

Senate File 2217 - Enrolled

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SENATE FILE 2217

AN ACT

RELATING TO HEALTH AND HUMAN SERVICES PROGRAMS AND PROCEDURES INVOLVING COMPLIANCE WITH PRIVACY LAWS APPLICABLE TO MENTAL HEALTH, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, AND BRAIN INJURY SERVICES DATA, MEDICAL ASSISTANCE PROGRAM ELIGIBILITY, CREATION OF AN ELECTRONIC HEALTH RECORDS SYSTEM TASK FORCE, FOSTER PARENT TRAINING, YOUNG ADULTS TRANSITIONING FROM FOSTER CARE, AND PERSONS WITH A DEVELOPMENTAL DISABILITY OR OTHER SPECIAL NEED AND THE PERSONS' FAMILIES, AND INVOLUNTARY HOSPITALIZATION PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I
DISABILITY SERVICES DATA

Section 1. Section 225C.6A, subsection 2, paragraph c, Code 2005, is amended to read as follows:

c. (1) Plan, collect, and analyze data as necessary to issue cost estimates for serving additional populations and providing core disability services statewide. The department shall maintain compliance with applicable federal and state privacy laws to ensure the confidentiality and integrity of individually identifiable disability services data. The department shall regularly assess the status of the compliance in order to assure that data security is protected.

(2) In implementing a system under this paragraph "c" for collecting and analyzing state, county, and private contractor data, the department shall establish a client identifier for the individuals receiving services. The client identifier shall be used in lieu of the individual's name or social security number. The client identifier shall consist of the last four digits of an individual's social security number, the first three letters of the individual's last name, the individual's date of birth, and the individual's gender in an order determined by the department.

Sec. 2. EMERGENCY RULES. The mental health, mental retardation, developmental disabilities, and brain injury commission may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this division of this Act, and the rules shall become effective immediately upon filing or on a later effective date specified in the rules, unless the effective date is delayed by the administrative rules review committee. Any rules adopted in accordance with this section shall not take effect before the rules are reviewed by the administrative rules review committee. The delay authority provided to the administrative rules review committee under section 17A.4, subsection 5, and section 17A.8, subsection 9, shall be applicable to a delay imposed under this section, notwithstanding a provision in those sections making them inapplicable to section 17A.5, subsection 2, paragraph "b". Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in section 17A.4.

Sec. 3. USE OF CLIENT IDENTIFIER. The client identifier established pursuant to section 225C.6A, subsection 2, paragraph "c", subparagraph (2), as enacted by this division of this Act, shall be used beginning with the data for disability services provided in the fiscal year beginning July 1, 2005, that is submitted by counties in December 2006.

DIVISION II

MEDICAID ELIGIBILITY == VEHICLE DISREGARD

Sec. 4. Section 249A.3, Code Supplement 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5B. In determining eligibility for adults under subsection 1, paragraphs "b", "e", "h", "j", "k", "n", "s", and "t"; subsection 2, paragraphs "d", "e", "h", "i", and "j"; and subsection 5, paragraph "b", one motor vehicle per household shall be disregarded.

DIVISION III

ELECTRONIC HEALTH RECORDS

3 4 Sec. 5. NEW SECTION. 217.41A ELECTRONIC HEALTH RECORDS
3 5 SYSTEM TASK FORCE.

3 6 1. The department of human services shall establish an
3 7 electronic health records system task force to provide a
3 8 structure that enables the state to act in a leadership role
3 9 in the development of state and federal standards for and in
3 10 the implementation and use of an electronic health records
3 11 system.

3 12 2. The task force shall consist of no more than nine
3 13 voting members, selected by the director of human services,
3 14 who represent entities with expertise in developing or
3 15 implementing electronic health records, including but not
3 16 limited to the United States veterans administration
3 17 facilities in the state, multifacility hospital systems in the
3 18 state, Des Moines university, the university of Iowa hospitals
3 19 and clinics, and the Iowa healthcare collaborative. In
3 20 addition, two members of the senate appointed by the president
3 21 of the senate after consultation with the majority leader and
3 22 the minority leader of the senate, two members of the house of
3 23 representatives appointed by the speaker of the house after
3 24 consultation with the majority leader and the minority leader
3 25 of the house of representatives, and the commissioner of
3 26 insurance shall serve as ex officio, nonvoting members of the
3 27 task force.

3 28 3. The task force shall do all of the following:

3 29 a. Develop an electronic health records system that
3 30 provides linkages between multiple settings that utilize
3 31 health records and that is consistent with requirements for
3 32 community health records and electronic prescribing.

3 33 b. Evaluate the economic model and the anticipated
3 34 benefits of electronic health records.

3 35 c. Provide quarterly updates to the governor and the
4 1 general assembly regarding progress in the development of
4 2 national standards and the work of the task force.

4 3 DIVISION IV

4 4 FOSTER PARENT TRAINING

4 5 Sec. 6. Section 237.5A, unnumbered paragraph 1, Code 2005,
4 6 is amended to read as follows:

4 7 As a condition for initial licensure, each individual
4 8 licensee shall complete thirty hours of foster parent training
4 9 offered or approved by the department. However, if the

4 10 licensee has completed relevant training or has a combination

4 11 of completed relevant training and experience, and the

4 12 department deems such training or combination to be an

4 13 acceptable equivalent to all or a portion of the initial

4 14 licensure training requirement, or based upon the

4 15 circumstances of the child and the licensee the department

4 16 finds there is other good cause, the department may waive all

4 17 or a portion of the training requirement. Prior to annual

4 18 renewal of licensure, each individual licensee shall also

4 19 complete six hours of foster parent training. The training

4 20 shall include but is not limited to physical care, education,

4 21 learning disabilities, referral to and receipt of necessary

4 22 professional services, behavioral assessment and modification,

4 23 self-assessment, self-living skills, and biological parent

4 24 contact. An individual licensee may complete the training as

4 25 part of an approved training program offered by a public or

4 26 private agency with expertise in the provision of child foster

4 27 care or in related subject areas. The department shall adopt

4 28 rules to implement and enforce this training requirement.

4 29 DIVISION V

4 30 PREPARATION FOR ADULT LIVING PROGRAM

4 31 Sec. 7. NEW SECTION. 234.46 PREPARATION FOR ADULT LIVING
4 32 PROGRAM.

4 33 1. For the purposes of this section, "young adult" means a

4 34 person who is described by all of the following conditions:

4 35 a. The person is a resident of this state.

5 1 b. The person is age eighteen, nineteen, or twenty.

5 2 c. At the time the person became age eighteen, the person

5 3 received foster care services that were paid for by the state

5 4 under section 234.35 and the person is no longer receiving

5 5 such services.

5 6 d. The person enters into and participates in an

5 7 individual self-sufficiency plan that complements the person's

5 8 own efforts for achieving self-sufficiency and the plan

5 9 provides for one or more of the following:

5 10 (1) The person attends an accredited school full-time

5 11 pursuing a course of study leading to a high school diploma.

5 12 (2) The person attends an instructional program leading to

5 13 a high school equivalency diploma.

5 14 (3) The person is enrolled in or pursuing enrollment in a

5 15 postsecondary education or training program or work training.

5 16 (4) The person is employed or seeking employment.

5 17 2. The division shall establish a preparation for adult
5 18 living program directed to young adults. The purpose of the
5 19 program is to assist persons who are leaving foster care
5 20 services at age eighteen or older in making the transition to
5 21 self-sufficiency. The department shall adopt rules necessary
5 22 for administration of the program, including but not limited
5 23 to eligibility criteria for young adult participation and the
5 24 services and other support available under the program. The
5 25 services and other support available under the program may
5 26 include but are not limited to any of the following:

5 27 a. Support for the young adult continuing to reside with
5 28 the family that provided family foster care to the young
5 29 adult.

5 30 b. Support for a supervised apartment living arrangement.

5 31 c. Support for participation in education, training, or
5 32 employment activities.

5 33 d. Other assistance to enhance the young adult's ability
5 34 to achieve self-sufficiency.

5 35 3. This section shall not be construed as granting an
6 1 entitlement for any program, services, or other support for
6 2 the persons described in this section. Any state obligation
6 3 to provide a program, services, or other support pursuant to
6 4 this section is limited to the extent of the funds
6 5 appropriated for the purposes of the program.

6 6 Sec. 8. Section 249A.3, subsection 2, Code Supplement
6 7 2005, is amended by adding the following new paragraph:

6 8 NEW PARAGRAPH. k. As allowed under 42 U.S.C. }
6 9 1396a(a)(10)(A)(ii)(XVII), individuals under twenty-one years
6 10 of age who were in foster care under the responsibility of the
6 11 state on the individuals' eighteenth birthday, and whose
6 12 income is less than two hundred percent of the most recently
6 13 revised official poverty guidelines published by the United
6 14 States department of health and human services. Medical
6 15 assistance may be provided for an individual described by this
6 16 paragraph regardless of the individual's resources.

6 17 DIVISION VI

6 18 FAMILY SUPPORT SUBSIDY AND COMPREHENSIVE FAMILY 6 19 SUPPORT PROGRAMS

6 20 Sec. 9. Section 216E.1, subsection 1, Code 2005, is
6 21 amended to read as follows:

6 22 1. "Assistive device" means any item, piece of equipment,
6 23 or product system which is purchased, or whose transfer is
6 24 accepted in this state, and which is used to increase,
6 25 maintain, or improve the functional capabilities of
6 26 individuals with disabilities concerning a major life activity
6 27 ~~as defined in section 225C.46.~~ "Assistive device" does not
6 28 mean any medical device, surgical device, or organ implanted
6 29 or transplanted into or attached directly to an individual.
6 30 "Assistive device" does not mean any device for which a
6 31 certificate of title is issued by the state department of
6 32 transportation but does mean any item, piece of equipment, or
6 33 product system otherwise meeting the definition of "assistive
6 34 device" that is incorporated, attached, or included as a
6 35 modification in or to such a certificated device.

7 1 Sec. 10. Section 216E.1, Code 2005, is amended by adding
7 2 the following new subsection:

7 3 NEW SUBSECTION. 9A. "Major life activity" includes
7 4 functions such as caring for one's self, performing manual
7 5 tasks, walking, seeing, hearing, speaking, breathing,
7 6 learning, or working.

7 7 Sec. 11. Section 225C.37, subsection 2, Code 2005, is
7 8 amended to read as follows:

7 9 2. Verification that the family member meets the
7 10 definitional requirements of section 225C.35, subsection 3.
7 11 Along with the verification, the application shall identify an
7 12 age when the family member's eligibility for the family
7 13 support subsidy under such definitional requirements will end.
7 14 The age identified is subject to approval by the department.

7 15 Sec. 12. Section 225C.38, subsection 1, paragraphs b and
7 16 c, Code Supplement 2005, are amended to read as follows:

7 17 b. A family support subsidy shall be used to meet the
7 18 special needs of the family. This subsidy is intended to
7 19 complement but not supplant public assistance or social
7 20 service benefits based on economic need, available through
7 21 governmental programs or other means available to the family.

7 22 c. Except as provided in section 225C.41, a family support
7 23 subsidy for a fiscal year shall be in an amount ~~equivalent to~~
7 24 ~~the monthly maximum supplemental security income payment~~
7 25 ~~available in Iowa on July 1 of that fiscal year for an adult~~

~~7 26 recipient living in the household of another, as formulated~~
~~7 27 under federal regulations. In addition, the parent or legal~~
~~7 28 guardian of a family member who is in an out-of-home placement~~
~~7 29 at the time of application may receive a one-time lump-sum~~
~~7 30 advance payment of twice the monthly family support subsidy~~
~~7 31 amount for the purpose of meeting the special needs of the~~
~~7 32 family in preparing for in-home care determined by the~~
~~7 33 department in consultation with the comprehensive family~~
~~7 34 support council created in section 225C.48.~~ The parent or

7 35 legal guardian receiving a family support subsidy may elect to
8 1 receive a payment amount which is less than the amount
8 2 determined in accordance with this paragraph.

8 3 Sec. 13. Section 225C.38, subsection 2, Code Supplement
8 4 2005, is amended by adding the following new paragraph:

8 5 NEW PARAGRAPH. c. Unless there are exceptional
8 6 circumstances and the family requests and receives approval
8 7 from the department for an exception to policy, a family is
8 8 not eligible to receive the family support subsidy if any of
8 9 the following are applicable to the family or the family
8 10 member for whom the application was submitted:

8 11 (1) The family member is a special needs child who was
8 12 adopted by the family and the family is receiving financial
8 13 assistance under section 600.17.

8 14 (2) Medical assistance home and community-based waiver
8 15 services are provided for the family member and the family
8 16 lives in a county in which comprehensive family support
8 17 program services are available.

8 18 (3) Medical assistance home and community-based waiver
8 19 services are provided for the family member under a consumer
8 20 choices option.

8 21 Sec. 14. Section 225C.40, subsection 3, Code 2005, is
8 22 amended to read as follows:

8 23 3. If an application for a family support subsidy is
8 24 ~~denied, the family member end-of-eligibility age identified in~~
8 25 ~~the application is not approved by the department,~~ or a family

8 26 support subsidy is terminated by the department, the parent or
8 27 legal guardian of the affected family member may request, in
8 28 writing, a hearing before an impartial hearing officer.

8 29 Sec. 15. Section 225C.41, unnumbered paragraph 2, Code
8 30 2005, is amended to read as follows:

8 31 Notwithstanding section 8.33, funds remaining unexpended on
8 32 June 30 of any fiscal year shall not revert to the general
8 33 fund of the state but shall remain available to provide family
8 34 support subsidy payments or to expand the comprehensive family
8 35 support program in the succeeding fiscal year.

9 1 Sec. 16. Section 225C.42, subsection 1, Code Supplement
9 2 2005, is amended to read as follows:

9 3 1. The department shall conduct ~~a periodic~~ an annual
9 4 evaluation of the family support subsidy program in
9 5 conjunction with the comprehensive family support council and
9 6 shall submit the evaluation report with recommendations to the
9 7 governor and general assembly. The report shall be submitted
9 8 on or before October 30 and provide an evaluation of the
9 9 latest completed fiscal year.

9 10 Sec. 17. Section 225C.47, subsection 4, Code 2005, is
9 11 amended to read as follows:

9 12 4. A family may apply to the department or to a family
9 13 support center developed pursuant to this section for
9 14 assistance under the comprehensive family support program.
9 15 The department or family support center shall determine
9 16 eligibility for the program in accordance with the provisions
9 17 of this section.

9 18 Sec. 18. Section 225C.47, subsection 5, unnumbered
9 19 paragraph 1, Code 2005, is amended to read as follows:

9 20 The department shall design the program in consultation
9 21 with the ~~personal assistance and comprehensive~~ family support
9 22 ~~services~~ council created in section 225C.48. The department
9 23 shall adopt rules to implement the program which provide for
9 24 all of the following:

9 25 Sec. 19. Section 225C.47, subsection 5, paragraph e, Code
9 26 2005, is amended to read as follows:

9 27 e. A process is available to appeal the department's or
9 28 family support center's decisions involving families ~~which~~
9 29 that apply for the comprehensive family support program and
9 30 are denied services and support under the comprehensive family
9 31 support program. The department shall make reasonable efforts
9 32 to utilize telecommunications so that a family initiating an
9 33 appeal may complete the appeal process in the family's local
9 34 geographic area.

9 35 Sec. 20. Section 225C.47, subsection 5, paragraph i, Code
10 1 2005, is amended to read as follows:

10 2 i. The utilization of a voucher system for payment
10 3 provisions for the ~~children-at-home~~ family support center
10 4 component of the program developed under subsection 7.

10 5 Sec. 21. Section 225C.47, subsection 7, Code 2005, is
10 6 amended to read as follows:

10 7 7. The comprehensive family support program shall include
10 8 a ~~children-at-home~~ family support center component developed
10 9 by the department in accordance with this subsection. ~~A~~
~~10 10 family eligible for the comprehensive family support program~~
~~10 11 may choose the children-at-home component.~~ Under the
10 12 ~~children-at-home~~ component, a family member of an individual
10 13 with a disability shall be assisted by ~~department staff~~ a
10 14 family support center in identifying the services and support
10 15 to be provided to the family under the family support subsidy
10 16 program or the comprehensive family support program. The
10 17 identification of services and support shall be based upon the
10 18 specific needs of the individual and the individual's family
10 19 which are not met by other service programs available to the
10 20 individual and the individual's family. ~~Based upon the~~
~~10 21 services and support identified, the department shall develop~~
~~10 22 a contract for direct payment of the services and support~~
~~10 23 provided to the family.~~

10 24 Sec. 22. Section 225C.48, Code 2005, is amended to read as
10 25 follows:

10 26 225C.48 ~~PERSONAL ASSISTANCE AND~~ COMPREHENSIVE FAMILY
10 27 SUPPORT SERVICES COUNCIL.

10 28 1. ~~a.~~ An eleven-member ~~personal assistance and~~
10 29 comprehensive family support services council is created in
10 30 the department. The members of the council shall be appointed
10 31 by the following officials as follows: governor, five
10 32 members; majority leader of the senate, three members; and
10 33 speaker of the house, three members. At least three of the
10 34 governor's appointments and one of each legislative chamber's
10 35 appointments shall be a family member of an individual with a
11 1 disability as defined in section 225C.47. At least five of
11 2 the members shall be current or former service consumers of
~~11 3 personal services or family members of such service consumers.~~
11 4 Members shall serve for three-year staggered terms. A vacancy
11 5 on the council shall be filled in the same manner as the
11 6 original appointment.

11 7 ~~b.~~ The members of the council ~~shall be~~ are entitled to
11 8 reimbursement of actual and necessary expenses incurred in the
11 9 performance of their official duties. ~~In addition, the~~
~~11 10 members who are current or former service consumers or family~~
~~11 11 members of such service consumers are entitled to a stipend of~~
~~11 12 fifty dollars for each council meeting attended, subject to a~~
~~11 13 limit of one meeting per month. The expenses and stipend~~
~~11 14 shall be paid from the appropriation made for purposes of the~~
~~11 15 comprehensive family support program.~~

11 16 ~~c.~~ The council shall elect officers from among the
11 17 council's members.

11 18 2. The council shall provide ongoing guidance, advice, and
11 19 direction to the department and other agencies working with
11 20 the department in the development and implementation of the
11 21 ~~personal assistance services family support subsidy program~~
11 22 created in section ~~225C.46~~ 225C.36 and the comprehensive
11 23 family support program created in section 225C.47. The
11 24 council shall perform an annual evaluation of each program,
11 25 and annually make recommendations concerning each program to
11 26 the governor and general assembly. ~~The evaluation and~~
~~11 27 recommendations shall be prepared and submitted in conjunction~~
~~11 28 with the evaluation report submitted by the department~~
~~11 29 pursuant to section 225C.42.~~ The department shall provide

11 30 sufficient staff support to the council to enable the council
11 31 to carry out its responsibilities.

11 32 3. The council shall perform the following duties in
11 33 consultation with the department and any department staff with
11 34 duties associated with the ~~personal assistance services family~~
11 35 support subsidy and comprehensive family support programs:

12 1 a. Oversee the operations of the programs.

12 2 b. Coordinate with the department of education and
12 3 programs administered by the department of education to
12 4 individuals with a disability, in providing information to
12 5 individuals and families eligible for the programs ~~under~~
~~12 6 sections 225C.46 and 225C.47.~~

12 7 c. Work with the department and counties regarding managed
12 8 care provisions utilized by the department and counties for
12 9 services to individuals with a disability to advocate the
12 10 inclusion of ~~personal assistance services family support~~
12 11 subsidy and the comprehensive family support program programs
12 12 as approved service provisions under managed care.

12 13 d. Develop and oversee implementation of evaluation
12 14 processes for the programs.

12 15 e. Oversee statewide training of department and family
12 16 support center staff regarding the two programs.

12 17 f. Oversee efforts to promote public awareness of the
12 18 programs.

12 19 4. The department shall consider recommendations from the
12 20 council in developing and implementing each program, including
12 21 the development of administrative rules. The department shall
12 22 regularly report to the council on the status of each program
12 23 and any actions planned or taken by the department related to
12 24 each program.

12 25 Sec. 23. Section 225C.49, subsection 3, paragraph b, Code
12 26 2005, is amended to read as follows:

12 27 b. Utilize internal training resources or contract for
12 28 additional training of staff concerning the information under
12 29 paragraph "a" and training of families and individuals as
12 30 necessary to ~~develop plans and contracts~~ implement the family
12 31 support subsidy and comprehensive family support programs
12 32 under sections 225C.46 and 225C.47 this chapter.

12 33 Sec. 24. Section 225C.49, subsection 4, Code 2005, is
12 34 amended to read as follows:

12 35 4. The department shall designate one individual whose
13 1 sole duties are to provide central coordination of the
13 2 programs under sections ~~225C.46~~ 225C.36 and 225C.47 and to
13 3 work with the ~~personal assistance and comprehensive~~ family
13 4 support services council to oversee development and
13 5 implementation of the programs.

13 6 Sec. 25. Section 422.11E, subsection 4, paragraph b, Code
13 7 2005, is amended to read as follows:

13 8 b. "Disability" means the same as defined in section
13 9 ~~225C.46~~ 15.102 except that it does not include alcoholism.

13 10 Sec. 26. Section 422.33, subsection 9, paragraph c,
13 11 subparagraph (2), Code Supplement 2005, is amended to read as
13 12 follows:

13 13 (2) "Disability" means the same as defined in section
13 14 ~~225C.46~~ 15.102, except that it does not include alcoholism.

13 15 Sec. 27. Section 225C.46, Code 2005, is repealed.

13 16 Sec. 28. CODE EDITOR DIRECTIVE. The Code editor shall
13 17 revise the headnote to section 225C.42 to change the word
13 18 "periodic" to "annual".

13 19 Sec. 29. TRANSITION PROVISIONS == EFFECTIVE DATE.

13 20 1. If a family that adopted a special needs child receives
13 21 the family support subsidy under section 225C.38 and also
13 22 receives financial assistance under section 600.17 for the
13 23 same child as of July 1, 2006, the department of human
13 24 services shall provide notice to the family that effective
13 25 January 1, 2007, the family will no longer be eligible for the
13 26 family support subsidy. The department shall notify the
13 27 families affected by this subsection on before July 1, 2006.
13 28 This subsection, being deemed of immediate importance, takes
13 29 effect upon enactment.

13 30 2. If a family that receives the family support subsidy
13 31 under section 225C.38 as of July 1, 2006, also receives
13 32 medical assistance home and community-based waiver services
13 33 and lives in a county in which the comprehensive family
13 34 support program services are available, effective January 1,
13 35 2007, the family is not eligible to receive the family support
14 1 subsidy. The department of human services shall notify the
14 2 families affected by this subsection on or before July 1,
14 3 2006. This subsection, being deemed of immediate importance,
14 4 takes effect upon enactment.

14 5 3. a. The provision of this division of this Act enacting
14 6 section 225C.38, subsection 2, paragraph "c", subparagraph
14 7 (3), relating to medical assistance home and community-based
14 8 waiver services provided under a consumer choices option, is
14 9 contingent upon receipt of federal approval of a waiver
14 10 authorizing utilization of the consumer choices option. The
14 11 department of human services shall notify the Code editor
14 12 regarding the receipt of the federal approval and the
14 13 implementation date.

14 14 b. A family receiving family support services that also
14 15 receives medical assistance home and community-based waiver
14 16 services and resides in an area in which the consumer choices
14 17 option is available under the waiver is ineligible to receive
14 18 the family support subsidy. The department shall notify a
14 19 family affected by this subsection six months prior to
14 20 terminating the family support subsidy.

14 21 c. This subsection, being deemed of immediate importance,
14 22 takes effect upon enactment.

14 23 4. Any savings generated by the requirements of this

14 24 section and the program changes implemented pursuant to this
14 25 Act during the fiscal year beginning July 1, 2006, shall be
14 26 used by the department of human services to provide
14 27 eligibility for families on the waiting list for the family
14 28 support subsidy program. If the waiting list is eliminated,
14 29 any remaining funds shall be used to expand the comprehensive
14 30 family support program during that fiscal year.

14 31 DIVISION VII

14 32 INVOLUNTARY HOSPITALIZATION PROCEEDINGS

14 33 Sec. 30. Section 125.82, subsection 3, Code 2005, as
14 34 amended by 2006 Iowa Acts, Senate File 2362, section 1, if
14 35 enacted, is amended to read as follows:

15 1 3. The person who filed the application and a licensed
15 2 physician or qualified mental health professional as defined
15 3 in section 229.1 who has examined the respondent in connection
15 4 with the commitment hearing shall be present at the hearing,
15 5 unless ~~prior to the hearing~~ the court for good cause finds
15 6 that their presence or testimony is not necessary. The
15 7 applicant, respondent, and the respondent's attorney may waive
15 8 the presence or telephonic appearance of the licensed
15 9 physician or qualified mental health professional who examined
15 10 the respondent and agree to submit as evidence the written
15 11 report of the licensed physician or qualified mental health
15 12 professional. The respondent's attorney shall inform the
15 13 court if the respondent's attorney reasonably believes that
15 14 the respondent, due to diminished capacity, cannot make an
15 15 adequately considered waiver decision. "Good cause" for
15 16 finding that the testimony of the licensed physician or
15 17 qualified mental health professional who examined the
15 18 respondent is not necessary may include, but is not limited
15 19 to, such a waiver. If the court determines that the testimony
15 20 of the licensed physician or qualified mental health
15 21 professional is necessary, the court may allow the licensed
15 22 physician or qualified mental health professional to testify
15 23 by telephone. The respondent shall be present at the hearing
15 24 unless prior to the hearing the respondent's attorney
15 25 stipulates in writing that the attorney has conversed with the
15 26 respondent, and that in the attorney's judgment the respondent
15 27 cannot make a meaningful contribution to the hearing, or that
15 28 the respondent has waived the right to be present, and the
15 29 basis for the attorney's conclusions. A stipulation to the
15 30 respondent's absence shall be reviewed by the court before the
15 31 hearing, and may be rejected if it appears that insufficient
15 32 grounds are stated or that the respondent's interests would
15 33 not be served by the respondent's absence.

15 34 Sec. 31. Section 229.12, subsection 3, Code 2005, as
15 35 amended by 2006 Iowa Acts, Senate File 2362, section 3, if
16 1 enacted is amended to read as follows:

16 2 3. The respondent's welfare shall be paramount and the
16 3 hearing shall be conducted in as informal a manner as may be
16 4 consistent with orderly procedure, but consistent therewith
16 5 the issue shall be tried as a civil matter. Such discovery as
16 6 is permitted under the Iowa rules of civil procedure shall be
16 7 available to the respondent. The court shall receive all
16 8 relevant and material evidence which may be offered and need
16 9 not be bound by the rules of evidence. There shall be a
16 10 presumption in favor of the respondent, and the burden of
16 11 evidence in support of the contentions made in the application
16 12 shall be upon the applicant. The licensed physician or
16 13 qualified mental health professional who examined the
16 14 respondent shall be present at the hearing unless ~~prior to the~~
16 15 ~~hearing~~ the court for good cause finds that the licensed
16 16 physician's or qualified mental health professional's presence
16 17 or testimony is not necessary. The applicant, respondent, and
16 18 the respondent's attorney may waive the presence or the
16 19 telephonic appearance of the licensed physician or qualified
16 20 mental health professional who examined the respondent and
16 21 agree to submit as evidence the written report of the licensed
16 22 physician or qualified mental health professional. The
16 23 respondent's attorney shall inform the court if the
16 24 respondent's attorney reasonably believes that the respondent,
16 25 due to diminished capacity, cannot make an adequately
16 26 considered waiver decision. "Good cause" for finding that the
16 27 testimony of the licensed physician or qualified mental health
16 28 professional who examined the respondent is not necessary may
16 29 include, but is not limited to, such a waiver. If the court
16 30 determines that the testimony of the licensed physician or
16 31 qualified mental health professional is necessary, the court
16 32 may allow the licensed physician or the qualified mental
16 33 health professional to testify by telephone. If upon
16 34 completion of the hearing the court finds that the contention

16 35 that the respondent is seriously mentally impaired has not
17 1 been sustained by clear and convincing evidence, it shall deny
17 2 the application and terminate the proceeding.

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JEFFREY M. LAMBERTI
President of the Senate

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CHRISTOPHER C. RANTS
Speaker of the House

17 14 I hereby certify that this bill originated in the Senate and
17 15 is known as Senate File 2217, Eighty-first General Assembly.

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MICHAEL E. MARSHALL
Secretary of the Senate

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17 21 Approved _____, 2006

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THOMAS J. VILSACK
Governor