

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The amendments make technical changes by removing references to Iowa Code chapter 235B, “Dependent Adult Abuse Services — Information Registry,” and replacing them with references to Iowa Code chapter 235E, “Dependent Adult Abuse in Facilities and Programs,” and to 481—Chapter 52, “Dependent Adult Abuse in Facilities and Programs.” Iowa Code chapter 235E specifically addresses dependent adult abuse in facilities and programs regulated by the Department.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.

The following amendments are proposed.

ITEM 1. Amend rule 481—57.39(135C), introductory paragraph, as follows:

481—57.39(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and physical,~~ sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident’s record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 2. Rescind subrule 57.39(4) and adopt the following **new** subrule in lieu thereof:

57.39(4) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 3. Rescind and reserve subrule **57.39(5)**.

ITEM 4. Rescind and reserve subrule **57.39(6)**.

ITEM 5. Amend rule 481—58.43(135C), introductory paragraph, as follows:

481—58.43(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and physical, sexual, and verbal~~ abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 6. Rescind subrule 58.43(9) and adopt the following **new** subrule in lieu thereof:

58.43(9) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 7. Rescind and reserve subrule **58.43(10)**.

ITEM 8. Rescind and reserve subrule **58.43(11)**.

ITEM 9. Amend rule **481—62.1(135C)** by rescinding the definition of “Abuse” as follows:

~~“Abuse” means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

- ~~1.—Physical abuse~~
- ~~2.—Physical injury to or unreasonable confinement or cruel punishment of a resident~~
- ~~3.—Sexual abuse~~
- ~~4.—Mental abuse~~
- ~~5.—Verbal abuse~~
- ~~6.—Exploitation of a resident~~
- ~~7.—The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident’s life or health as a result of the acts or omissions of the resident.~~

ITEM 10. Adopt the following **new** definition of “Dependent adult abuse” in rule **481—62.1(135C)**:

“Dependent adult abuse” is as defined in rule 481—52.1(235E).

ITEM 11. Amend subrule 62.23(23) as follows:

62.23(23) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 12. Rescind subrule 62.23(24) and adopt the following **new** subrule in lieu thereof:

62.23(24) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 13. Rescind and reserve subrule **62.23(25)**.

ITEM 14. Amend rule **481—62.23(135C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~435C.14(8)~~ 135C.14 and 135C.24 and Iowa Code chapter 235E.

ITEM 15. Amend rule 481—63.37(135C), introductory paragraph, as follows:

481—63.37(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and~~ physical, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 16. Rescind subrule 63.37(4) and adopt the following new subrule in lieu thereof:

63.37(4) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 17. Rescind and reserve subrule **63.37(5)**.

ITEM 18. Rescind and reserve subrule **63.37(6)**.

ITEM 19. Amend rule **481—63.37(135C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~subsections 235B.3(1) and 235B.3(11)~~ sections 135C.14 and 135C.24 and Iowa Code chapter 235E.

ITEM 20. Rescind rule 481—64.33(235B) and adopt the following new rule in lieu thereof:

481—64.33(135C) Allegations of dependent adult abuse.

64.33(1) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

64.33(2) Separation of accused abuser and victim. Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the department's abuse investigation is completed and an abuse determination is made. (I, II)

ITEM 21. Amend rule **481—65.1(135C)** by rescinding the definition of "Abuse" as follows:

~~"Abuse" means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

- ~~1. Physical abuse;~~
- ~~2. Physical injury to or unreasonable confinement or cruel punishment of a resident;~~
- ~~3. Sexual abuse;~~
- ~~4. Mental abuse;~~
- ~~5. Verbal abuse;~~
- ~~6. Exploitation of a resident; or~~
- ~~7. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident's life or health as a result of the acts or omissions of the caretaker.~~

ITEM 22. Adopt the following new definition of "Dependent adult abuse" in rule **481—65.1(135C)**:

"Dependent adult abuse" is as defined in rule 481—52.1(235E).

ITEM 23. Amend subrule 65.25(3) as follows:

65.25(3) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 24. Rescind subrule 65.25(4) and adopt the following new subrule in lieu thereof:
65.25(4) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 25. Rescind and reserve subrule **65.25(5)**.

ITEM 26. Adopt the following new implementation sentence in rule **481—65.25(135C)**:
This rule is intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.