

## CHAPTER 135G

## SUBACUTE MENTAL HEALTH CARE FACILITIES

Referred to in [§225C.19A](#), [229.13](#), [229.14](#)

Standards for subacute mental health services and for accreditation of community-based subacute mental health services providers; §225C.6

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**135G.1 Definitions.**

As used in [this chapter](#), unless the context otherwise requires:

1. “*Advanced registered nurse practitioner*” means a person currently licensed as a registered nurse under [chapter 152](#) or [152E](#) who is licensed by the board of nursing as an advanced registered nurse practitioner.
2. “*Department*” means the department of inspections and appeals.
3. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or an activity.
4. “*Licensee*” means the holder of a license issued to operate a subacute care facility for persons with serious and persistent mental illness.
5. “*Mental health professional*” means the same as defined in [section 228.1](#).
6. “*Mental health services*” means services provided by a mental health professional operating within the scope of the professional’s practice which address mental, emotional, medical, or behavioral problems.
7. “*Physician*” means a person licensed under [chapter 148](#).
8. “*Physician assistant*” means a person licensed to practice under the supervision of a physician as authorized in [chapters 147](#) and [148C](#).
9. “*Rehabilitative services*” means services to encourage and assist restoration of a resident’s optimum mental and physical capabilities.
10. “*Resident*” means a person who is eighteen years of age or older and has been determined by a mental health professional to need subacute mental health services.
11. “*Subacute care facility for persons with serious and persistent mental illness*” or “*subacute care facility*” means an institution, place, building, or agency with restricted means of egress providing subacute mental health services for a period exceeding twenty-four consecutive hours to persons in need of the services.
12. “*Subacute mental health services*” means the same as defined in [section 225C.6](#).
13. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.
14. “*Treatment care plan*” means a plan of care and services designed to eliminate the need for acute care by improving the condition of a person with serious and persistent mental illness. Services must be based upon a diagnostic evaluation, which includes an examination of the medical, psychological, social, behavioral, and developmental aspects of the person’s situation, reflecting the need for inpatient care.

[2012 Acts, ch 1120, §40](#); [2015 Acts, ch 56, §2](#)

**135G.2 Purpose.**

The purpose of [this chapter](#) is to provide for the development, establishment, and enforcement of basic standards for the operation, construction, and maintenance of a subacute care facility which will ensure the safe and adequate diagnosis, evaluation, and

treatment of persons with serious and persistent mental illness so that the persons are able to experience recovery and live successfully in the community.

[2012 Acts, ch 1120, §41](#)

### **135G.3 Nature of care — seclusion room — admissions.**

1. A subacute care facility shall utilize a team of professionals to direct an organized program of diagnostic services, subacute mental health services, and rehabilitative services to meet the needs of residents in accordance with a treatment care plan developed for each resident under the supervision of a mental health professional. The goal of a treatment care plan is to transition residents to a less restrictive environment, including a home-based community setting. Social and rehabilitative services shall also be provided under the direction of a mental health professional.

2. The mental health professional providing supervision of the subacute care facility's treatment care plans shall evaluate the condition of each resident as medically necessary and shall be available to residents of the facility on an on-call basis at all other times. Additional evaluation and treatment may be provided by a mental health professional. The subacute care facility may employ a seclusion room meeting the conditions described in [42 C.F.R. §483.364\(b\)](#) with approval of a licensed psychiatrist or by order of the resident's physician, a physician assistant, or an advanced registered nurse practitioner.

[2012 Acts, ch 1120, §42](#); [2013 Acts, ch 19, §4, 6, 7](#)

### **135G.4 Licensure.**

1. A person shall not establish, operate, or maintain a subacute care facility unless the person obtains a license for the subacute care facility under [this chapter](#).

2. An intermediate care facility for persons with mental illness licensed under [chapter 135C](#) may convert to a subacute care facility by submitting an application for a license in accordance with [section 135G.5](#) accompanied by written notice to the department that the facility has employed a mental health professional and desires to make the conversion. An intermediate care facility for persons with mental illness applying for a license under [this subsection](#) remains subject to [subsection 1](#) until a license is issued.

[2012 Acts, ch 1120, §43](#); [2013 Acts, ch 19, §5 – 7](#)

### **135G.5 Application for license.**

An application for a license under [this chapter](#) shall be submitted on a form requesting information required by the department, which may include affirmative evidence of the applicant's ability to comply with the rules for standards adopted pursuant to [this chapter](#). An application for a license shall be accompanied by the required license fee which shall be credited to the general fund of the state. The initial and annual license fee is twenty-five dollars.

[2012 Acts, ch 1120, §44](#)

Referred to in [§135G.4](#)

### **135G.6 Inspection — conditions for issuance.**

The department shall issue a license to an applicant under [this chapter](#) if the following conditions exist:

1. The department has ascertained that the applicant's facilities and staff are adequate to provide the care and services required of a subacute care facility.

2. *a.* The department of human services has submitted written approval of the application based upon the process used by the department of human services to identify the best qualified providers. The process implemented by the department of human services shall identify the best qualified providers and ensure the geographic dispersion of subacute mental health services.

*b.* The department of human services shall not give approval to an application which would cause the number of publicly funded subacute care facility beds licensed under [this chapter](#) to exceed seventy-five beds.

*c.* The subacute care facility beds identified by the process initiated on or after July 1,

2015, shall be new beds located in hospitals and facilities licensed as a subacute care facility under [this chapter](#).

[2012 Acts, ch 1120, §45](#); [2015 Acts, ch 61, §1](#)

#### **135G.7 Denial, suspension, or revocation of license.**

The department may deny an application or suspend or revoke a license if the department finds that an applicant or licensee has failed or is unable to comply with [this chapter](#) or the rules establishing minimum standards pursuant to [this chapter](#) or if any of the following conditions apply:

1. It is shown that a resident is a victim of cruelty or neglect due to the acts or omissions of the licensee.

2. The licensee has permitted, aided, or abetted in the commission of an illegal act in the subacute care facility.

3. An applicant or licensee acted to obtain or to retain a license by fraudulent means, misrepresentation, or submitting false information.

4. The licensee has willfully failed or neglected to maintain a continuing in-service education and training program for persons employed by the subacute care facility.

5. The application involves a person who has failed to operate a subacute care facility in compliance with the provisions of [this chapter](#).

[2012 Acts, ch 1120, §46](#)

#### **135G.8 Provisional license.**

The department may issue a provisional license, effective for not more than one year, to a licensee whose subacute care facility does not meet the requirements of [this chapter](#) if, prior to issuance of the license, the applicant submits written plans to achieve compliance with the applicable requirements and the plans are approved by the department. The plans shall specify the deadline for achieving compliance.

[2012 Acts, ch 1120, §47](#)

#### **135G.9 Notice and hearings.**

The procedure governing notice and hearing to deny an application or suspend or revoke a license shall be in accordance with rules adopted by the department pursuant to [chapter 17A](#). A full and complete record shall be kept of the proceedings and of any testimony. The record need not be transcribed unless judicial review is sought. A copy or copies of a transcript may be obtained by an interested party upon payment of the cost of preparing the transcript or copies.

[2012 Acts, ch 1120, §48](#)

#### **135G.10 Rules.**

1. The department of inspections and appeals and the department of human services shall collaborate in establishing standards for licensing of subacute care facilities to achieve all of the following objectives:

a. Subacute mental health services are provided based on sound, proven clinical practice.

b. Subacute mental health services are established in a manner that allows the services to be included in the federal medical assistance state plan.

2. It is the intent of the general assembly that subacute mental health services be included in the Medicaid state plan adopted for the implementation of the federal Patient Protection and Affordable Care Act, benchmark plan.

3. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt and enforce rules setting out the standards for a subacute care facility and the rights of the residents admitted to a subacute care facility. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

[2012 Acts, ch 1120, §49](#)

Responsibility of department of human services to adopt standards in coordination with department of inspections and appeals for facility-based and community-based, subacute mental health services; §225C.6

**135G.11 Complaints alleging violations.**

1. A person may request an inspection of a subacute care facility by filing with the department a complaint of an alleged violation of an applicable requirement of [this chapter](#) or a rule adopted pursuant to [this chapter](#). The complaint shall state in a reasonably specific manner the basis of the complaint. A statement of the nature of the complaint shall be delivered to the subacute care facility involved at the time of or prior to the inspection.

2. Upon receipt of a complaint made in accordance with [subsection 1](#), the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a subacute care 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 subacute care facility which is the subject of the complaint. The department of inspections and appeals may refer to the department of human services any complaint received by the department of inspections and appeals if the complaint applies to rules adopted by the department of human services. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with a developmental disability or mental illness. In any case, the complainant shall be promptly informed of the result of any action taken by the department in the matter.

3. An inspection made pursuant to a complaint filed under [subsection 1](#) need not be limited to the matter or matters referred to in the complaint; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the subacute care facility to be inspected, the inspector shall show identification to the person in charge of the subacute care facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to [this section](#). The inspector may cancel the privilege at any time if the inspector determines that the privacy of a resident of the subacute care facility to be inspected would be violated. The dignity of the resident shall be given first priority by the inspector and others.

[2012 Acts, ch 1120, §50](#)

**135G.12 Information confidential.**

1. The department's final findings regarding licensure shall be made available to the public in a readily available form and place. Other information relating to the subacute care facility is confidential and shall not be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident.

2. The name of a person who files a complaint with the department shall remain confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to a person other than an employee of the department or an agent involved in the investigation of the complaint.

3. Information regarding a resident who has received or is receiving care shall not be disclosed directly or indirectly except as authorized under [section 217.30](#).

[2012 Acts, ch 1120, §51](#)

**135G.13 Judicial review.**

Judicial review of the action of the department may be sought pursuant to the Iowa administrative procedure Act, [chapter 17A](#). Notwithstanding [chapter 17A](#), a petition for judicial review of the department's actions under [this chapter](#) may be filed in the district court of the county in which the related subacute care facility is located or is proposed to be located. The status of the petitioner or the licensee shall be preserved pending final disposition of the judicial review.

[2012 Acts, ch 1120, §52](#)

**135G.14 Penalty.**

A person who establishes, operates, or manages a subacute care facility without obtaining a license under [this chapter](#) commits a serious misdemeanor. Each day of continuing violation following conviction shall be considered a separate offense.

[2012 Acts, ch 1120, §53](#)

**135G.15 Injunction.**

Notwithstanding the existence or pursuit of another remedy, the department may maintain an action for injunction or other process to restrain or prevent the establishment, operation, or management of a subacute care facility without a license.

[2012 Acts, ch 1120, §54](#)