

House Amendment to
Senate Amendment to
House File 2422

S-5229

1 Amend the Senate amendment, H-8486 to House File
2 2422, as amended, passed, and reprinted by the House,
3 as follows:

4 1. By striking page 1, line 3, through page 3, line
5 12, and inserting:

6 <____. By striking everything after the enacting
7 clause and inserting:

8 <Section 1. Section 135C.3, subsection 1, Code
9 2011, is amended to read as follows:

10 1. a. A licensed nursing facility shall provide
11 an organized twenty-four-hour program of services
12 commensurate with the needs of its residents and
13 under the immediate direction of a licensed nurse.
14 Medical and nursing services must be provided
15 under the direction of either a house physician
16 or an individually selected physician. Surgery or
17 obstetrical care shall not be provided within the
18 facility. An admission to the nursing facility must
19 be based on a physician's written order certifying
20 that the individual being admitted requires no greater
21 degree of nursing care than the facility to which the
22 admission is made is licensed to provide and is capable
23 of providing.

24 b. A nursing facility is not required to admit
25 an individual through court order, referral, or
26 other means without the express prior approval of the
27 administrator of the nursing facility. For purposes of
28 this paragraph, the approval of the administrator of
29 the nursing facility cannot be withheld on the basis of
30 considerations that are otherwise prohibited by state
31 or federal law.

32 Sec. 2. Section 135C.4, Code 2011, is amended to
33 read as follows:

34 **135C.4 Residential care facilities.**

35 1. Each facility licensed as a residential care
36 facility shall provide an organized continuous
37 twenty-four-hour program of care commensurate with
38 the needs of the residents of the home and under
39 the immediate direction of a person approved and
40 certified by the department whose combined training and
41 supervised experience is such as to ensure adequate and
42 competent care.

43 2. All admissions to residential care facilities
44 shall be based on an order written by a physician
45 certifying that the individual being admitted does
46 not require nursing services or that the individual's
47 need for nursing services can be avoided if home and
48 community-based services, other than nursing care, as
49 defined by this chapter and departmental rule, are
50 provided.

1 3. For the purposes of this section, the home
2 and community-based services to be provided shall
3 be limited to the type included under the medical
4 assistance program provided pursuant to chapter 249A,
5 shall be subject to cost limitations established by
6 the department of human services under the medical
7 assistance program, and except as otherwise provided
8 by the department of inspections and appeals with
9 the concurrence of the department of human services,
10 shall be limited in capacity to the number of licensed
11 residential care facilities and the number of licensed
12 residential care facility beds in the state as of
13 December 1, 2003.

14 4. A residential care facility is not required
15 to admit an individual through court order, referral,
16 or other means without the express prior approval of
17 the administrator of the residential care facility.
18 For purposes of this subsection, the approval of the
19 administrator of the residential care facility cannot
20 be withheld on the basis of considerations that are
21 otherwise prohibited by state or federal law.

22 Sec. 3. NEW SECTION. 135C.23A Sex offender
23 notification.

24 1. Upon commitment of a person required to register
25 as a sex offender as provided in section 692A.103 to
26 a nursing facility, residential care facility, or
27 assisted living program as defined in section 231C.2,
28 the clerk of the committing court shall notify the
29 department of inspections and appeals and the admitting
30 facility or program.

31 2. Prior to admission of a resident or tenant to
32 a nursing facility, residential care facility, or
33 assisted living program, the facility or program shall
34 access and search the sex offender registry established
35 in chapter 692A to determine whether the resident
36 or tenant is a person required to register as a sex
37 offender, as provided in section 692A.103.

38 3. Upon the admission of a person required to
39 register as a sex offender, a nursing facility,
40 residential care facility, or assisted living program
41 shall provide notice of the admission, in accordance
42 with the federal Health Insurance Portability and
43 Accountability Act of 1996, Pub. L. No. 104-191, other
44 state and federal regulations, and rules adopted by the
45 department, to all of the following persons:

46 a. Residents or tenants of the facility or program.

47 b. The emergency contact person or next of kin for
48 residents or tenants of the facility or program.

49 c. Operators, owners, managers, or employees of the
50 facility or program.

1 d. Visitors to the facility or program.
2 e. The sheriff for the county in which the facility
3 or program is located. The sheriff shall notify local
4 law enforcement agencies.
5 4. Upon the admission of a person required to
6 register as a sex offender, a nursing facility,
7 residential care facility, or assisted living program
8 shall develop and implement a written safety plan for
9 each such person in accordance with rules adopted by
10 the department.
11 5. The department shall establish by rule, all of
12 the following:
13 a. The requirements of the notice required under
14 this section. The rules shall include but are not
15 limited to provisions for the method of notice and
16 time of notice to each of the persons enumerated in
17 subsection 3.
18 b. The requirements of a safety plan for persons
19 required to register as a sex offender who are admitted
20 by a nursing facility, residential care facility, or
21 assisted living program. The rules shall include but
22 are not limited to all of the following:
23 (1) A plan for the safety of residents, tenants,
24 and staff of the facility or program.
25 (2) A plan for the safety of others when community
26 functions are held at a facility or program and when a
27 person required to register as a sex offender is not on
28 the premises of a facility or program but the person
29 remains within the care, custody, and control of the
30 facility or program.
31 (3) A provision to establish the responsibilities
32 of a nursing facility, residential care facility, and
33 assisted living program and the operators, owners,
34 managers, and employees of facilities and programs in
35 implementing a safety plan.
36 (4) A provision for the timely development and
37 implementation of a safety plan.
38 6. The department shall work with interested
39 stakeholders in developing the proposed rules under
40 this section.
41 7. A violation of this section is subject to the
42 imposition of a civil penalty in accordance with rules
43 adopted by the department pursuant to this section.
44 Sec. 4. Section 229A.8A, subsection 5, Code 2011,
45 is amended to read as follows:
46 5. ~~Committed~~ Except as provided in subsection 6A,
47 committed persons in the transitional release program
48 are not necessarily required to be segregated from
49 other persons.
50 Sec. 5. Section 229A.8A, Code 2011, is amended by

1 adding the following new subsection:

2 NEW SUBSECTION. 6A. Persons in the transitional
3 release program shall not be released to a health care
4 facility as defined in section 135C.1.

5 Sec. 6. Section 229A.9A, Code 2011, is amended by
6 adding the following new subsection:

7 NEW SUBSECTION. 3A. If a release with or without
8 supervision is ordered, the committed person shall not
9 be released to a health care facility as defined in
10 section 135C.1.

11 Sec. 7. Section 231C.3, subsection 9, Code 2011, is
12 amended to read as follows:

13 9. An assisted living program shall comply with
14 ~~section~~ sections 135C.23A and 135C.33.

15 Sec. 8. Section 231C.5A, Code 2011, is amended to
16 read as follows:

17 **231C.5A Assessment of tenants — program**
18 **eligibility.**

19 1. An assisted living program receiving
20 reimbursement through the medical assistance program
21 under chapter 249A shall assist the department of
22 veterans affairs in identifying, upon admission of a
23 tenant, the tenant's eligibility for benefits through
24 the United States department of veterans affairs.
25 The assisted living program shall also assist the
26 commission of veterans affairs in determining such
27 eligibility for tenants residing in the program on July
28 1, 2009. The department of inspections and appeals,
29 in cooperation with the department of human services,
30 shall adopt rules to administer this section, including
31 a provision that ensures that if a tenant is eligible
32 for benefits through the United States department of
33 veterans affairs or other third-party payor, the payor
34 of last resort for reimbursement to the assisted living
35 program is the medical assistance program. The rules
36 shall also require the assisted living program to
37 request information from a tenant or tenant's personal
38 representative regarding the tenant's veteran status
39 and to report to the department of veterans affairs
40 only the names of tenants identified as potential
41 veterans along with the names of their spouses and
42 any dependents. Information reported by the assisted
43 living program shall be verified by the department of
44 veterans affairs.

45 2. An assisted living program is not required
46 to enter into a lease or occupancy agreement with an
47 individual through court order, referral, or other
48 means without the express prior approval of the manager
49 of the assisted living program. For purposes of this
50 subsection, the approval of the manager of the assisted

1 living program cannot be withheld on the basis of
2 considerations that are otherwise prohibited by state
3 or federal law.

4 Sec. 9. Section 231C.14, subsection 1, Code 2011,
5 is amended by adding the following new paragraph:

6 NEW PARAGRAPH. d. Noncompliance with section
7 135C.23A.

8 Sec. 10. Section 602.8102, Code 2011, is amended by
9 adding the following new subsection:

10 NEW SUBSECTION. 152. Notify the department of
11 inspections and appeals and the admitting entity upon
12 commitment of a person required to register as a sex
13 offender as provided in section 692A.103 to a nursing
14 facility or residential care facility as defined in
15 section 135C.1, or assisted living program as defined
16 in section 231C.2.

17 Sec. 11. **PLACEMENT OF PERSONS REQUIRED TO**
18 **REGISTER.**

19 1. For purposes of this section, "adequate
20 placement" means a placement that will provide the
21 level of care necessary for a person including the
22 level of care provided by a nursing facility or
23 residential care facility.

24 2. For the period beginning July 1, 2012, through
25 June 30, 2013, the department of human services, in
26 compliance with federal and state law, shall secure
27 adequate placements for persons required to register
28 as a sex offender pursuant to chapter 692A who are
29 being released from the custody of the department
30 of corrections and require the type of medical
31 and personal care provided by a nursing facility,
32 residential care facility, or assisted living program;
33 who are being discharged or transferred from nursing
34 facilities, residential care facilities, or assisted
35 living programs pursuant to a provision of this Act;
36 or who require the type of medical and personal care
37 provided by nursing facilities, residential care
38 facilities, or assisted living programs when the
39 persons are unable to gain access to a facility or
40 program because the persons are required to register on
41 the sex offender registry.

42 3. The department of human services may use a
43 state facility to provide care for such persons or may
44 conduct a request for proposal process to contract with
45 a private facility to care for such persons. A request
46 for proposals shall identify the reimbursement rate
47 and the necessary training for staff in the facility
48 or program.

49 4. The department of human services shall secure
50 an adequate placement for such a person within ten

1 business days of being notified by the department of
2 corrections, the department of inspections and appeals,
3 or a nursing facility, residential care facility,
4 or assisted living program that placement is needed
5 for such person, provided that such period shall not
6 commence until the department of public safety receives
7 and approves registration data and makes such data
8 available on the sex offender registry internet site
9 pursuant to section 692A.121, subsection 12.

10 Sec. 12. WORKFORCE DEVELOPMENT WORKGROUP.

11 1. If a workgroup to address issues connected with
12 workforce development related to mental health and
13 disability services is established by or as a result
14 of legislation enacted by the 2012 regular session of
15 the Eighty-fourth General Assembly, the workgroup shall
16 also address issues connected with ensuring that an
17 adequate workforce is available in the state to provide
18 services to persons who have a history of committing
19 sexual offenses and have been determined to be likely
20 to reoffend.

21 2. a. If a workgroup to address issues connected
22 with workforce development for mental health and
23 disability services is not established by or as a
24 result of legislation enacted by the 2012 regular
25 session of the Eighty-fourth General Assembly, the
26 department of human services shall convene and provide
27 support to a health and mental health services for
28 sexual offender workforce development workgroup to
29 address issues connected with ensuring that an adequate
30 workforce is available in the state to provide health
31 and mental health services to persons who have a
32 history of committing sexual offenses and have been
33 determined to be likely to reoffend. The workgroup
34 shall report at least annually to the governor and
35 general assembly providing findings, recommendations,
36 and financing information concerning the findings and
37 recommendations.

38 b. The membership of the workgroup shall include
39 all of the following:

40 (1) The director of the department of aging or the
41 director's designee.

42 (2) The director of the department of corrections
43 or the director's designee.

44 (3) The director of the department of education or
45 the director's designee.

46 (4) The director of human services or the
47 director's designee.

48 (5) The director of the department of public health
49 or the director's designee.

50 (6) The director of the department of workforce

1 development or the director's designee.

2 (7) At least three individuals who have a history
3 of committing sexual offenses and have been determined
4 likely to reoffend who are receiving mental health
5 or health services or involved relatives of such
6 individuals.

7 (8) At least three providers of mental health or
8 health services for individuals who have a history of
9 committing sexual offenses and have been determined
10 likely to reoffend.

11 (9) Other persons identified by the workgroup.

12 c. In addition to the members identified in
13 paragraph "b", the membership of the workgroup
14 shall include four members of the general assembly
15 serving in a ex officio, nonvoting capacity. One
16 member shall be designated by each of the following:
17 the majority leader of the senate, the minority
18 leader of the senate, the speaker of the house of
19 representatives, and the minority leader of the house
20 of representatives. A legislative member serves for a
21 term as provided in section 69.16B.

22 d. Except as provided in paragraph "c" for
23 legislative appointments, the workgroup shall determine
24 its own rules of procedure, membership terms, and
25 operating provisions.

26 Sec. 13. FACILITY FOR SEXUAL OFFENDERS COMMITTEE
27 AND REPORT.

28 1. The department of inspections and appeals, in
29 conjunction with the department of human services,
30 shall establish and facilitate the activities of
31 a committee of stakeholders to examine options for
32 designating a facility to provide care for persons in
33 this state who have a history of committing sexual
34 offenses and have been determined to be likely to
35 reoffend.

36 2. The membership of the committee shall include
37 but is not limited to the following:

38 a. Representatives of the departments of
39 inspections and appeals, human services, public health,
40 corrections, and aging, the office of the state public
41 defender, the office of the citizens' aide, the office
42 of the state long-term care ombudsman, and the judicial
43 branch.

44 b. Consumers of services provided by health care
45 facilities and family members of consumers.

46 c. Representatives of the health care industry and
47 industry associations.

48 d. Direct care workers employed by health care
49 facilities.

50 e. Representatives from the Iowa legal aid.

1 f. Representatives from AARP Iowa.
2 g. Representatives from the Iowa civil liberties
3 union.
4 h. Other stakeholders as the department of
5 inspections and appeals and the department of human
6 services deem necessary.
7 i. Four ex officio, nonvoting members from the
8 general assembly with not more than one member from
9 each chamber being from the same political party.
10 The two senators shall be appointed, one each, by
11 the majority leader of the senate and the minority
12 leader of the senate. The two representatives shall
13 be appointed, one each, by the speaker of the house of
14 representatives and the minority leader of the house
15 of representatives.
16 3. The committee shall discuss and make
17 recommendations on all of the following:
18 a. Options to create a new facility or assist
19 an existing facility to expand services to provide
20 care for elderly persons who are no longer under
21 judicial control, but have a history of committing
22 sexual offenses and have been determined to be
23 likely to reoffend. The committee shall identify
24 the characteristics of a client for such a facility,
25 the need for such a facility, options for creating
26 a new facility to house such persons, options for
27 the expansion of an existing facility to house such
28 persons, options for using any alternative facilities
29 for such purposes, options for a public-private
30 partnership for such a facility, options for
31 using part of a mental health institute to house
32 such persons, options to qualify a facility for
33 Medicaid reimbursement, cost projections for any
34 recommendations, regulatory challenges, and other
35 information deemed relevant by the department of
36 inspections and appeals and the department of human
37 services.
38 b. The responsibility of the court, the clerk of
39 the district court, the department of corrections,
40 or any other entity, department, or person to inform
41 a nursing facility, residential care facility, or an
42 assisted living program of the admission of a person
43 who has a history of committing sexual offenses.
44 c. The responsibility of the court, clerk of the
45 district court, department of corrections, a facility,
46 or any other entity, department, or person to notify
47 persons of the discharge of a person who has a history
48 of committing sexual offenses from a nursing facility,
49 residential care facility, or assisted living program.
50 d. The requirements of a treatment safety plan for

1 a person admitted to a nursing facility, residential
2 care facility, or assisted living program who has a
3 history of committing sexual offenses. The treatment
4 safety plan shall address the procedure for notifying
5 other residents of the residency of a person required
6 to register as a sex offender.

7 e. The establishment of a formal process for
8 the department of inspections and appeals to follow
9 when completing facility or assisted living program
10 inspections or surveys.

11 f. The establishment of a system for the judicial
12 branch to identify facilities with the capacity to
13 provide an appropriate placement for a person requiring
14 commitment when the person also has a history of
15 committing sexual offenses.

16 4. The committee shall provide a report detailing
17 its findings and recommendations to the governor and
18 the general assembly by December 14, 2012.

19 Sec. 14. EMERGENCY RULES. If specifically
20 authorized by a provision of this Act, the department
21 of inspections and appeals may adopt administrative
22 rules under section 17A.4, subsection 3, and section
23 17A.5, subsection 2, paragraph "b", to implement
24 the provisions and the rules shall become effective
25 immediately upon filing or on a later effective date
26 specified in the rules, unless the effective date is
27 delayed by the administrative rules review committee.
28 Any rules adopted in accordance with this section
29 shall not take effect before the rules are reviewed
30 by the administrative rules review committee. The
31 delay authority provided to the administrative rules
32 review committee under section 17A.4, subsection 7, and
33 section 17A.8, subsection 9, shall be applicable to a
34 delay imposed under this section, notwithstanding a
35 provision in those sections making them inapplicable
36 to section 17A.5, subsection 2, paragraph "b". Any
37 rules adopted in accordance with the provisions of this
38 section shall also be published as a notice of intended
39 action as provided in section 17A.4.

40 Sec. 15. CURRENT RESIDENTS AND TENANTS —
41 ACCESS AND SEARCH OF SEX OFFENDER REGISTRY AND
42 NOTIFICATION. A nursing facility, residential care
43 facility, or assisted living program, within three
44 months of the adoption of the rules by the department
45 of inspections and appeals regarding notification of
46 the admission of persons required to register as a
47 sex offender to a facility or program and development
48 and implementation of safety plans relating to such
49 admitted persons, shall access and search the sex
50 offender registry established in chapter 692A for

1 persons who were residents or tenants of a facility
2 or program prior to the adoption of the rules and who
3 remain residents or tenants of the facility or program
4 after the adoption of the rules. Upon determining that
5 a resident or tenant is a person required to register
6 as a sex offender, the facility or program shall,
7 within three months of the adoption of the rules,
8 work with the department of inspections and appeals
9 and the department of human services to transfer a
10 sex offender living in the facility or program to a
11 state facility, based on the sex offender status as
12 an endangerment to the safety of individuals in the
13 facility or program, or notify persons as required by
14 section 135C.23A and the rules adopted pursuant to
15 that section and develop and implement a safety plan
16 as required by section 135C.23A and the rules adopted
17 pursuant to that section. The rules shall provide
18 that, for purposes of this section, a nursing facility,
19 residential care facility, or assisted living program
20 has the right to discharge a current resident or tenant
21 based solely on the person's status as a sex offender
22 as an endangerment to the safety of individuals in the
23 facility or program.

24 Sec. 16. EFFECTIVE UPON ENACTMENT. This Act, being
25 deemed of immediate importance, takes effect upon
26 enactment.>

27 _____. Title page, line 3, after <program,> by
28 inserting <the care and housing of sex offenders and
29 sexually violent predators,>>