

FEB 19 1973

HOUSE FILE 240

Place On Calendar

Sen. Human Resources 3/20, Pass 3/26 BY COMMITTEE ON HUMAN RESOURCES

House File 240
Doderer, Chairman
Murray
Milligan

Passed House, Date 3-8-73 (518) Passed Senate, Date 5-31-73 (1490)

Vote: Ayes 91 Nays 2 Vote: Ayes 43 Nays 0

Approved 6-19-73

Passed House as amended by Senate
6-5-73
94-2

A BILL FOR

1 An Act relating to the placement of patients admitted or com-
2 mitted to the state hospital-schools for the mentally
3 retarded or to a special mental retardation unit in facili-
4 ties outside those institutions.

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

6 Section 1. Section two hundred twenty-two point fifty-
7 nine (222.59), Code 1973, is amended to read as follows:

8 222.59 SUPERINTENDENT MAY RETURN PATIENT.

9 1. The superintendent of a hospital-school or a special
10 unit may ~~at-any-time~~ return a patient to the parent, or
11 guardian, or ~~other-responsible-person-or-community-agency,~~
12 may arrange for the patient to be placed at an appropriate
13 health care facility licensed under chapter one hundred thirty-
14 five C (135C) of the Code or at some other appropriate
15 facility, which may include a foster home or group home,
16 either under an arrangement which involves full-time
17 responsibility for the patient by such facility, or as part
18 of an arrangement under which the patient is to participate
19 in one or more educational, developmental or employment
20 programs conducted by other responsible persons, agencies
21 or facilities. Such return or placement may be made at any
22 time, even though such the patient was committed by a court,
23 upon recommendation of the professional staff of the hospital-
24 school or special unit that the patient is unlikely to benefit
25 from further treatment, training, instruction, or care at

1 the institution or is likely to improve his life status in
2 an alternate facility.

3 2. In planning for the placement of a patient outside
4 the hospital-school or special unit, it shall be the superin-
5 tendent's responsibility to arrange for representation of
6 the patient's interest by the patient's parent or legal
7 guardian. If the patient has no living parent and no legal
8 guardian other than the department or one of its officers
9 or employees, the superintendent shall request some person
10 who has demonstrated by prior activities an informed concern
11 for the welfare and habilitation of the mentally retarded,
12 and who is not an officer or employee of the department nor
13 of any agency or facility which is a party to the arrangement
14 for placement of the patient, to act as the patient's advocate.
15 The superintendent may request some such person to serve as
16 advocate for a patient who has no legal guardian if either
17 or both of the patient's parents are living but are deemed
18 unlikely to or have shown themselves unable to represent the
19 patient's interest effectively due to physical or mental
20 infirmity, residence outside the state at such a distance
21 as to make their effective participation unfeasible, or lack
22 of interest demonstrated by refusal to participate in planning
23 for the patient's placement or by failure to respond within
24 thirty days to a letter sent by restricted certified mail
25 to the last known address of the parent or parents.

26 3. ~~Such-action~~ Each proposed placement shall be reported
27 to the state director, who may approve, modify, alter, or
28 rescind the action if deemed necessary. In so doing, the
29 superintendent of the hospital-school or special unit involved
30 shall certify in writing to the state director that there
31 has been compliance with subsection two (2) of this section
32 and that the patient's parent, guardian or advocate is or
33 is not satisfied with the proposed placement, as the case
34 may be. In the latter case, the state director shall afford
35 the parent, guardian or advocate an opportunity to explain

1 objections to the proposed placement and, if he decides to
2 approve the proposed placement despite such objection, shall
3 advise the parent, guardian or advocate of his right to appeal
4 the decision pursuant to subsection four (4) of this section.

5 4. If a proposed placement of a patient from a hospital-
6 school or special unit which is not satisfactory to the
7 patient's parent, guardian or advocate is approved by the
8 state director; or a proposed placement which is satisfactory
9 to the patient's parent, guardian or advocate is modified,
10 altered or rescinded by the state director, the parent,
11 guardian or advocate may appeal to the department of social
12 services, within thirty days after notification to the parent,
13 guardian or advocate of the proposed placement. The department
14 shall give the appellant reasonable notice and opportunity
15 for a fair hearing, conducted by the commissioner or his
16 designee who shall act as an impartial arbiter of fact and
17 law. In such hearing the parent, guardian or advocate shall
18 have the opportunity to confront witnesses, to have access
19 to hospital records, to present evidence and witnesses on
20 their behalf and to be represented by counsel. The standard
21 for such fair hearing shall be to provide "that placement
22 which inures to the best interest of the patient."

23 An appellant aggrieved by the result of such hearing may,
24 within thirty days, appeal to the district court of Polk
25 County or of the county in which the appellant resides, by
26 -serving notice of such appeal upon the commissioner of social
27 services or his designee, in the manner required for the ser-
28 vice of original notice in a civil action. Upon such notice,
29 the department shall furnish the appellant with a copy of
30 any papers filed by him in support of his position, a
31 transcript of any testimony taken, and a copy of the
32 department's decision.

33 In the district court hearings, the parent, guardian or
34 advocate has the right to be represented by counsel. The
35 court shall, in all cases where the interests of the patient

1 conflict with that of parent, guardian or advocate, appoint
2 counsel as guardian ad litem for the patient.

3 In all cases where an appeal is taken from a proposed
4 placement, the proposed placement shall be stayed pending
5 the outcome of said appeal.

6 5. Placement of a patient outside of a hospital-school
7 or special unit under this section shall not relieve the state
8 director of continuing responsibility for the welfare of the
9 patient, except in cases of discharge under section two hundred
10 twenty-two point fifteen (222.15) or two hundred twenty-two
11 point forty-three (222.43) of the Code. Unless such a
12 discharge has occurred, the state director shall provide for
13 review of each placement arrangement made under this section
14 at least once each year, or not more often than once each
15 six months upon the written request of the patient's parent,
16 guardian or advocate, with a view to ascertaining whether
17 such arrangements continue to satisfactorily meet the patient's
18 current needs.

19 6. The ~~action~~ proposed return or placement of a patient
20 outside a hospital-school or special unit shall be further
21 reported to the board of supervisors of the patient's county
22 of legal settlement. The county board may not change a
23 placement or program arranged and approved under this section
24 if state funds are being made available to the county which
25 the county may by law use to pay a portion of the cost of
26 care of the patient so placed, however the board may at any
27 time propose an alternative placement or program to the state
28 director. No such alternative placement or program shall
29 be carried out without the prior written approval of the state
30 director, which shall be granted only after evaluation in
31 the same manner as provided by this section for initial
32 placements from a hospital-school or special unit.

33 7. When a patient committed by a court is to be returned
34 to a county, either by release the parent or guardian, or
35 placed out from a hospital-school or a special unit or for

1 ~~the purposes of convalescent leave as otherwise provided~~
2 ~~by this section~~, notice shall be sent to the clerk of the
3 court which committed the patient, and to the board of super-
4 visors of both the patient's county of legal settlement and
5 the county to which the patient is to be released, thirty
6 days prior to the time the patient leaves the hospital-school
7 or special unit. ~~Patients released from a hospital school~~
8 ~~or a special unit may be placed in family care by direction~~
9 ~~of the superintendent under the supervision of such~~
10 ~~institution.~~

11 EXPLANATION

12 This bill establishes more detailed requirements for the
13 placement of individuals who have been admitted or committed
14 to state institutions for the mentally retarded in other
15 facilities for continued care, treatment or training.

16 The bill requires that an independent advocate be appointed
17 to assist in evaluating any placement arrangement for any
18 patient who does not have a parent, or a legal guardian other
19 than the Department of Social Services. Such an advocate
20 may also be appointed for a patient who has a living parent
21 or parents, if he has no legal guardian other than the Depart-
22 ment, in cases where the parent or parents are unable or
23 unwilling to act effectively in the patient's behalf.

24 It is made clear that the Director of the Department's
25 Bureau of Mental Retardation Services has continuing
26 responsibility for the welfare of patients placed out from
27 state institutions for the mentally retarded, unless they
28 are legally discharged as patients of these institutions,
29 and that these placement arrangements cannot be changed by
30 the patient's county of legal settlement without the Director's
31 approval so long as the state makes available funds which
32 the county is authorized to use to pay a portion of the cost
33 of the patient's care, whether or not the county in fact makes
34 use of the funds which are available.

35

LSB 21
pb/cc/1

H-139

1 Amend House File 240 as follows:
 2 1. Page 1, by striking from lines 10 and 11 the
 3 following: "~~may at any time~~ return a patient to the
 4 parent, or guardian, or" and inserting in lieu thereof
 5 the following: "~~may at any time return a patient to~~
 6 ~~the parent, guardian, or~~".
 7 2. Page 4, by striking from lines 33 and 34 the
 8 following: "~~returned to a county, either by release~~
 9 ~~the parent or guardian, or~~" and inserting in lieu
 10 thereof the following: "~~returned to a county, either~~
 11 ~~by release~~".

H-139 Filed *Adopted 3/6 (496)* By NORPEL of Jackson
 March 5, 1973 *Motion reconsidered filed 3/6*
Withdrawn 3/8

H-140

1 Amend House File 240 as follows:
 2 1. Page 1, line 10, by inserting after the word
 3 "may" the following: ", on application of the parent
 4 or guardian,".
 5 2. Page 4, by striking from lines 33 and 34 the
 6 following: "~~returned to a county, either by release~~
 7 ~~the parent or guardian, or~~" and inserting in lieu
 8 thereof the following: "~~returned to a county, either~~
 9 ~~by release~~".

H-140 Filed *Withdrawn 3/8* By NORPEL of Jackson
 March 6, 1973

H-144

1 Amend House File 240 as follows:
 2 1. Page 1, line 10, by inserting after the word
 3 "may" the following: ", on application of the parent
 4 or guardian,".
 5 2. Page 1, by striking from line 11 the following:
 6 ", or" and inserting in lieu thereof the following:
 7 "or . The superintendent".

H-144 Filed *Adopted 3/8* By NORPEL of Jackson
 March 6, 1973

SENATE AMENDMENT TO HOUSE FILE 240

1 Amend House File 240 as amended and passed by the House as
 2 follows:
 3 1. Page 1, line 12, by inserting after the word "superintendent"
 4 the words "in cooperation with other social agencies under the
 5 supervision of the Iowa department of social services".
 6 2. Page 4, by striking in lines 7 and 8 the words "state
 7 director" and inserting in lieu thereof the words "Iowa
 8 department of social services".
 9 3. Page 4, line 12, by striking the words "state director"
 10 and inserting in lieu thereof the word "department".

Received from the Senate
 May 31, 1973

House amendment 6/5

S-338

1 Amend House File 240 as amended and passed by the
2 House as follows:

3 1. Page 1, line 12 by inserting after the word
4 "superintendent" the words "or other social agencies
5 the supervision of the Iowa department of social under
6 services".

7 2. Page 4, by striking in lines 7 and 8 the words
8 "state director" and inserting in lieu thereof the words
9 "Iowa department of social services".

10 3. Page 4, line 12 by striking the words "state
11 "director" and inserting in lieu thereof the word
12 "department".

S-338 Filed
April 3, 1973

By DODERER and SCHWIEGER

S-465

1 Amend the Doderer and Schwieger Amendment S-338 to
2 House File 240 by striking in line 4 the word "or" and
3 inserting in lieu thereof the words "in cooperation with".

S-465 Filed - *adopted 5/31*
April 26, 1973

By DODERER