section seventeen A point four (17A.4) of the Code for adoption of the rules required by section twenty-three (23) of this Act. The adoption of those rules shall then be completed as expeditiously as reasonably possible. It is the intent of this Act that those rules the adoption of which is required by this section shall serve only to classify violations of and not to substantively change the department's existing rules previously adopted under chapter one hundred thirty-five C (135C) of the Code. Any substantive changes in such existing rules shall be made in a proceeding separate from the proceeding for adoption of the rules required by section twenty-three (23) of this Act.

Sec. 38. Not later than July 1, 1978, the department shall complete a review of the effectiveness of the citation and penalty procedure established by this Act as a means of enforcement of the provisions of chapter one hundred thirty-

five C (135C) of the Code and of the rules adopted pursuant to it, and shall submit a report thereon to the legislative council for transmission to the Sixty-eighth General Assembly upon the convening of its first regular session. The report shall include any recommendations for additional legislation which the department deems necessary to improve the enforcement of the provisions of chapter one hundred thirty-five C (135C) of the Code or to enhance the quality of care provided in health care facilities in this state.

Sec. 39. This Act shall take effect January 1, 1976.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 525, Sixty-sixth General Assembly.

CLARK R. RASMUSSEN
Secretary of the Senate

Approved July 14, 1975

ROBERT D. RAY
Governor