

CHAPTER 129**HEALTH CARE FACILITY CARE REVIEW COMMITTEES — NAME CHANGE**

H.F. 379

AN ACT changing the name of care review committee to resident advocate committee.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135C.11, subsection 2, Code 1999, is amended to read as follows:

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. Copies of the transcript may be obtained by an interested party upon payment of the cost of preparing the copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the department's rules. The director may, after advising the ~~care review~~ resident advocate committee established pursuant to section 135C.25, either proceed in accordance with section 135C.30, or remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when the director finds that the health or safety of residents of the health care facility requires such action on an emergency basis. The fact that no ~~care review~~ resident advocate committee has been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

Sec. 2. Section 135C.13, Code 1999, is amended to read as follows:

135C.13 JUDICIAL REVIEW.

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

Sec. 3. Section 135C.14, subsection 8, paragraph d, Code 1999, is amended to read as follows:

d. The notification of ~~care review~~ resident advocate committees by the department of all complaints relating to health care facilities and the involvement of the ~~care review~~ resident advocate committees in resolution of the complaints.

Sec. 4. Section 135C.20A, subsection 2, Code 1999, is amended to read as follows:

2. The report card form shall be developed by the department in cooperation with representatives of the department of elder affairs, the state long-term care resident's advocate, representatives of ~~care review~~ resident advocate committees, representatives of protection and advocacy entities, consumers, and other interested persons.

Sec. 5. Section 135C.25, Code 1999, is amended to read as follows:

135C.25 ~~CARE REVIEW~~ RESIDENT ADVOCATE COMMITTEE APPOINTMENTS — DUTIES — DISCLOSURE — LIABILITY.

1. Each health care facility shall have a ~~care review~~ resident advocate committee whose members shall be appointed by the director of the department of elder affairs or the director's designee. A person shall not be appointed a member of a ~~care review~~ resident advocate

committee for a health care facility unless the person is a resident of the service area where the facility is located. The ~~care review~~ resident advocate committee for any facility caring primarily for persons with mental illness, mental retardation, or a developmental disability shall only be appointed after consultation with the administrator of the division of mental health and developmental disabilities of the department of human services on the proposed appointments. Recommendations to the director or the director's designee for membership on ~~care review~~ resident advocate committees are encouraged from any agency, organization, or individual. The administrator of the facility shall not be appointed to the ~~care review~~ resident advocate committee and shall not be present at committee meetings except upon request of the committee.

2. Each ~~care review~~ resident advocate committee shall periodically review the needs of each individual resident of the facility and shall perform the functions pursuant to sections 135C.38 and 231.44.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a ~~care review~~ resident advocate committee member, unless permission for this disclosure is refused in writing by the family member. The facility shall provide a form on which a family member may indicate a refusal to grant this permission.

4. Neither the state nor any ~~care review~~ resident advocate committee member is liable for an action by a ~~care review~~ resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

Sec. 6. Section 135C.37, Code 1999, is amended to read as follows:

135C.37 COMPLAINTS ALLEGING VIOLATIONS — CONFIDENTIALITY.

A person may request an inspection of a health care facility by filing with the department, ~~care review~~ resident advocate committee of the facility, or the long-term care resident's advocate as defined in section 231.4, subsection 16, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the ~~care review~~ resident advocate committee or the long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, ~~care review~~ resident advocate committee, or the long-term care resident's advocate shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

Sec. 7. Section 135C.38, subsection 1, paragraphs a and c, Code 1999, are amended to read as follows:

a. Upon receipt of a complaint made in accordance with section 135C.37, the department or ~~care review~~ resident advocate committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint.

c. The department may refer to the ~~care review~~ resident advocate committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

Sec. 8. Section 135C.38, subsection 4, Code 1999, is amended to read as follows:

4. If upon an inspection of a facility by its ~~care review~~ resident advocate committee, pursuant to this section, the committee advises the department of any circumstance believed to

constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

Sec. 9. Section 225C.4, subsection 1, paragraph n, Code 1999, is amended to read as follows:

n. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial branch and the ~~care review~~ resident advocate committees appointed for health care facilities pursuant to section 135C.25.

Sec. 10. Section 227.2, subsection 2, Code 1999, is amended to read as follows:

2. A copy of the written report prescribed by subsection 1 shall be furnished to the county board of supervisors, to the county mental health and mental retardation coordinating board or to its advisory board if the county board of supervisors constitutes ex officio the coordinating board, to the administrator of the county care facility inspected and to its ~~care review~~ resident advocate committee, and to the department of elder affairs.

Sec. 11. Section 227.4, Code 1999, is amended to read as follows:

227.4 STANDARDS FOR CARE OF PERSONS WITH MENTAL ILLNESS OR MENTAL RETARDATION IN COUNTY CARE FACILITIES.

The administrator, in cooperation with the department of inspections and appeals, shall recommend, and the mental health and developmental disabilities commission created in section 225C.5 shall adopt standards for the care of and services to persons with mental illness or mental retardation residing in county care facilities. The standards shall be enforced by the department of inspections and appeals as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that persons with mental illness or mental retardation who are residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the administrator shall designate an advisory committee representing administrators of county care facilities, county mental health and developmental disabilities regional planning councils, and county care facility ~~care review~~ resident advocate committees to assist in the establishment of standards.

Sec. 12. Section 231.33, subsection 21, Code 1999, is amended to read as follows:

21. Submit a report to the department of elder affairs every six months, of the name of each health care facility in its area for which the ~~care review~~ resident advocate committee has failed to submit the report required by rules adopted pursuant to section 231.44.

Sec. 13. Section 231.42, subsection 6, Code 1999, is amended to read as follows:

6. Administer the ~~care review~~ resident advocate committee program.

Sec. 14. Section 231.44, Code 1999, is amended to read as follows:

231.44 ~~CARE REVIEW~~ RESIDENT ADVOCATE COMMITTEE — DUTIES — DISCLOSURE — LIABILITY.

1. The ~~care review~~ resident advocate committee program is administered by the long-term care resident's advocate program.

2. The responsibilities of the ~~care review~~ resident advocate committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of each category of licensed

health care facility as defined in section 135C.1, subsection 6, and the services each facility may render. The commission shall coordinate the development of rules with the mental health and developmental disabilities commission created in section 225C.5 to the extent the rules would apply to a facility primarily serving persons with mental illness, mental retardation, or a developmental disability. The commission shall coordinate the development of appropriate rules with other state agencies.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a ~~care review~~ resident advocate committee member, unless permission for this disclosure is refused in writing by a family member.

4. Neither the state nor any ~~care review~~ resident advocate committee member is liable for an action undertaken by a ~~care review~~ resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

Sec. 15. Section 231A.2, subsections 2, 3, 4, and 8, Code 1999, are amended to read as follows:

2. If, following a visitation, the ~~care review~~ resident advocate committee finds that the needs of all of the residents of an elder family home are not being adequately met, the ~~care review~~ resident advocate committee shall notify the appropriate area agency on aging. The area agency on aging shall cause to be performed a complete assessment of any of the residents whose needs are not being met. If, following the full assessment, the ~~care review~~ resident advocate committee determines that any of the residents require additional services to meet the needs of the resident, the ~~care review~~ resident advocate committee shall inform the responsible party that unless the resident relocates to a facility which is able to provide necessary services, the elder family home will no longer be designated as an elder family home and will no longer be in compliance with zoning requirements. The department shall notify the city council or the county board of supervisors if an elder family home is found to no longer be in compliance.

3. If the responsible party does not comply with the recommendations of the ~~care review~~ resident advocate committee pursuant to subsection 2, the elder family home shall lose its designation for the purposes of zoning.

4. If the ~~care review~~ resident advocate committee has probable cause to believe that any elder family home is in fact acting as a health care facility as defined under chapter 135C, upon producing identification that an individual is an inspector, an inspector of the department of inspections and appeals may enter the elder family home to determine if the home is in fact operating as an unlicensed health care facility. If the inspector is denied entrance, the inspector may, with the assistance of the county attorney in the county in which the elder family home is located, apply to the district court for an order requiring the responsible party to permit entry and inspection.

8. The commission shall adopt by rule procedures for appointing members of a ~~care review~~ resident advocate committee for each elder family home. To the maximum extent possible, the ~~care review~~ resident advocate committee appointed for an elder family home shall include a person involved in a local retired senior volunteer program. The rules shall incorporate the provisions, if applicable, for ~~care review~~ resident advocate committees pursuant to sections 135C.25, 135C.38, and 231.44.

Sec. 16. Section 231B.2, subsection 2, paragraphs g and h, Code 1999, are amended to read as follows:

g. The commission of elder affairs shall adopt by rule procedures for appointing members of ~~care review~~ resident advocate committees for elder group homes.

h. Notwithstanding any other requirements relating to performance of visitations or meetings of a ~~care review~~ resident advocate committee, a ~~care review~~ resident advocate committee appointed for an elder group home shall perform no more than four visitations, annually, to fulfill the duties of the ~~care review~~ resident advocate committee in relation to the elder group home.

Sec. 17. Section 235B.3, subsection 2, paragraph f, Code 1999, is amended to read as follows:

f. A person who performs inspections of elder group homes for the department of elder affairs and a ~~care-review~~ resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

Sec. 18. Section 669.14, subsection 12, Code 1999, is amended to read as follows:

12. Any claim based upon the actions of a ~~care-review~~ resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

Approved May 17, 1999

CHAPTER 130

EMPLOYMENT AGENCY LICENSURE AND OPERATION

H.F. 521

AN ACT relating to the licensure and operation of employment agencies and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 94A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Applicant" means a person applying for a private employment agency license.
2. "Commissioner" means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner's designee.
3. "Employee" means a person who seeks employment or who obtains employment through an employment agency.
4. "Employer" means a person who seeks one or more employees or who obtains one or more employees.
5. "Employment agency" means a person who brings together those desiring to employ and those desiring employment and who receives a fee, privilege, or other consideration directly or indirectly from an employee for the service. "Employment agency" does not include furnishing or procuring theatrical, stage, or platform attractions or amusement enterprises.

Sec. 2. NEW SECTION. 94A.2 LICENSING.

1. An employment agency shall obtain a license from the commissioner prior to transacting any business. Licenses expire on June 30 of each year.
2. A license application shall be in the form prescribed by the commissioner and shall be accompanied by all of the following:
 - a. A surety company bond in the sum of thirty thousand dollars, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.
 - b. The schedule of fees to be charged by the employment agency.
 - c. All contract forms to be signed by an employee.
 - d. An application fee of seventy-five dollars.
3. The commissioner shall grant or deny a license within thirty days from the filing date of a completed application.