

FILED APR 25 1989

SENATE FILE 542
BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO SSB 370)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the bill of rights of persons with mental
2 retardation, a developmental disability, or chronic mental
3 illness and providing applicability provisions.

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

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1 Section 1. Section 225C.2, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 7. "Eligible populations" means persons
4 with mental retardation, a developmental disability, or
5 chronic mental illness included in section 225C.26.

6 Sec. 2. Section 225C.6, subsection 1, Code 1989, is
7 amended by adding the following new paragraphs:

8 NEW PARAGRAPH. o. Establish standards for rights included
9 in section 225C.28.

10 NEW PARAGRAPH. p. Establish standards for services
11 provided to eligible populations pursuant to the rights
12 included in section 225C.28.

13 Sec. 3. NEW SECTION. 225C.30 COORDINATION OF DEPART-
14 MENTS.

15 The department of management shall coordinate the ac-
16 tivities of the departments required to accomplish goals,
17 adopt rules, and fulfill other responsibilities pursuant to
18 sections 225C.25 through 225C.31.

19 Sec. 4. NEW SECTION. 225C.31 OBLIGATIONS.

20 Any right or entitlement created by this chapter shall be
21 the sole obligation of the state of Iowa. Any county acting
22 pursuant to this chapter, acts only in a ministerial capacity
23 as the agent of the state and in a representative capacity for
24 the state. In the event any claim for damages or injunctive
25 relief is brought against a county, the state shall appear,
26 defend, and indemnify the county. A proceeding for compliance
27 pursuant to section 225C.29 may also be brought against a
28 county, its officials, or employees. Nothing in this section
29 shall be interpreted as transferring obligations of counties
30 as provided in chapters, other than this chapter, of the Code
31 to the state.

32 Sec. 5. 1985 Iowa Acts, chapter 249, section 9, is amended
33 to by striking the section and inserting in lieu thereof the
34 following:

35 SEC. 9.

1 1. This Act takes effect July 1, 1985, except for section
2 5 which shall be implemented according to the following
3 schedule. Significant progress in implementation shall be
4 made each year and reported to the governor and the general
5 assembly annually beginning July 1, 1989:

6 a. A fair and equitable funding formula for the provision
7 of services and programs under section 225C.28 shall be
8 enacted into law on or before July 1, 1990. An interim
9 committee composed of members of the appropriations committees
10 of the house of representatives and the senate shall be
11 created by the legislative council to conduct a study and
12 recommend a funding mechanism to the general assembly on or
13 before January 15, 1990.

14 b. The provisions of section 225C.28, subsections 1, 2,
15 and 5, shall be implemented by January 1, 1993. Between July
16 1, 1989, and January 1, 1993, the department of human services
17 shall establish and implement a schedule for the development
18 of program plans based on comprehensive diagnosis and
19 evaluation of persons described in section 225C.26. The
20 program plans shall be completed and coordinated by an
21 interdisciplinary team in accordance with standards for case
22 management services adopted by the mental health and mental
23 retardation commission pursuant to section 225C.6, subsection
24 1, paragraphs "m" and "n".

25 c. The provisions of section 225C.28, subsection 3,
26 regarding individualized treatment, habilitation, and program
27 services shall be implemented by July 1, 1994. The mental
28 health and mental retardation commission shall adopt rules to
29 implement the provisions and the rules shall be effective and
30 shall be enforced by July 1, 1994. Reimbursement of providers
31 of individualized treatment, habilitation, and program
32 services shall be adequate to ensure the availability of the
33 services to persons described in section 225C.26. Provisions
34 of section 225C.28, subsection 3, prohibiting discrimination
35 regarding the individualized services shall be implemented

1 according to rules adopted by the Iowa state civil rights
2 commission and the rules shall be effective and shall be
3 enforced by July 1, 1994.

4 d. The provisions of section 225C.28, subsection 4, shall
5 be implemented within one year following the implementation of
6 the provisions of section 225C.28, subsection 2.

370-7 e. The provisions of section 225C.28, subsection 6, shall
8 be implemented by July 1, 1994. Progress toward
9 implementation of the provisions shall be made in each year
10 prior to July 1, 1994. The commission on mental health and
11 mental retardation and the department of inspections and
12 appeals shall adopt rules regarding least restrictive
13 environment and age-appropriate services. Rules shall be
374-14 adopted by the appropriate state to agencies provide for
15 flexibility in funding to support less restrictive living
16 arrangements, integrated supported work training, and
17 supported employment. The department of inspections and
18 appeals shall adopt rules providing standards for intermediate
19 care facilities for the mentally retarded which are identical
20 to applicable federal standards and apply to the facilities
21 rules adopted pursuant to section 135C.14, subsection 2,
22 regarding the federal resident's bill of rights.

23 f. The provisions of section 225C.28, subsection 7, shall
24 be implemented by July 1, 1990. The provisions shall be
25 implemented by rules adopted by the mental health and mental
26 retardation commission and by the state board of education
27 which shall take effect by July 1, 1990. Rules shall be
28 adopted by the appropriate state agencies to reflect current
29 training options and include but not be limited to flexible
30 funding mechanisms to finance supported work training and
31 supported employment options in integrated community settings.

32 g. The provisions of section 225C.28, subsection 8, shall
33 be implemented by January 1, 1990. The provisions shall be
34 implemented by rules adopted by the department of employment
35 services which shall take effect by January 1, 1990.

1 h. The provisions of section 225C.28, subsection 9, shall
2 be implemented by January 1, 1990. The provisions shall be
3 implemented by rules adopted by the department of commerce,
4 division of insurance, which shall take effect by January 1,
5 1990.

6 2. The sole remedy for any action or inaction under this
7 chapter, by a county, its agents, or employees, shall be by a
8 proceeding for compliance pursuant to section 225C.29.

9 3. A proceeding for compliance may be initiated pursuant
10 to section 225C.29 to review agency action or inaction prior
11 to the date of the implementation schedule provided in each
12 paragraph of subsection 1.

13 4. Notwithstanding the implementation schedule in
14 subsection 1, section 225C.28, subsections 1, 2, 3, 4, 5, 6,
15 and 7, shall be suspended on and after July 1, 1990, unless
16 and until legislation is enacted and becomes law which
17 specifically establishes a fair and equitable funding formula
18 for the bill of rights in chapter 225C. If a reduction in
19 services is necessary because funds provided by the state in
20 any fiscal year are less than that provided in any previous
21 fiscal year, the county shall not be required to provide
22 additional funds in order to maintain or increase existing
23 services. In any event, section 222.60 shall remain in
24 effect.

25 Sec. 6. RULES REQUIRED. Notwithstanding any other
26 provision of this Act to the contrary, the appropriate state
27 agencies shall adopt rules which provide flexible funding to
28 any new service to persons described under section 225C.26
29 which complies with the concepts of least restrictive
30 environment and age-appropriate services. The rules may
31 establish a date after which a newly developed service for a
32 person described under section 225C.26 must comply with the
33 concepts of least restrictive environment and age-appropriate
34 services in order to use public funds for the person.

35 Sec. 7. OBLIGATIONS OF THE STATE. Nothing in this Act is

1 intended or shall be construed to limit any obligations of the
2 state or political subdivisions of the state under any other
3 provisions of state law.

4 Sec. 8. LIMITATION ON RIGHTS. Nothing in this Act is
5 intended or shall be construed to limit any of a person's
6 existing rights provided under any other provisions of state
7 law.

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EXPLANATION

9 This bill provides dates for implementation of the bill of
10 rights of persons with mental retardation, a developmental
11 disability, or chronic mental illness. The scope of state
12 implementation of the bill of rights is dependent upon the
13 development of a funding formula.

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**SENATE FILE 542
FISCAL NOTE**

A fiscal note for Senate File 542 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 542 is a bill which relates to the Bill of Rights for the chronically mentally ill, developmentally disabled, and mentally retarded populations of the State. It implements the rights provided in Chapter 249, 1985 Acts of Iowa on a phased in schedule beginning in FY 1990, providing that a fair and equitable funding formula is enacted into law by July 1, 1990. If no funding formula established, the implementation of the rights is suspended.

Assumptions

1. There are a total of 20,000 adults and children with chronic mental illness, developmental disabilities, or mental retardation who are identified for this estimate. This is based on the Bill of Rights Study completed in 1987.
2. Persons with organic mental disorders, including Alzheimers, are excluded from the estimates because historically they have not been included in the definition of the "eligible populations."
3. There will be little growth in the eligible populations. Most persons are already in the service system, and few will appear after the introduction of new services.
4. The estimated costs for the Nursing Home Reform Act and Enhanced Services were included as current law. This effectively reduces the costs for this legislation, because substantial costs can be attributed those existing programs.
5. Federal funds for these services are assumed to be constant for both the current system and proposed bill scenarios. There is no assurance that additional services would be eligible to receive federal funding. It is possible that additional federal funds could be secured, but because this cannot be estimated, the dollars remain constant.
6. The following costs assume a fair and equitable funding formula is enacted by July 1, 1990. If no formula is enacted, this has no fiscal effect.
7. Because the formula will determine the state and county share for any or all costs, no breakout can be given under proposed law for the non-federal share.
8. County and state expenditures will increase approximately 43% from FY 1989 through FY 1995, independent of this legislation.

Several issues were not addressed, because their fiscal impact could not be determined. Listed below is a partial list of these issues that have a potential costs or savings which could not be determined:

A) The population estimates are based on the number of persons served, not the overall prevalence of the conditions. B) There may be additional persons in the system who were not receiving services at the time of the

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formulation of the population estimate. C) Law suits against the State for "degree of disability" civil rights language could increase. D) Law suits against the State over the establishment of entitlements could increase. E) Day Rehabilitation is not included as a service in Enhanced Services. F) Although this legislation could reduce it, the effects of de-institutionalization and Nursing Home Reform remain constant for both current and proposed law scenarios. G) Some costs associated with the DHS provision of case management are not included in the current scenario. H) There may be more persons eligible for Medicaid than used in the estimate.

Fiscal Estimate

There is no fiscal impact for FY 1990. The FY 1991 and FY 1992 fiscal impact is listed below.

Dollars in thousands

| Funding | Current | Proposed | Diff. | Current | Proposed | Diff. |
|-----------------------|--------------|--------------|----------|--------------|--------------|-----------|
| | Law FY 91 | Law FY 91 | | Law FY 92 | Law FY 92 | |
| Federal | \$102,022 | \$102,022 | \$ 0 | \$115,815 | \$115,815 | \$ 0 |
| County | \$117,574 | unknown | unknown | \$128,363 | unknown | unknown |
| State | \$ 44,269 | unknown | unknown | \$ 47,197 | unknown | unknown |
| | ----- | ----- | ----- | ----- | ----- | ----- |
| Non Federal | \$161,843 | \$163,590 | \$ 1,747 | \$175,560 | \$187,036 | \$ 11,476 |
| Impact of Unknowns | 0 | ? | ? | 0 | ? | ? |
| Total | \$263,865 | \$265,612 | \$ 1,747 | \$291,375 | \$302,851 | \$ 11,476 |

The increase in costs for FY 1992 is the result of phased-in schedule of effectiveness dates for the basic rights.

The estimated additional non-federal cost for FY 1993 is \$14.5 million. This includes the continued expansion of the diagnosis and evaluations, and case management services. The additional non-federal cost for FY 1994 is \$20.9 million. This includes the continued expansion of the diagnosis and evaluations, case management. The additional non-federal cost for FY 1995 is between \$34.3 million and \$39.7 million. The first number assumes FY 1994 costs with an inflationary increase; the second number is the same, and adds the costs associated with eliminating all existing waiting lists.

(LSB 2682sv, CAR)

FILED APRIL 26, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 542

S-3950

1 Amend Senate File 542 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Sec. 100. Section 135C.2, subsection 3, Code
5 1989, is amended by adding the following new
6 unnumbered paragraphs:

7 NEW UNNUMBERED PARAGRAPH. The rules adopted for
8 intermediate care facilities for the mentally retarded
9 shall be consistent with, but no more restrictive
10 than, the federal standards for intermediate care
11 facilities for the mentally retarded established
12 pursuant to the federal Social Security Act, §
13 1905(c)(d), as codified in 42 U.S.C. § 1396d, in
14 effect on January 1, 1989. However, in order to be
15 licensed the state fire marshal must certify to the
16 department an intermediate care facility for the
17 mentally retarded as meeting the applicable provisions
18 of either the health care occupancies chapter or the
19 residential board and care chapter of the life safety
20 code of the national fire protection association, 1985
21 edition. The department shall adopt additional rules
22 for intermediate care facilities for the mentally
23 retarded pursuant to section 135C.14, subsection 8.

24 NEW UNNUMBERED PARAGRAPH. Notwithstanding the
25 limitations set out in this subsection regarding rules
26 for intermediate care facilities for the mentally
27 retarded, the department shall consider the federal
28 interpretive guidelines issued by the federal health
29 care financing administration when interpreting the
30 department's rules for intermediate care facilities
31 for the mentally retarded. This use of the guidelines
32 is not subject to the rulemaking provisions of
33 sections 17A.4 and 17A.5, but the guidelines shall be
34 published in the Iowa administrative bulletin and the
35 Iowa administrative code."

36 2. Page 3, by striking lines 17 through 22 and
37 inserting the following: "supported employment."

38 3. Page 5, by inserting after line 7 the
39 following:

40 "Sec. ____ . EFFECTIVE DATE. Section 100 of this
41 Act, being deemed of immediate importance, takes
42 effect upon enactment. Within sixty days of the
43 enactment of this Act, the department shall adopt
44 rules, which take effect immediately upon filing, to
45 comply with the provisions of section 100 of this Act.

46 4. Title page, line 3, by inserting after the
47 word "provisions" the following: "and an effective
48 date".

By JOE WELSH

S-3950 FILED APRIL 26, 1989

SENATE FILE 542

S-3919

- 1 Amend Senate File 542 as follows:
 - 2 1. Page 3, line 14, by striking the words "to
 - 3 agencies" and inserting the following: "agencies to".
- By JOE WELSH

S-3919 FILED APRIL 26, 1989

SENATE FILE 542

S-3946

- 1 Amend Senate File 542 as follows:
 - 2 1. Page 4, by striking lines 6 through 8.
 - 3 2. By renumbering as necessary.
- By TOM MANN, Jr.

S-3946 FILED APRIL 26, 1989

WELSH, CH.
TIGSON
GROWSTAL

SSB 370
APPROPRIATIONS

SENATE FILE 542
BY (PROPOSED COMMITTEE ON
APPROPRIATIONS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the bill of rights of persons with mental
2 retardation, a developmental disability, or chronic mental
3 illness and providing applicability provisions.

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

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1 Section 1. Section 225C.2, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 7. "Eligible populations" means persons
4 with mental retardation, a developmental disability, or
5 chronic mental illness included in section 225C.26.

6 Sec. 2. Section 225C.6, subsection 1, Code 1989, is
7 amended by adding the following new paragraphs:

8 NEW PARAGRAPH. o. Establish standards for rights included
9 in section 225C.28.

10 NEW PARAGRAPH. p. Establish standards for services
11 provided to eligible populations pursuant to the rights
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13 Sec. 3. NEW SECTION. 225C.30 COORDINATION OF DEPART-
14 MENTS.

15 The department of management shall coordinate the ac-
16 tivities of the departments required to accomplish goals,
17 adopt rules, and fulfill other responsibilities pursuant to
18 sections 225C.25 through 225C.31.

19 Sec. 4. NEW SECTION. 225C.31 OBLIGATIONS.

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21 the sole obligation of the state of Iowa. Any county acting
22 pursuant to this chapter, acts only in a ministerial capacity
23 as the agent of the state and in a representative capacity for
24 the state. In the event any claim for damages or injunctive
25 relief is brought against a county, the state shall appear,
26 defend, and indemnify the county. A proceeding for compliance
27 pursuant to section 225C.29 may also be brought against a
28 county, its officials, or employees. Nothing in this section
29 shall be interpreted as transferring obligations of counties
30 as provided in chapters, other than this chapter, of the Code
31 to the state.

32 Sec. 5. 1985 Iowa Acts, chapter 249, section 9, is amended
33 to by striking the section and inserting in lieu thereof the
34 following:

35 SEC. 9.

1 1. This Act takes effect July 1, 1985, except for section
2 5 which shall be implemented according to the following
3 schedule. Significant progress in implementation shall be
4 made each year and reported to the governor and the general
5 assembly annually beginning July 1, 1989:

6 a. A fair and equitable funding formula for the provision
7 of services and programs under section 225C.28 shall be
8 enacted into law on or before July 1, 1990. An interim
9 committee composed of members of the appropriations committees
10 of the house of representatives and the senate shall be
11 created by the legislative council to conduct a study and
12 recommend a funding mechanism to the general assembly on or
13 before January 15, 1990.

14 b. The provisions of section 225C.28, subsections 1, 2,
15 and 5, shall be implemented by January 1, 1993. Between July
16 1, 1989, and January 1, 1993, the department of human services
17 shall establish and implement a schedule for the development
18 of program plans based on comprehensive diagnosis and
19 evaluation of persons described in section 225C.26. The
20 program plans shall be completed and coordinated by an
21 interdisciplinary team in accordance with standards for case
22 management services adopted by the mental health and mental
23 retardation commission pursuant to section 225C.6, subsection
24 1, paragraphs "m" and "n".

25 c. The provisions of section 225C.28, subsection 3,
26 regarding individualized treatment, habilitation, and program
27 services shall be implemented by July 1, 1994. The mental
28 health and mental retardation commission shall adopt rules to
29 implement the provisions and the rules shall be effective and
30 shall be enforced by July 1, 1994. Reimbursement of providers
31 of individualized treatment, habilitation, and program
32 services shall be adequate to ensure the availability of the
33 services to persons described in section 225C.26. Provisions
34 of section 225C.28, subsection 3, prohibiting discrimination
35 regarding the individualized services shall be implemented

1 according to rules adopted by the Iowa state civil rights
2 commission and the rules shall be effective and shall be
3 enforced by July 1, 1994.

4 d. The provisions of section 225C.28, subsection 4, shall
5 be implemented within one year following the implementation of
6 the provisions of section 225C.28, subsection 2.

7 e. The provisions of section 225C.28, subsection 6, shall
8 be implemented by July 1, 1994. Progress toward
9 implementation of the provisions shall be made in each year
10 prior to July 1, 1994. The commission on mental health and
11 mental retardation and the department of inspections and
12 appeals shall adopt rules regarding least restrictive
13 environment and age-appropriate services. Rules shall be
14 adopted by the appropriate state agencies to provide for
15 flexibility in funding to support less restrictive living
16 arrangements, integrated supported work training, and
17 supported employment. The department of inspections and
18 appeals shall adopt rules providing standards for intermediate
19 care facilities for the mentally retarded which are identical
20 to applicable federal standards and apply to the facilities
21 rules adopted pursuant to section 135C.14, subsection 8,
22 regarding the federal resident's bill of rights.

23 f. The provisions of section 225C.28, subsection 7, shall
24 be implemented by July 1, 1990. The provisions shall be
25 implemented by rules adopted by the mental health and mental
26 retardation commission and by the state board of education
27 which shall take effect by July 1, 1990. Rules shall be
28 adopted by the appropriate state agencies to reflect current
29 training options and include but not be limited to flexible
30 funding mechanisms to finance supported work training and
31 supported employment options in integrated community settings.
32 g. The provisions of section 225C.28, subsection 8, shall
33 be implemented by January 1, 1990. The provisions shall be
34 implemented by rules adopted by the department of employment
35 services which shall take effect by January 1, 1990.

1 h. The provisions of section 225C.28, subsection 9, shall
2 be implemented by January 1, 1990. The provisions shall be
3 implemented by rules adopted by the department of commerce,
4 division of insurance, which shall take effect by January 1,
5 1990.

6 2. The sole remedy for any action or inaction under this
7 chapter, by a county, its agents, or employees, shall be by a
8 proceeding for compliance pursuant to section 225C.29.

9 3. A proceeding for compliance may be initiated pursuant
10 to section 225C.29 to review agency action or inaction prior
11 to the date of the implementation schedule provided in each
12 paragraph of subsection 1.

13 4. Notwithstanding the implementation schedule in
14 subsection 1, section 225C.28, subsections 1, 2, 3, 4, 5, 6,
15 and 7, shall be suspended on and after July 1, 1990, unless
16 and until legislation is enacted and becomes law which
17 specifically establishes a fair and equitable funding formula
18 for the bill of rights in chapter 225C. If a reduction in
19 services is necessary because funds provided by the state in
20 any fiscal year are less than that provided in any previous
21 fiscal year, the county shall not be required to provide
22 additional funds in order to maintain or increase existing
23 services. In any event, section 222.60 shall remain in
24 effect.

25 Sec. 6. RULES REQUIRED. Notwithstanding any other
26 provision of this Act to the contrary, the appropriate state
27 agencies shall adopt rules which provide flexible funding to
28 any new service to persons described under section 225C.26
29 which complies with the concepts of least restrictive
30 environment and age-appropriate services. The rules may
31 establish a date after which a newly developed service for a
32 person described under section 225C.26 must comply with the
33 concepts of least restrictive environment and age-appropriate
34 services in order to use public funds for the person.

35 Sec. 7. OBLIGATIONS OF THE STATE. Nothing in this Act is

1 intended or shall be construed to limit any obligations of the
2 state or political subdivisions of the state under any other
3 provisions of state law.

4 Sec. 8. LIMITATION ON RIGHTS. Nothing in this Act is
5 intended or shall be construed to limit any of a person's
6 existing rights provided under any other provisions of state
7 law.

8 EXPLANATION

9 This bill provides dates for implementation of the bill of
10 rights of persons with mental retardation, a developmental
11 disability, or chronic mental illness. The scope of state
12 implementation of the bill of rights is dependent upon the
13 development of a funding formula.

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