

MAR 13 1995

HUMAN RESOURCES

HOUSE FILE 384

BY MURPHY

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the reestablishment of the long-term care
2 resident's advocate program in the office of the citizens'
3 aide, and providing effective dates.

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

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HF 384

1 Section 1. Section 2C.1, Code 1995, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 2A. "Elder" means an individual who is
4 sixty years of age or older. "Elderly" means individuals
5 sixty years of age or older.

6 NEW SUBSECTION. 3A. "Federal Act" means the Older
7 Americans Act of 1965, 42 U.S.C. § 3001 et seq., as amended to
8 and including February 1, 1986.

9 NEW SUBSECTION. 3B. "Long-term care facility" means a
10 long-term care unit of a hospital, a licensed hospice program,
11 a foster group home, a group living arrangement, or a facility
12 licensed under section 135C.1 whether the facility is public
13 or private.

14 NEW SUBSECTION. 6. "Resident's advocate program" means
15 the state long-term care resident's advocate program
16 established by the office of the citizens' aide and
17 administered by the long-term care resident's advocate.

18 Sec. 2. Section 2C.6, Code 1995, is amended to read as
19 follows:

20 2C.6 DEPUTY -- ASSISTANT FOR PENAL AGENCIES -- LONG-TERM
21 CARE RESIDENT'S ADVOCATE.

22 The citizens' aide shall designate one of the members of
23 the staff as the deputy citizens' aide, with authority to act
24 as citizens' aide when the citizens' aide is absent from the
25 state or becomes disabled. The citizens' aide may delegate to
26 members of the staff any of the citizens' aide's authority or
27 duties except the duty of formally making recommendations to
28 agencies or reports to the governor or the general assembly.

29 The citizens' aide shall appoint an assistant who shall be
30 primarily responsible for investigating complaints relating to
31 penal or correctional agencies. The citizens' aide shall
32 appoint a long-term care resident's advocate who shall be
33 responsible for administration of the long-term care
34 resident's advocate program established in subchapter II.

35 Sec. 3. Section 2C.8, Code 1995, is amended to read as

1 follows:

2 2C.8 CLOSED FILES.

3 The citizens' aide may maintain secrecy in respect to all
4 matters including the identities of the complainants or
5 witnesses coming before the citizens' aide, except that the
6 general assembly, any standing committee of the general
7 assembly or the governor may require disclosure of any matter
8 and shall have complete access to the records and files of the
9 citizens' aide. Records and files maintained for the purposes
10 of the long-term care resident's advocate program, however,
11 shall be accessible to the extent provided in subchapter II.
12 The citizens' aide may conduct private hearings.

13 SUBCHAPTER 2

14 Sec. 4. NEW SECTION. 2C.24 PURPOSE.

15 The purpose of this subchapter is to establish the long-
16 term care resident's advocate program operated by the office
17 of the citizens' aide in accordance with the requirements of
18 the Older Americans Act of 1965, and to adopt the supporting
19 federal regulations and guidelines for its implementation.
20 Notwithstanding section 2C.9, subsection 5, the office of the
21 citizens' aide shall adopt rules in accordance with chapter
22 17A to administer this subchapter. This requirement to adopt
23 rules for the administration of this subchapter does not
24 affect the exemption in section 2C.9, subsection 5, with
25 regard to rules for the administration of subchapter 1.

26 Sec. 5. NEW SECTION. 2C.25 LONG-TERM CARE RESIDENT'S
27 ADVOCATE -- DUTIES.

28 The office of the citizens' aide, in accordance with
29 section 3027(a)(12) of the federal Act, shall establish the
30 office of long-term care resident's advocate within the
31 office. The long-term care resident's advocate shall do all
32 of the following:

- 33 1. Investigate and resolve complaints about administrative
34 actions that may adversely affect the health, safety, welfare,
35 or rights of elderly in long-term care facilities.

1 2. Monitor the development and implementation of federal,
2 state, and local laws, regulations, and policies that relate
3 to long-term care facilities in Iowa.

4 3. Provide information to other agencies and to the public
5 about the problems of elderly in long-term care facilities.

6 4. Train volunteers and assist in the development of
7 citizens' organizations to participate in the long-term care
8 resident's advocate program.

9 5. Carry out other activities consistent with the
10 resident's advocate provisions of the federal Act.

11 6. Administer the care review committee program.

12 7. Report annually to the general assembly on the
13 activities of the resident's advocate office.

14 The resident's advocate shall have access to long-term care
15 facilities, private access to residents, access to residents'
16 personal and medical records, and access to other records
17 maintained by the facilities or governmental agencies
18 pertaining only to the person on whose behalf a complaint is
19 being investigated.

20 Sec. 6. NEW SECTION. 2C.26 AUTHORITY AND
21 RESPONSIBILITIES OF THE OFFICE OF THE CITIZENS' AIDE.

22 To ensure compliance with the federal Act the office of the
23 citizens' aide shall establish all of the following:

24 1. Procedures to protect the confidentiality of a
25 resident's records and files.

26 2. A statewide uniform reporting system.

27 3. Procedures to enable the long-term care resident's
28 advocate to elicit, receive, and process complaints regarding
29 administrative actions which may adversely affect the health,
30 safety, welfare, or rights of elderly in long-term care
31 facilities.

32 Sec. 7. NEW SECTION. 2C.27 CARE REVIEW COMMITTEE --
33 DUTIES -- DISCLOSURE -- LIABILITY.

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

1 2. The responsibilities of the care review committee are
2 in accordance with the rules adopted by the office of the
3 citizens' aide pursuant to chapter 17A. When adopting the
4 rules, the office of the citizens' aide shall consider the
5 needs of residents of each category of licensed health care
6 facility as defined in section 135C.1, and the services each
7 facility may render. The office of the citizens' aide shall
8 coordinate the development of rules with the mental health and
9 developmental disabilities commission created in section
10 225C.5 to the extent the rules would apply to a facility
11 primarily serving persons with mental illness, mental
12 retardation, or a developmental disability. The office of the
13 citizens' aide shall coordinate the development of appropriate
14 rules with other state agencies.

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

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

24 Sec. 8. Section 135C.25, subsection 2, Code 1995, is
25 amended to read as follows:

26 2. Each care review committee shall periodically review
27 the needs of each individual resident of the facility and
28 shall perform the functions pursuant to sections 2C.27 and
29 135C.38 and-231-44.

30 Sec. 9. Section 135C.37, Code 1995, is amended to read as
31 follows:

32 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

33 A person may request an inspection of a health care
34 facility by filing with the department, care review committee
35 of the facility, or the long-term care resident's advocate as

1 ~~defined~~ established in section ~~231-47-subsection-16~~ 2C.24, a
2 complaint of an alleged violation of applicable requirements
3 of this chapter or the rules adopted pursuant to this chapter.
4 A person alleging abuse or neglect of a resident with a
5 developmental disability or with mental illness may also file
6 a complaint with the protection and advocacy agency designated
7 pursuant to section 135B.9 or section 135C.2. A copy of a
8 complaint filed with the care review committee or the long-
9 term care resident's advocate shall be forwarded to the
10 department and the office of the citizens' aide established in
11 section 2C.2. The complaint shall state in a reasonably
12 specific manner the basis of the complaint, and a statement of
13 the nature of the complaint shall be delivered to the facility
14 involved at the time of the inspection. The name of the
15 person who files a complaint with the department, care review
16 committee, or the long-term care resident's advocate shall be
17 kept confidential and shall not be subject to discovery,
18 subpoena, or other means of legal compulsion for its release
19 to a person other than department employees involved in the
20 investigation of the complaint.

21 Sec. 10. Section 135C.38, subsection 2, paragraph d, Code
22 1995, is amended to read as follows:

23 d. A person who is dissatisfied with any aspect of the
24 department's handling of the complaint may contact the long-
25 term care resident's advocate, established pursuant to section
26 ~~231-42~~ 2C.24, or may contact the protection and advocacy
27 agency designated pursuant to section 135C.2 if the complaint
28 relates to a resident with a developmental disability or a
29 mental illness.

30 Sec. 11. Section 231.4, subsection 16, Code 1995, is
31 amended by striking the subsection.

32 Sec. 12. Section 231.14, unnumbered paragraph 1, Code
33 1995, is amended to read as follows:

34 The commission is the policymaking body of the ~~sole~~ state
35 agency responsible for administration of the Older Americans

1 Act of 1965, as amended with the exception of the long-term
2 care resident's advocate program established in section 2C.24.

3 The commission shall:

4 Sec. 13. Section 231.33, subsections 18 and 21, Code 1995,
5 are amended to read as follows:

6 18. Coordinate activities in support of the statewide
7 long-term care resident's advocate program established in
8 section 2C.24.

9 21. Submit a report to the ~~department-of-elder-affairs~~
10 office of the citizens' aide every six months, of the name of
11 each health care facility in its area for which the care
12 review committee has failed to submit the report required by
13 rules adopted pursuant to section ~~231-44~~ 2C.27.

14 Sec. 14. Section 231A.2, subsection 1, paragraph b, Code
15 1995, is amended to read as follows:

16 b. The responsible party shall comply with visitation and
17 assessment requirements as determined by the office of the
18 citizens' aide in cooperation with the department.

19 Sec. 15. Section 231A.2, subsection 8, Code 1995, is
20 amended to read as follows:

21 8. The office of the citizens' aide in cooperation with
22 the commission shall adopt by rule procedures for appointing
23 members of a care review committee for each elder family home.
24 To the maximum extent possible, the care review committee
25 appointed for an elder family home shall include a person
26 involved in a local retired senior volunteer program. The
27 rules shall incorporate the provisions, if applicable, for
28 care review committees pursuant to sections 2C.27, 135C.25,
29 and 135C.38~~,--and-231-44.~~

30 Sec. 16. Section 231B.2, subsection 2, paragraph g, Code
31 1995, is amended to read as follows:

32 g. The office of the citizens' aide in cooperation with
33 the commission of elder affairs shall adopt by rule procedures
34 for appointing members of care review committees for elder
35 group homes.

1 Sec. 17. Sections 231.41 through 231.44, Code 1995, are
2 repealed.

3 Sec. 18. MISCELLANEOUS PROVISIONS.

4 1. All rules, regulations, forms, orders, and directives
5 in effect for the long-term care resident's advocate program
6 on the effective date of this Act shall continue in full force
7 and effect as rules, regulations, and forms, of the department
8 of elder affairs until amended, repealed, or supplemented by
9 affirmative action of the office of the citizens' aide.

10 2. On the effective date of this Act, the director of
11 revenue and finance shall allocate to the office of the
12 citizens' aid any funds appropriated to the department of
13 elder affairs for the long-term care resident's advocate
14 program and the department of elder affairs shall take all
15 actions necessary to transfer administration and control of
16 the long-term care resident's advocate program to the office
17 of the citizens' aide, including, but not limited to, the
18 assignment of contracts, the reassignment of personnel, and
19 transfer of records and supplies, as applicable.

20 Sec. 19. EFFECTIVE DATES.

21 1. Section 18 of this Act, being deemed of immediate
22 importance, takes effect upon enactment.

23 2. Sections 1 through 17 of this Act take effect January
24 1, 1996.

25 EXPLANATION

26 This bill provides for the reestablishment of the long-term
27 care resident's advocate program in the office of the
28 citizens' aide rather than in the department of elder affairs.
29 The bill also provides for cooperation between the department
30 of elder affairs and the office of the citizens' aide in
31 certain instances and makes conforming changes throughout the
32 Code.

33 The bill also provides for an effective date of January 1,
34 1996.

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