

F I N A L R E P O R T

REVIEW OF STATE SERVICES FOR OLDER IOWANS STUDY COMMITTEE

January, 1988

The Review of State Services for Older Iowans Interim Study Committee was established by the Legislative Council with the following charge: "Review services available to older Iowans, and recommend ways to prevent needless institutionalization and enhance the quality of life of the elderly. Recommendations for improvements in the areas, including but not limited to respite care, transportation, nutrition, adult day care, homemaker-home health care, and housing alternatives should be included in the Committee's final report."

The following members were appointed:

Senator Pat Deluhery, Davenport, Co-chairperson
 Representative Patricia Harper, Waterloo, Co-chairperson
 Senator John Peterson, Albia
 Senator Emil J. Husak, Toledo
 Senator Norman Goodwin, DeWitt
 Senator Forrest Schwengels, Fairfield
 Representative Daniel P. Fogarty, Cylinder
 Representative Robert E. Dvorsky, Coralville
 Representative Andy McKean, Anamosa
 Representative Dan Petersen, Muscatine

MEETING DAYS

The Interim Study Committee was authorized three meeting days, and held its meetings on Friday, October 2, 1987, Friday, October 30, 1987, and Friday, November 30, 1987.

PRESENTATIONS

The following individuals made presentations to the Study Committee:

1. Mr. Joseph Becker, Speaker of the House, Older Iowans' Legislature; Mr. Paul Skarda, Speaker Pro Tem, Older Iowans' Legislature; and Ms. Marquerite Stockstad, delegate, Older Iowans' Legislature.

2. Ms. Betty Grandquist, Director, Department of Elder Affairs.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 2

3. Dr. Jane Roberts, member, State Legislative Committee, American Association for Retired Persons.
4. Mr. Tom O'Rourke, Director, Black Hawk County Health Department.
5. Ms. Karla Lowe-Phelps, Director of Home Health Services, Allen Memorial Hospital, Waterloo.
6. Mr. Wayne Pos, member, Public Policy Committee of the Board of Directors of the United Way of Central Iowa.
7. Mr. Marvin Webb, President, Iowa Association of Area Agencies on Aging.
8. Mr. Roger Strauss, Iowa Division of Insurance, and Mr. Kevin Howe, Staff Attorney, Iowa Division of Insurance.
9. Ms. Jeanine Freeman, Staff Legal Counsel, Iowa Hospital Association, and Ms. Sandy Pogones, Research Associate, Iowa Hospital Association.
10. Mr. Carl McPherson, Long-Term Care Residents' Advocate/Ombudsman, Department of Elder Affairs.
11. Ms. Jo Benson, Vintage Life Coordinator, Covenant Medical Center, Waterloo.
12. Mr. Jack Seeber, President, Iowa State Council of Senior Citizens.
13. Dr. Dennis J. Walter, M.D., President, Iowa Medical Society.
14. Mr. Gary Gesaman, Manager, Long-Term Care, Department of Human Services.
15. Mr. Bill Thayer, Administrator, Madrid Home for the Aging, representative, Iowa Association of Homes for the Aging.
16. Ms. Julie Van Gorp, Legislative Chair, Iowa Council for Homemaker-Home Health Aide Services.
17. Ms. Janet Adair, R.N., Public Health Nurse Administrator, Clarke County Public Health.
18. Ms. Louise Lex, Administrator, Office of Health Planning, Iowa Department of Public Health.
19. Mr. Robert Baudino, Jr., partner, Neiman, Neiman, Stone, and Spellman.
20. Ms. Delores Butt, R.N., B.S.N., member, Board of Directors, Iowa Hospice Organization.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 3

21. Ms. Betty Meisel, Coordinator, Iowa City and Johnson County Senior Center, and Ms. Jean Snow, Director, Elder Services Agency, Iowa City.

22. Mr. Robert A. Jackson, Sr., board member, Iowa Aging Coalition.

23. Ms. Dana Petrowsky, Administrator, Division of Health Facilities, Iowa Department of Inspections and Appeals.

24. Written testimony was submitted by Mr. Paul Stanfield, member, Governmental Concerns Commission, Iowa Inter-Church Agency for Peace and Justice.

RECOMMENDATIONS

The Committee made the following recommendations based upon careful consideration of the testimony presented and information distributed in light of the charge of the Committee:

1. The Committee recommended that all information and written testimony collected and presented during the Interim Study Committee meetings be made available to the members of the General Assembly, upon request.

2. The Committee recommended the inclusion in the final report of a summary of recommendations made by each of the presenters.

3. In the area of care management, the Committee supported the concept of care management, acknowledging the testimony of the Department of Elder Affairs that the care management project is still in the pilot stages and is not as yet ready to be implemented on a statewide level. The Committee recommended that the General Assembly provide funding for the Department of Elder Affairs in its efforts to determine the most appropriate method of administering care management throughout the state.

4. In the area of Homemaker-Home Health Aide and Chore Services, the Committee recommended continued funding for both services with priority given to Homemaker-Home Health Aide Services funding.

5. In the area of nursing home reimbursement rates, the Committee recommended that the reimbursement rate be increased to the sixty-sixth percentile and that the establishment of any reimbursement rate reflect the differences in levels of care, including "heavy care".

6. In the area of housing alternatives, the Committee recommended the collection of housing alternative legislation of other states and the drafting of legislation regarding housing alternatives to be submitted to the General Assembly. The Committee also recommended an evaluation of the existing alternative housing projects within the state.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 4

7. In the area of Well-Elderly Clinics, the Committee recommended continued funding.

8. In the area of transportation, the Committee recommended an increased stable source of funding.

9. In the area of respite care, the Committee strongly supports the current respite care program and recommended increased funding, especially in the area of respite care for Alzheimer's disease victims and families.

10. The Committee recommended that a Committee comprised of the Iowa Department of Public Health, the Department of Elder Affairs, the Department of Human Services, the Department of Inspections and Appeals, and representatives of the groups and organizations which had presented testimony to the Committee be established to review the areas of care review committees, nursing home violations, staffing of nursing homes contingent upon an increase in reimbursement rate levels, the certificate of need program, and the development of a toll-free hotline for the registering of residents' complaints. The Committee recommended that the Department of Inspections and Appeals be the lead agency responsible for scheduling of meetings and for the development of a report of the Committee's findings for submission to the 1988 General Assembly.

11. In the area of guardianship, the Committee recommended an evaluation of guardianship procedures by the human resources and judiciary committees.

12. In the area of mandatory Medicare assignment, the Committee recommended evaluation of the issue by the General Assembly.

13. The Committee recommended that legislation be drafted and submitted to the General Assembly concerning division of assets in the case of the institutionalization of one spouse of a couple to avoid spousal impoverishment.

14. The committee recommended that legislation requiring the financial disclosure of life care communities be drafted and submitted to the General Assembly.

The following is a summary of the recommendations made to the Review of State Services for Older Iowans Study Committee during its meetings of October 2, 1987 and October 30, 1987.

1. The representatives of the Older Iowans' Legislature, Mr. Joseph Becker, Mr. Paul Skarda, and Ms. Marguerite Stockstad, submitted the top five priorities of the Older Iowans' Legislature as recommendations to the Committee. The top five priorities have been provided to the members of the Committee and include:

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 5

a. The establishment of a comprehensive long-term care and community-based services program for the elderly within the Department of Elder Affairs and making an appropriation for the program.

b. Reform of tort law affecting physicians, dentists, podiatrists, optometrists, pharmacists, chiropractors, nurses, and physical therapists, as well as hospitals.

c. Establishment of well-elderly clinics in each county of the state.

d. Increase of the percentage of the road use tax fund allocated to the public transit assistance fund.

e. Establishment of respite care and adult day care for victims of Alzheimer's disease and their families.

2. Ms. Betty Grandquist, Director of the Department of Elder Affairs, recommended that the issues of transportation to rural areas, payment of homemaker-home health aides, housing alternatives, and expansion of case management of long-term care projects, be considered by the Committee.

3. Dr. Jane Roberts, a member of the State Legislative Committee for the American Association of Retired Persons recommended that the three top priorities of the AARP, long-term care, spousal impoverishment, and transportation to meet elderly needs, be considered by the Committee.

a. In the area of long-term care, Dr. Roberts recommended the establishment of a long-term care delivery system which assures access to and receipt of the appropriate mix of long-term care services (institutionalized as well as community-based) by including mandatory prescreening, case (care) management, and a single point of entry to the system. Also, Dr. Roberts recommended the full funding and expansion of the two pilot projects in Linn and Cerro Gordo counties.

b. In the area of spousal impoverishment, Dr. Roberts recommended the division of property assets and income equally between spouses so that the noninstitutionalized spouse's share is not considered in the eligibility application for Medicaid assistance.

c. In the area of transportation, Dr. Roberts recommended that Iowa public transportation be funded by the allocation of one-twentieth of one percent from the road use tax fund.

4. Mr. Tom O'Rourke, Director of the Black Hawk County Health Department, recommended:

a. The investigation of complaints in licensed care facilities by local agencies through 28E agreements.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 6

b. A reasonably relaxed standard of care, combined with the requirement of some or all home care services, as a condition of licensure.

c. Development of an Oregon-type adult foster home level of care.

5. Ms. Karla Lowe-Phelps, Director of Home Health Services at Allen Memorial Hospital in Waterloo and Chairperson of the Iowa Nurses' Association Government Relations Committee, recommended:

a. The use of a waiver system to implement more homelike conditions in care facilities.

b. Funding for follow-up of abuse reporting.

c. The increase in Medicaid reimbursement for institutionalized care.

d. The development of deinstitutionalized care by relaxing physical construction standards without reducing health and safety standards to permit care for the frail elderly in a homelike atmosphere.

6. Mr. Wayne Pos, member of the Public Policy Committee of the Board of Directors of the United Way of Central Iowa, recommended:

a. Stronger regulation of nursing home insurance.

b. Clarification of who is able to be prosecuted for abuse of dependent elderly persons.

c. Subsidization of the cost for public transportation through an additional tax burden.

d. Expansion and funding of home-based services.

e. Expansion of the medically needy program.

7. Mr. Marvin Webb, president of the Iowa Association of Area Agencies on Aging, recommended:

a. Care management with the long-term care component and funding for a coordinated services system.

b. Avoidance of spousal impoverishment by allowing a married couple to divide assets and income into equal shares, allowing the noninstitutionalized spouse to retain one residence and one automobile as exempt resources, and institution of a lien filed as a demand against the estate upon the death of the well spouse.

c. Increasing the percentage of the road use tax fund to one-twentieth of one percent for public transportation.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 7

d. Requirement of Medicare payments as payment in full to physicians who accept Medicare patients.

8. Ms. Jeanine Freeman, staff legal counsel with the Iowa Hospital Association, recommended at the state level:

a. The expansion of the swing-bed program to larger hospitals.

b. Encouragement of ongoing utilization of hospitals in delivery to assure a continuum of needed services.

c. Regulatory flexibility in allowing hospitals development of full service capacity.

d. State support for home-based services.

9. Mr. Carl McPherson, the Long-Term Care Residents' Advocate/Ombudsman, recommended:

a. Changes to eliminate Medicaid discrimination including:

(1) The quota system which allows LTC facilities to make determinations as to the number of Medicaid clients which the facility will allow.

(2) Being put on a waiting list for entry, if a Medicaid-paying potential resident.

(3) Transfers to hospitals not being readmitted to the facility, and the fine for not holding a bed for a resident's return not being a strong enough deterrent.

(4) The guarantee of private pay for an established amount of time.

(5) Withdrawal of a facility from the Medicaid program in order to discharge certain or all Medicaid patients.

(6) Superior care provided to private pay patients as compared with Medicaid pay patients.

b. An increase in the Medicaid reimbursement rate for LTC facilities with the condition of increased trained staff.

c. A central registry for all LTC staff members for screening purposes.

d. Elimination or revision of the Certificate of Need program.

e. Revision of the inspection process.

f. Funding of the Care Review Committee system.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 8

10. Ms. Jo Benson of the Emergency Response Services Unit of Covenant Medical Center in Waterloo suggested the use and funding of the personal emergency response system as an alternative to institutionalized care.

11. Mr. Jack Seeber, Iowa State Council of Senior Citizens, recommended that the Committee address the issues of:

- a. Prescription drug costs.
- b. Payment for home-health care by Medicare.
- c. Affordability of supplemental health insurance.
- d. Alzheimer's care.
- e. The holding of beds in health care facilities if a person is hospitalized.
- f. Spousal impoverishment.

12. Dr. Dennis Walter, president of the Iowa Medical Society, asked the Committee to support voluntary assignment of Medicare as payment in full and to support the program which the IMS is currently developing. Dr. Walter also voiced the IMS opposition to acceptance of Medicare payments as payment in full as a condition of licensure.

13. Mr. Bill Thayer of the Iowa Association of Homes for the Aging suggested:

- a. Increase to the seventy-fourth percentile for Medicaid reimbursement for care.
- b. A Medicaid waiver for home-health care.

14. Ms. Julie Van Gorp, Legislative Chair of the Iowa Council for Homemaker-Home Health Aide Services suggested:

a. Expending of additional funds for home care in place of institutionalized care as ninety-five percent of older persons do not require institutionalized care.

b. Use and coordination of currently existing services in place of a newly established coordinating unit for case management.

c. Increased financial support for home care service personnel.

d. A fifteen percent increase in the state appropriation for home care services.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 9

15. Ms. Janet Adair, R.N., Public Health Nurse Administrator, Clark County Public Health, recommended:

- a. Increased funding for home health care services.
- b. Provision and funding of more intensive types of care.
- c. Increased funding through DPH nursing grants.
- d. The rescision of the Medicaid reimbursement freeze.
- e. Support of the OIL legislation which mandates public health nursing services in each county of the state.

16. Ms. Louise Lex, Administrator, Office of Health Planning, Iowa Department of Public Health, recommended continuation of the Certificate of Need program.

17. Mr. Robert Baudino, Jr., partner, Neiman, Neiman, Stone, and Spellman, recommended continuance and expansion of the Certificate of Need program to include independent living communities.

18. Ms. Delores Butt, R.N., B.S.N., member, Board of Directors, Iowa Hospice Organization, recommended:

- a. Licensure of Hospices to ensure quality and maintenance of minimum standards.
- b. Evaluation of the need for additional registered nurses.
- c. Evaluation of respite care provisions.

19. Ms. Sally Walker, R.N., Director of Alternative Living, Covenant Medical Center, Waterloo, recommended support for funding of respite care, especially in the area of Alzheimer's victims.

20. Ms. Betty Meisel, Coordinator, Iowa City and Johnson County Senior Center, and Ms. Jean Snow, Director, Elder Services Agency, Iowa City, recommended:

- a. The use of the clustering of services concept for provisions of services to older Iowans.
- b. Resource and referral services which provide follow-up and evaluation of the meeting of an individual's service needs.
- c. Subsidized respite care for the very poor elderly, including respite care for older Iowans without family who require "respite" from self-care.

21. Mr. Robert A. Jackson, Sr., board member, Iowa Aging Coalition, recommended funding of a comprehensive long-term care program which provides appropriate and cost-effective services to older Iowans.

Review of State Services for Older Iowans Study Committee
Final Report - January, 1988k
Page 10

22. Ms. Dana Petrowsky, Administrator, Health Care Facilities Division, Iowa Department of Inspections and Appeals, recommended the development of a toll-free hotline for registering of residents' complaints.

23. Mr. Paul Stanfield, member, Governmental Concern Commission, Iowa Inter-Church Agency for Peace and Justice, recommended expansion of Medicaid coverage pursuant to the Sixth Omnibus Budget Reclamation Act of 1986 (SOBRA).

SENATE FILE _____

BY (PROPOSED REVIEW OF STATE
SERVICES FOR OLDER IOWANS
STUDY COMMITTEE BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the determination of eligibility for
2 institutionalized spouses under the medical assistance
3 program.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

S.F. _____ H.F. _____

1 Section 1. Section 249A.3, Code Supplement 1987, is
 2 amended by adding the following new subsection:

3 NEW SUBSECTION. 7. Notwithstanding the provisions of
 4 subsection 6, for the purpose of determining eligibility for
 5 medical assistance for individuals receiving care in a
 6 hospital; residential care facility; intermediate care
 7 facility; or skilled nursing facility, as defined in section
 8 135C.1; a married individual may voluntarily transfer or
 9 assign nonexempt resources to the individual's spouse, not to
 10 exceed one-half of the combined assets and income of the
 11 couple, at any time within two years immediately prior to the
 12 individual's application for medical assistance for
 13 institutional care. Such a transfer or assignment of
 14 nonexempt resources shall not disqualify the institutionalized
 15 spouse from eligibility for medical assistance for
 16 institutionalized care if the institutionalized spouse is
 17 otherwise eligible.

18

EXPLANATION

19 This bill authorizes certain transfers or assignments of
 20 nonexempt resources from an institutionalized spouse to the
 21 noninstitutionalized spouse, not to exceed one-half of the
 22 combined assets of a couple, without affecting the
 23 institutionalized spouse's eligibility for medical assistance.

24

COMPANION TO LSB 8130HI

25

26

27

28

29

30

31

32

33

34

35

HOUSE FILE _____

BY (PROPOSED REVIEW OF STATE
SERVICES FOR OLDER IOWANS
STUDY COMMITTEE BILL)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act regulating continuing-care facilities, and providing
2 enforcement procedures.

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

S.F. _____ H.F. _____

1 Section 1. NEW SECTION. 523D.1 DEFINITIONS.

2 As used in this chapter, unless the context clearly
3 indicates otherwise:

4 1. "Commissioner" means the commissioner of insurance.

5 2. "Continuing care" means the furnishing to an indi-
6 vidual, other than an individual related by consanguinity or
7 affinity to the person furnishing the care, of board and
8 lodging together with nursing services, medical services, or
9 other health-related services, regardless of whether or not
10 the lodging and services are provided at the same location and
11 pursuant to an agreement effective for the life of the
12 individual or for a period in excess of one year, including
13 mutually terminable contracts and in consideration of the
14 payment of an entrance fee with or without other periodic
15 charges.

16 3. "Division" means the insurance division of the depart-
17 ment of commerce.

18 4. "Entrance fee" means an initial or deferred transfer to
19 a provider of a sum of money or other property made or
20 promised to be made as full or partial consideration for
21 acceptance of a specified individual as a resident in a
22 facility, unless the sum is less than the sum of the regular
23 periodic charges for one year of residency.

24 5. "Facility" means the place or places in which a person
25 undertakes to provide continuing care to an individual.

26 6. "Living unit" means a room, apartment, cottage, or
27 other area within a facility set aside for the exclusive use
28 or control of one or more identified individuals.

29 7. "Provider" means a person undertaking to provide
30 continuing care in a facility.

31 8. "Resident" means an individual entitled to receive con-
32 tinuing care in a facility.

33 Sec. 2. NEW SECTION. 523D.2 CERTIFICATE OF AUTHORITY
34 REQUIRED.

35 1. A person shall not provide continuing care in this

S.F. _____ H.F. _____

1 state without a certificate of authority obtained from the
2 division as provided in this chapter.

3 2. The application for a certificate of authority shall be
4 filed with the division by the provider on forms prescribed by
5 the division and shall include all information required by the
6 division under rules adopted by the division pursuant to chap-
7 ter 17A.

8 3. With respect to a provider who has offered continuing-
9 care agreements to existing or prospective residents in a
10 facility established prior to the effective date of this Act,
11 which facility has one or more residents living in the
12 facility pursuant to the agreements entered into prior to the
13 effective date of this Act, and if the provider is unable to
14 comply with sections 523D.4 and 523D.5 within the time
15 provided, the division may, after the filing of a petition by
16 the provider, issue a temporary certificate of authority to
17 the provider which may then enter into continuing-care agree-
18 ments in compliance with all other applicable provisions of
19 this chapter until the permanent certificate of authority has
20 been issued. A temporary certificate of authority may only be
21 issued to existing providers who will be able to comply with
22 sections 523D.4 and 523D.5 within a period of time agreed to
23 by the division, not to exceed two years.

24 4. If a provider is not in compliance on, or before, the
25 expiration date of the temporary certificate of authority, the
26 provider may petition the division for an extension.
27 Providers who will be able to comply with sections 523D.4 and
28 523D.5 as determined by the division, may be granted an
29 extension of up to three years.

30 Sec. 3. NEW SECTION. 523D.3 REVOCATION OF CERTIFICATE OF
31 AUTHORITY.

32 1. The certificate of authority of a provider remains in
33 effect until revoked after notice and hearing, upon written
34 findings of fact by the division, that the provider has
35 willfully violated a provision of this chapter or a rule

S.F. _____ H.F. _____

1 adopted or order entered pursuant to this chapter, or failed
2 to comply with the terms of a cease and desist order.

3 2. If the division finds good cause to believe that the
4 provider has been guilty of a violation for which revocation
5 could be ordered, the division may first issue a cease and
6 desist order. If the cease and desist order is not or cannot
7 be effective in remedying the violation, the division may,
8 after notice and hearing, order that the license be revoked
9 and surrendered. A cease and desist order may be appealed
10 pursuant to chapter 17A.

11 Sec. 4. NEW SECTION. 523D.4 RESIDENT MEMBERSHIP ON
12 GOVERNING BOARD AND EXECUTIVE COMMITTEE.

13 A provider shall constitute its governing board so that
14 one-third of the members of the governing board at all times
15 are residents of the facility. If the governing board has an
16 executive committee, one-third of the members of the executive
17 committee shall at all times be residents of the facility.

18 Sec. 5. NEW SECTION. 523D.5 ESCROW ACCOUNT.

19 1. A provider shall establish and maintain liquid reserves
20 in an amount equal to or exceeding the greater of the
21 following:

22 a. The total of all principal and interest payments due
23 during the next twelve months on account of any mortgage loan
24 or other long-term financing of the facility.

25 b. Ten percent of the projected annual operating expenses
26 of the facility, exclusive of depreciation.

27 The provider shall notify the commissioner in writing at
28 least ten days prior to reducing the funds available to
29 satisfy this requirement and may expend no more than one-
30 twelfth of the required balance each calendar month. In
31 facilities where some residents are not under continuing-care
32 agreements, the reserve shall be computed only on the
33 proportional share of financing or operating expenses which is
34 applicable to residents under continuing-care agreements at
35 the end of the provider's most recent fiscal year. Funds in

1 escrow accounts may be used to satisfy this reserve re-
2 quirement if the funds are available to make payments when
3 operating funds are insufficient for such purposes.

4 2. If the division has cause to believe that additional
5 protection may be necessary to secure the obligations assumed
6 under all resident agreements, the division may require the
7 provider to establish and to maintain on a current basis, in
8 escrow with a bank, trust company, or other escrow agent ap-
9 proved by the division, a portion of all entrance fees
10 received by the provider in an aggregate amount not to exceed
11 the total of all principal and interest payments due during
12 the next twelve months on account of any first mortgage loan
13 or other long-term financing of the facility. The funds in
14 the escrow account may be invested with earnings payable to
15 the provider. If the provider requests in writing, the escrow
16 agent shall release up to one-twelfth of the original
17 principal balance of the escrow account. A release of funds
18 shall not be made more than once during any calendar month and
19 then only after the escrow agent has given written notice to
20 the division at least ten days prior to the release. The
21 amount of the escrow fund shall be included in satisfying the
22 reserves required under this chapter.

23 Sec. 6. NEW SECTION. 523D.6 LIEN ON BEHALF OF RESIDENTS.

24 Prior to the issuance of a license under this chapter or at
25 such other time as the commissioner may determine is in the
26 best interests of residents of a facility, the commissioner
27 may file a lien on the real and personal property of the
28 provider or facility to secure the obligations of the provider
29 pursuant to existing and future contracts for continuing care.
30 The lien is effective for a period of ten years following
31 filing and may be extended by the commissioner upon a finding
32 that an extension is advisable for the protection of residents
33 of the facility. The lien may be foreclosed upon the
34 liquidation of the facility or the insolvency or bankruptcy of
35 the provider, and, in that event, the foreclosure proceeds

S.F. _____ H.F. _____

1 shall be used in full or partial satisfaction of obligations
2 of the provider pursuant to contracts for continuing care in
3 effect. The lien is subordinate to the lien of any first
4 mortgage on the real property of the facility and may be
5 subordinated with the written consent of the commissioner to
6 the claims of other persons if the commissioner determines
7 such subordination to be advisable for the efficient operation
8 of the facility.

9 Sec. 7. NEW SECTION. 523D.7 ENTRANCE FEE ESCROW.

10 The division shall require, as a condition of issuing a
11 certificate of authority, that the provider establish an
12 interest-bearing escrow account with a bank, trust company, or
13 other escrow agent approved by the division. Any entrance
14 fees and payments which are in excess of five percent of the
15 existing entrance fee for the unit, received by the provider
16 prior to the date a resident is permitted to occupy the living
17 unit in a facility, shall be placed in the escrow account
18 subject to release as follows:

19 1. If the entrance fee gives the resident the right to
20 occupy a living unit which has been previously occupied, the
21 entrance fee and any income earned on the entrance fee shall
22 be released to the provider when the living unit becomes
23 available for occupancy by the new resident.

24 2. If the entrance fee applies to a living unit which has
25 not been previously occupied, the entrance fee shall be
26 released to the provider when the division is satisfied as to
27 all of the following:

28 a. Aggregate entrance fees received or receivable by the
29 provider pursuant to executed continuing-care agreements equal
30 not less than fifty percent of the sum of the entrance fees
31 due at full occupancy of the portion of the facility under
32 construction. For this paragraph, entrance fees receivable
33 pursuant to an agreement shall be counted only if the facility
34 has received a deposit of thirty-five percent or more of the
35 entrance fee due from the individual, or individuals, signing

1 the contract.

2 b. The entrance fees received or receivable pursuant to
3 paragraph "a" plus anticipated proceeds of any first mortgage
4 loan or other long-term financing commitment plus funds from
5 other sources in the actual possession of the provider are
6 equal to not less than fifty percent of the aggregate cost of
7 constructing or purchasing, and equipping and furnishing the
8 facility plus not less than fifty percent of the funds
9 estimated, in the statement of anticipated source and
10 application of funds submitted by the provider as part of its
11 application, to be necessary to fund start-up losses of the
12 facility.

13 c. A commitment has been received by the provider for any
14 first mortgage loan or other long-term financing described in
15 the statement of anticipated source and application of funds
16 submitted as part of the application for license and any
17 conditions of the commitment prior to disbursement of funds,
18 other than completion of the construction or closing of the
19 purchase of the facility, have been substantially satisfied.

20 3. If the funds in an escrow account to which subsections
21 1 and 2 apply and any interest earned on the funds are not
22 released within thirty-six months, or a greater time specified
23 by the provider with the consent of the division, the funds
24 shall be returned by the escrow agent to the persons who made
25 the payment to the provider.

26 4. This section does not require the escrow of any nonre-
27 fundable application fee charged to prospective residents.

28 5. In lieu of any escrow which is required by the division
29 under this section, a provider may post a letter of credit
30 from a financial institution, negotiable securities, or a bond
31 by a surety authorized to do business in this state and
32 approved by the division as to form and in an amount not to
33 exceed the amount required by subsection 2, paragraph "a".
34 The bond, letter of credit, or negotiable securities shall be
35 executed in favor of the division on behalf of individuals who

S.F. _____ H.F. _____

1 may be found entitled to a refund of entrance fees from the
2 provider.

3 6. An entrance fee held in escrow may be returned by the
4 escrow agent at any time to the person who paid the fee to the
5 provider upon receipt by the escrow agent of notice from the
6 provider that the person is entitled to a refund of the en-
7 trance fee.

8 Sec. 8. NEW SECTION. 523D.8 INVESTIGATIONS AND
9 SUBPOENAS.

10 The division may make public or private investigations
11 within or outside of this state as the commissioner deems
12 necessary to determine whether any person has violated or is
13 about to violate this chapter or rules adopted or orders
14 entered pursuant to this chapter, or to aid in the enforcement
15 of this chapter or rules adopted or orders entered pursuant to
16 this chapter, and may publish information concerning any
17 violation of this chapter or rules adopted or orders entered
18 pursuant to this chapter.

19 For the purpose of an investigation or proceeding under
20 this chapter, the commissioner or an officer designated by the
21 commissioner may administer oaths and affirmations, subpoena
22 witnesses, compel their attendance, take evidence, and require
23 the production of any books, papers, correspondence,
24 memoranda, agreements, or other documents or records which the
25 commissioner deems relevant or material to the inquiry, all of
26 which may be enforced in a court of this state which has
27 appropriate jurisdiction.

28 Sec. 9. NEW SECTION. 523D.9 AUDITS.

29 The commissioner or the commissioner's designee shall visit
30 each facility offering continuing care in this state to
31 examine its books and records at least once every four years.
32 A multifacility provider may be required to provide the
33 financial statements of the component parts at the request of
34 the commissioner or the commissioner's designee. The
35 financial statements need not be certified audited reports.

1 Sec. 10. NEW SECTION. 523D.10 CEASE AND DESIST ORDERS --
2 INJUNCTIONS.

3 If the commissioner determines that a person has engaged
4 in, or is about to engage in, any act or practice constituting
5 a violation of this chapter, the commissioner may:

6 1. Issue an order requiring the person to cease and desist
7 from engaging in the act or practice.

8 2. Bring an action in a court which has appropriate juris-
9 diction to enjoin the acts or practices and to enforce
10 compliance with this chapter or rules adopted or orders
11 entered pursuant to this chapter. Upon a proper showing, a
12 permanent or temporary injunction, restraining order, or writ
13 of mandamus shall be granted and a receiver or conservator may
14 be appointed for the defendant or the defendant's assets. The
15 commissioner shall not be required to post a bond.

16 Sec. 11. NEW SECTION. 523D.11 FEES.

17 1. Within six months after the effective date of this
18 chapter, the commissioner shall adopt rules pursuant to
19 chapter 17A setting forth those transactions which shall
20 require the payment of fees by a provider and the fees which
21 shall be charged.

22 2. The division may be reimbursed from the fees charged
23 for any expenses the division reasonably incurs itself, or by
24 its agents, in pursuing its investigative and enforcement
25 activities under this chapter.

26 Sec. 12. NEW SECTION. 523D.12 REASONABLE TIME TO COMPLY
27 WITH RULES AND STANDARDS.

28 A provider who is offering continuing care on the effective
29 date of this Act may be given a reasonable time by the
30 commissioner, not to exceed one year from the effective date
31 of the initial rules adopted to implement this chapter
32 pursuant to section 523D.13, within which to comply with the
33 rules and to obtain a certificate of authority.

34 Sec. 13. NEW SECTION. 523D.13 RULES.

35 The commissioner shall adopt rules pursuant to chapter 17A

S.F. _____ H.F. _____

1 reasonably necessary for the enforcement of this chapter.
 2 Initial rules necessary to implement this chapter shall be
 3 effective within six months of the effective date of this
 4 chapter.

5

EXPLANATION

6 This bill requires the commissioner of insurance to issue
 7 certificates of authority to providers before they can provide
 8 continuing care to residents. Continuing care is defined as
 9 the provision of maintenance and medical services for the life
 10 of an individual or for a period in excess of one year, in
 11 consideration of the payment of an entrance fee.

12 In order to receive a certificate of authority, the pro-
 13 vider must do the following: (1) constitute the facility's
 14 governing board and executive committee so that one-third of
 15 their members are facility residents; (2) establish and
 16 maintain liquid reserves in an amount, to be determined by the
 17 insurance division of the department of commerce, necessary to
 18 secure the obligations of the provider; and (3) establish an
 19 interest-bearing escrow account for the deposit and safe-
 20 keeping of entrance fees. Temporary conditional certificates
 21 of authority may be issued for up to three years by the
 22 insurance division.

23 The bill authorizes the commissioner of insurance to en-
 24 force the chapter through investigations and subpoenas,
 25 audits, cease and desist orders, and the filing of liens.
 26 Provider fees are to be established to offset the costs of the
 27 insurance division in implementing and enforcing the chapter.
 28 Rules must be effective within six months from the effective
 29 date of the bill.

30

COMPANION LSB 7640IS

31

32

33

34

35

LSB 7676IS 72

HOUSE FILE _____
BY (PROPOSED REVIEW OF STATE
SERVICES TO OLDER IOWANS
STUDY COMMITTEE BILL)

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

A BILL FOR

1 An Act relating to adult foster homes.

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

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

S.F. _____ H.F. _____

1 Section 1. Section 135C.1, Code Supplement 1987, is
2 amended by adding the following new subsections:

3 NEW SUBSECTION. 3A. "Adult foster home" means a family
4 home or a facility which provides room and board and twenty-
5 four hour care and service in a homelike environment for
6 compensation to five or fewer persons who are eighteen years
7 of age or older and who are not related to the administrator
8 or owner thereof within the third degree of consanguinity, and
9 who by reason of illness, disease, or physical or mental
10 infirmity are unable to sufficiently or properly care for
11 themselves but who do not require the services of a registered
12 or licensed practical nurse except on an emergency basis. If
13 an adult relative of the administrator or owner receives care
14 in the adult foster home, the adult relative shall be included
15 as one of the five allowable persons residing in the adult
16 foster home. "Adult foster home" does not include:

17 a. A house, institution, hotel, or other similar place
18 which supplies board and room only, or room only, or board
19 only, if no person residing in the adult foster home requires
20 any element of care.

21 b. A specialized living situation for physically
22 handicapped persons where payment is provided for personal
23 care services other than to a provider of care in an adult
24 foster home.

25 c. A residential care facility for persons who are
26 mentally retarded or developmentally disabled, which is
27 certified by and receives funding from the division of mental
28 health, mental retardation, and developmental disabilities of
29 the department of human services.

30 NEW SUBSECTION. 3B. "Care" means, relative to an adult
31 foster home, the provision of services directed toward aiding
32 persons residing in the adult foster home maintaining their
33 level of functioning, including but not limited to assistance
34 with personal care activities, including bathing, dressing,
35 and grooming; and assistance with activities of daily living,

1 including ambulation, communication, eating, getting in and
2 out of bed, laundry, cleaning of living area, managing of
3 money, shopping, using public transportation, medication
4 supervision, participating in recreational and leisure
5 activities, and other similar activities of daily living.
6 "Care" includes twenty-four hour supervision and monitoring of
7 the activities of persons residing in the adult foster home
8 while on the premises of the adult foster home to ensure their
9 health, safety, and welfare.

10 NEW SUBSECTION. 3C. "Homelike" means, relative to an
11 adult foster home, an environment which promotes the dignity,
12 security, and comfort of persons residing in the adult foster
13 home through the provision of personalized care and services
14 which encourage independence, choice, and decision making by
15 the persons residing in the adult foster home.

16 NEW SUBSECTION. 3D. "Services" means, relative to an
17 adult foster home, those activities which aid the persons
18 residing in the adult foster home in developing appropriate
19 skills to increase or maintain their level of functioning or
20 which assist them in performing personal care or activities of
21 daily living. Services available in the community and
22 arranged for by the caregiver may include but are not limited
23 to mental health services, habilitation services,
24 rehabilitation services, social services, medical, dental, and
25 other health care services, legal services, vocational
26 services, transportation, recreational and leisure activities,
27 and other services required to meet the needs of persons
28 residing in the adult foster home.

29 Sec. 2. Section 135C.4, Code Supplement 1987, is amended
30 to read as follows:

31 135C.4 RESIDENTIAL CARE FACILITIES AND ADULT FOSTER HOMES.

32 Each facility licensed as a residential care facility or as
33 an adult foster home shall provide an organized continuous
34 twenty-four-hour twenty-four hour program of care commensurate
35 with the needs of the residents of the home and under the

S.F. _____ H.F. _____

1 immediate direction of a person approved and certified by the
 2 department whose combined training and supervised experience
 3 is such as to ensure adequate and competent care. In the case
 4 of an adult foster home the provider shall also live in the
 5 home which is to be licensed or hire a certified resident
 6 manager. All admissions to residential care facilities and to
 7 adult foster homes shall be based on an order written by a
 8 physician certifying that the individual being admitted does
 9 not require nursing services.

10 Sec. 3. NEW SECTION. 135C.49 EXEMPTION FOR COUNTY WITH
 11 LICENSING AND INSPECTION PROGRAM.

12 The director may exempt from the licensing, inspection, and
 13 fee provisions of this chapter adult foster homes in counties
 14 in which a county agency provides a similar program for
 15 licensing and inspection which the director finds is
 16 equivalent to or superior to the licensing and inspection
 17 program of this chapter.

18 Sec. 4. Section 414.22, Code 1987, is amended by adding
 19 the following new subsection:

20 NEW SUBSECTION. 5. For the purposes of zoning, a city,
 21 city council, or city zoning commission shall consider an
 22 adult foster home a residential use of property, and the
 23 provisions of subsections 3 and 4 shall apply to adult foster
 24 homes.

25 Sec. 5. RULES FOR ADULT FOSTER HOMES. The department of
 26 inspections and appeals shall, in accordance with chapter 17A,
 27 adopt and enforce rules setting minimum standards for adult
 28 foster homes. The rules shall reflect, as much as is
 29 practical, the experience of other states in the licensure of
 30 adult foster homes.

31

EXPLANATION

32 This bill establishes adult foster homes as a distinct type
 33 of care facility for five or fewer adults who by reason of
 34 illness, disease, or physical or mental infirmity are unable
 35 to sufficiently or properly care for themselves. The bill

S.F. _____ H.F. _____

1 defines "adult foster home," "care," "homelike," and
2 "services," and includes "adult foster home" in the definition
3 of a health care facility. The bill allows licensing and
4 inspection provisions for adult foster homes to be carved out
5 by a county agency if approved, requires the department of
6 inspections and appeals to adopt rules similar to those of
7 other states, and establishes an adult foster home as a
8 residential use of property for zoning purposes.

9 COMPANION TO LSB 8131SI

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

LSB 7140IS 72

pf/sc/14