Regulatory Analysis

Notice of Intended Action to be published: 481—Chapter 52
"Dependent Adult Abuse in Facilities and Programs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 235E.2 and 235E.5

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 235E as amended by 2024 Iowa Acts, House File 2390

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

January 14, 2025 10 to 10:30 a.m.	Pine Conference Room 6200 Park Avenue Des Moines, Iowa

Virtual participation information will be available on the Department of Inspections, Appeals, and Licensing website prior to the public hearing.

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This proposed rulemaking repromulgates Chapter 52 and implements Iowa Code chapter 235E as amended by 2024 Iowa Acts, House File 2390, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 235E.5 provides that the Department, in cooperation and consultation with affected industry representatives and professional consumer groups, may adopt rules pursuant to Iowa Code chapter 17A to administer Iowa Code chapter 235E (dependent adult abuse in facilities and programs). In addition, Iowa Code section 235E.2 requires that the Department adopt rules that require facilities and programs to separate an alleged dependent adult abuser from a victim following an allegation of perpetration.

This rulemaking implements the aforementioned Iowa Code sections by implementing the statute that governs dependent adult abuse in facilities and programs and ensuring an efficient process with effective oversight and regulation, consistent with applicable federal regulations.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Not applicable.

- **Classes of persons that will benefit from the proposed rulemaking:**

This proposed rulemaking updates the rules in association with revisions to Iowa Code chapter 235E as amended by 2024 Iowa Acts, House File 2390. The general public and regulated entities will benefit from clear and consistent implementation of revised Iowa Code chapter 235E.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

This proposed rulemaking has no effect on the substantive regulatory standards beyond conformance with revised Iowa Code chapter 235E. No quantitative impact is anticipated.

- **Qualitative description of impact:**

This proposed rulemaking has no effect on the substantive regulatory standards beyond conformance with revised Iowa Code chapter 235E. No qualitative impact is anticipated.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

There are no implementation or enforcement costs borne by the Department or any other agency. Implementation will be through current personnel implementing this chapter.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department's statutory duties identified. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions. The benefits include clear and consistent implementation of applicable Iowa Code provisions.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Department believes that it has utilized the least costly and least intrusive method of implementing revised Iowa Code chapter 235E.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

No alternative methods of implementation were identified.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

No alternative methods of implementation were identified.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 52 and adopt the following **new** chapter in lieu thereof:

CHAPTER 52
DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

481—52.1(235E) Definitions. The definitions set forth in Iowa Code section 235E.1 are incorporated herein by reference. For purposes of this chapter, unless the context otherwise requires, the following definitions apply:

"Caretaker" means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.

"Dependent adult abuse" means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, neglect, or personal degradation.

"Gross negligence" means an act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an extreme departure from the ordinary standard of care.

"Immediately," for purposes of mandatory reporters' reporting of suspected dependent adult abuse, means within 24 hours.

"Inspector" means a surveyor or investigator with the department or any department designee.

"Misappropriates" means taking unfair advantage of or wrongfully or dishonestly exercising control over property.

"Physical injury" means a physical injury, or injury that is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances. "Physical injury" includes damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue that results in the death of the person who has sustained the damage.

"Registry" means the central registry for dependent adult abuse information established in Iowa Code section 235B.5.

"Report" means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

"Resident" means a resident of a health care facility as defined in Iowa Code chapter 135C, a patient in a hospital as defined in Iowa Code chapter 135B, a tenant of an assisted living program as defined in Iowa Code chapter 231C, a tenant in an elder group home as defined in Iowa Code chapter 231B, or a participant in an adult day services program as defined in Iowa Code chapter 231D.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. "Sexual exploitation" includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17;

4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing evaluation or investigation.

"Sexual exploitation" does not include touching that is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

"Sexual offense" means the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

"Staff member" means an individual who provides direct or indirect treatment or services to residents in a facility or program. Specifically included in the definition of "staff member" is an employee, health care employment agency worker, or other independent contractor who otherwise meets the definition. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the definition of "staff member" are individuals such as part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

"Unreasonable confinement" means confinement that includes but is not limited to the use of restraints, either physical or chemical, for the convenience of staff. "Unreasonable confinement" does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

"Unreasonable punishment" means a willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

"Willful misconduct" means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.

481—52.2(235E) Reporting.

52.2(1) The following persons shall report suspected dependent adult abuse in accordance with subrule 52.2(2).

a. A staff member. Specifically excluded from the definition of "staff member" only for purposes of the requirements set forth in this subrule are individuals who have no contact or de minimis contact with residents in a facility or program.

b. Entities as set forth in 481—Chapter 55.

52.2(2) Reporting procedures include the following:

a. If a staff member or employee is required to make a report pursuant to this rule, the staff member or employee shall immediately notify the person in charge or the person's designated agent, who shall then notify the department within 24 hours of such notification or the next business day.

b. If the person in charge is the alleged perpetrator of dependent adult abuse, the staff member shall directly report the abuse to the department within 24 hours or the next business day.

c. Nothing prevents any person from notifying the department directly of suspected abuse.

d. The employer or supervisor of a person who is required to or may make a report pursuant to this rule shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

e. When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person should also immediately make an oral report to an appropriate law enforcement agency.

f. A report of suspected dependent adult abuse should contain as much of the following information as possible:

(1) The date and time of the incident;

(2) The name, date of birth and diagnoses of the dependent adult;

(3) Whether the dependent adult sustained an injury and, if yes, whether photographs of the injury were taken;

(4) The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse allegations;

(5) A list of the staff members working at the time of the incident, including each staff member's full name, title, date of birth, address and telephone number;

(6) The full name, title, date of birth, social security number, address, and telephone number of the alleged perpetrator of dependent adult abuse;

(7) Other information that might be helpful in establishing the cause of the abuse, establishing the identity of the person or persons responsible for the abuse, or providing assistance to the dependent adult; and

(8) The name, address, and telephone number of the person making the report.

52.2(3) A report will be accepted whether or not it contains all of the information requested. When the report is made to any agency other than the department, that agency will promptly refer the report to the department.

52.2(4) A person required to report abuse who knowingly and willfully fails to do so within 24 hours may be subject to criminal penalties and civil liability as provided for by statute.

52.2(5) Interference with a person required to report.

a. It is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person for any of the following:

(1) Reporting suspected dependent adult abuse;

(2) Cooperating with or assisting the department in evaluating a report or investigating a case of dependent adult abuse; or

(3) Participating in judicial proceedings relating to dependent adult abuse.

b. A person in violation of this subrule may be guilty of a simple misdemeanor.

481—52.3(235E) Reports and central registry.

52.3(1) *Receipt and evaluation of reports.* The department receives and evaluates reports of dependent adult abuse in facilities and programs. Upon receipt of a report, the department will conduct an intake sufficient to determine whether the allegation constitutes dependent adult abuse.

52.3(2) *Central registry.* The department will inform the department of health and human services of such evaluations and dispositions for inclusion in the central registry for dependent adult abuse information pursuant to Iowa Code section 235B.5.

52.3(3) *Reports to and from the department of health and human services.* The department will transfer any reports received of dependent adult abuse in the community to the department of health and human services.

52.3(4) *Reports that are minor, isolated, and unlikely to reoccur.*

a. First instance. A report of dependent adult abuse that meets the definition of "dependent adult abuse" as defined in Iowa Code section 235E.1(5)*"a"*(1)(a) or (d), or section 235E.1(5)*"a"*(3), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of health and human services for a five-year period, shall not be included in the central registry, and shall not be considered founded dependent adult abuse.

b. Subsequent instance(s). A subsequent report of dependent adult abuse that meets the definition of "dependent adult abuse" as defined in Iowa Code section 235E.1(5)*"a"*(1)(a) or (d), or

section 235E.1(5)*"a"*(3), that occurs within the five-year period, and that is committed by the same caretaker may also be considered minor, isolated, and unlikely to reoccur, depending on the totality of circumstances.

c. *Retention.* All initial and subsequent reports are collected and maintained by the department of health and human services until a five-year period has expired, so long as no additional reports have been filed.

481—52.4(235E) Separation mandatory. Upon receipt of a report of alleged dependent adult abuse in a facility or program, the facility or program shall separate the victim and the alleged perpetrator of dependent adult abuse immediately and maintain that separation until the department's abuse investigation is completed and the abuse determination is made.

NOTE: Facilities that participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.

481—52.5(235E) Interviews, examination of evidence, and investigation.

52.5(1) *Entering and examination of evidence.* An inspector of the department may enter any facility or program without a warrant and may examine all records and items pertaining to residents, employees, former employees, and the alleged perpetrator of dependent adult abuse and any other records and items necessary to ensure the integrity of the investigation unless the record or item is protected by some other legal privilege.

52.5(2) *Interviews.*

a. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who may have knowledge about the alleged dependent adult abuse.

b. An alleged perpetrator of dependent adult abuse may request to have an attorney present at the alleged perpetrator's own expense at any time during the interview, but the request may not unreasonably delay the investigation. An employee organization representative or union representative may observe an investigative interview conducted by the department of an alleged perpetrator of dependent adult abuse if all of the conditions set forth in Iowa Code section 235E.2(13)*"a"* are met.

The purpose of the interview is a civil administrative dependent adult abuse investigation under applicable law.

52.5(3) *Photographs.* An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved in accordance with Iowa Code section 235E.2(12).

52.5(4) *Evaluating information.* The department will consider the information as reported, other known or discovered information, and any information gathered as a result of the inspector's contact with collateral sources, including prior abuse allegations and disciplinary actions.

481—52.6(235E) Notification to subsequent employers. The department will notify a facility or program that subsequently employs a founded dependent adult abuser in accordance with Iowa Code section 235E.2(11).

These rules are intended to implement Iowa Code chapter 235E.