

JAN 30 1998

HUMAN RESOURCES

HOUSE FILE 2124
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FORD and REYNOLDS-KNIGHT

(COMPANION TO LSB 3483SS
BY NEUHAUSER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the state long-term care ombudsperson,
2 establishing local area long-term care ombudspersons, making
3 an appropriation, and providing an effective date.

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

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HF 2124

1 Section 1. Section 135C.37, Code 1997, is amended to read
2 as follows:

3 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

4 A person may request an inspection of a health care
5 facility by filing with the department, care review committee
6 of the facility, or the state long-term care resident's
7 advocate ombudsperson as defined in section 231.4, subsection
8 167 a complaint of an alleged violation of applicable
9 requirements of this chapter or the rules adopted pursuant to
10 this chapter. A person alleging abuse or neglect of a
11 resident with a developmental disability or with mental
12 illness may also file a complaint with the protection and
13 advocacy agency designated pursuant to section 135B.9 or
14 section 135C.2. A copy of a complaint filed with the care
15 review committee or the state long-term care resident's
16 ~~advocate-sha~~ ombudsperson may be forwarded to the
17 department. The complaint shall state in a reasonably
18 specific manner the basis of the complaint, and a statement of
19 the nature of the complaint shall be delivered to the facility
20 involved at the time of the inspection. The name of the
21 person who files a complaint with the department, care review
22 committee, or the state long-term care resident's advocate
23 ombudsperson shall be kept confidential and shall not be
24 subject to discovery, subpoena, or other means of legal
25 compulsion for its release to a person other than department
26 or the office of the state long-term care resident's
27 ombudsperson employees involved in the investigation of the
28 complaint.

29 Sec. 2. Section 135C.38, subsection 2, paragraph d, Code
30 1997, is amended to read as follows:

31 d. A person who is dissatisfied with any aspect of the
32 department's handling of the complaint may contact the state
33 long-term care resident's advocate ombudsperson, established
34 pursuant to section 231.42, or may contact the protection and
35 advocacy agency designated pursuant to section 135C.2 if the

1 complaint relates to a resident with a developmental
2 disability or a mental illness.

3 Sec. 3. Section 231.4, Code 1997, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 15A. "State long-term care resident's
6 ombudsperson" or "state resident's ombudsperson" means the
7 administrator of the state long-term care resident's
8 ombudsperson program.

9 Sec. 4. Section 231.4, subsection 16, Code 1997, is
10 amended to read as follows:

11 16. "~~Resident's-advocate~~ "State long-term care resident's
12 ombudsperson program" or "state resident's ombudsperson
13 program" means the state long-term care resident's ~~advocate~~
14 ombudsperson program operated by the commission of elder
15 affairs and administered by the state long-term care
16 resident's ~~advocate~~ ombudsperson.

17 Sec. 5. Section 231.33, subsection 18, Code 1997, is
18 amended to read as follows:

19 18. Coordinate activities in support of the statewide
20 state long-term care resident's ~~advocate~~ ombudsperson program.

21 Sec. 6. Section 231.41, Code 1997, is amended to read as
22 follows:

23 231.41 PURPOSE.

24 The purpose of this subchapter is to establish the state
25 long-term care resident's ~~advocate~~ ombudsperson program
26 operated by the Iowa commission of elder affairs in accordance
27 with the requirements of the Older Americans Act of 1965 ~~and~~
28 ~~to-adopt-the-supporting-federal-regulations-and-guidelines-for~~
29 ~~its-implementation~~. In accordance with chapter 17A, the
30 commission of elder affairs shall adopt and enforce rules for
31 the implementation of this subchapter.

32 Sec. 7. Section 231.42, Code 1997, is amended to read as
33 follows:

34 231.42 LONG-TERM CARE RESIDENT'S ~~ADVOCATE~~ OMBUDSPERSON --
35 DUTIES.

1 The Iowa commission of elder affairs, in accordance with
2 section 3027(a)(12) of the federal Act, shall establish the
3 office of state long-term care resident's advocate
4 ombudsperson within the commission. The state long-term care
5 resident's advocate ombudsperson shall:

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

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

12 3. Provide information to other agencies and to the public
13 about the problems of elderly residents in long-term care
14 facilities.

15 4. Train volunteers and assist in the development of
16 citizens' organizations to participate in the long-term-care
17 state resident's advocate ombudsperson program.

18 5. Carry out other activities consistent with the state
19 resident's advocate ombudsperson provisions of the federal
20 Act.

21 6. Administer the care review committee program.

22 7. Report annually to the general assembly on the
23 activities of the state resident's advocate ombudsperson
24 office.

25 8. a. Establish an area long-term care resident's
26 ombudsperson program in a designated entity in each of the
27 area agency on aging planning and service areas throughout the
28 state. The state resident's ombudsperson, in consultation
29 with the department, shall establish a procedure for
30 certification of an area long-term care resident's
31 ombudsperson. The certification procedure shall require, at a
32 minimum, that the area long-term care resident's ombudsperson
33 has demonstrated the capability to carry out the
34 responsibilities of the office, be free of conflicts of
35 interest, and meet any additional requirements as specified by

1 the state resident's ombudsperson.

2 b. The state resident's ombudsperson, the designated
3 entities in which area long-term care resident's ombudsperson
4 programs are established, and the area long-term care
5 resident's ombudsperson are not liable for any action
6 undertaken by an area long-term care resident's ombudsperson
7 in the performance of duty, if the action is undertaken and
8 carried out in good faith.

9 c. The area long-term care resident's ombudsperson shall
10 assist the state resident's ombudsperson by doing, at a
11 minimum, all of the following:

12 (1) Providing services to protect the health, safety,
13 welfare, and rights of residents in long-term care facilities.

14 (2) Ensuring that the residents of long-term care
15 facilities in the service area of the area long-term care
16 resident's ombudsperson program have regular, timely access to
17 the area long-term care resident's ombudsperson and are
18 provided timely responses to complaints and requests for
19 assistance.

20 (3) Identifying, investigating, and resolving complaints
21 and grievances regarding actions or omissions that may
22 adversely affect the health, safety, welfare, or rights of
23 residents in long-term care facilities.

24 (4) Representing the interests of residents of long-term
25 care facilities before government agencies and seeking
26 administrative, legal, and other remedies to protect the
27 health, safety, welfare, and rights of the residents of long-
28 term care facilities.

29 (5) Providing information to other agencies and to the
30 public about the problems of residents in long-term care
31 facilities and facilitating the ability of the public to
32 comment on laws, regulations, and policies which affect the
33 residents in long-term care.

34 (6) Reviewing, and, if necessary, commenting on any
35 existing and proposed laws, rules, and other government

1 policies and actions that pertain to the rights and well-being
2 of residents in long-term care facilities.

3 (7) Developing and assisting care review committees in the
4 performance of their duties through recruitment, training, and
5 publicity.

6 (8) Supporting the development of resident and family
7 councils.

8 (9) Assisting in the development of consumer organizations
9 to participate in the area long-term care resident's
10 ombudsperson program.

11 (10) Carrying out other activities that the state
12 resident's ombudsperson determines to be appropriate.

13 d. The department shall establish, in consultation with
14 the state resident's ombudsperson, policies and procedures for
15 monitoring area long-term care resident's ombudsperson
16 programs, the entities in which the programs are established,
17 and the area long-term care resident's ombudsperson.

18 9. ~~The resident's advocate shall have~~ Have access to long-
19 term care facilities, private access to residents, access to
20 residents' personal, social, and medical records, and access
21 to other records maintained by the facilities or governmental
22 agencies only as necessary pertaining only to the person on
23 whose behalf a complaint is being investigated. An area long-
24 term care resident's ombudsperson shall have comparable access
25 to facilities, residents, and records as provided in this
26 paragraph if the area long-term care resident's ombudsperson
27 obtains consent from the resident or from the resident's legal
28 representative. If the resident is unable to provide consent
29 and the resident's legal representative refuses to consent to
30 the access, access shall be granted if the area long-term care
31 resident's ombudsperson has reasonable cause to believe that
32 the legal representative is not acting in the resident's best
33 interests and if the area long-term care resident's
34 ombudsperson obtains approval from the state long-term care
35 resident's ombudsperson.

1 Sec. 8. Section 231.43, subsection 3, Code 1997, is
2 amended to read as follows:

3 3. Procedures to enable the ~~long-term-care~~ state
4 resident's advocate ombudsperson and area long-term care
5 resident's ombudspersons to elicit, receive, and process
6 complaints regarding administrative actions which may
7 adversely affect the health, safety, welfare, or rights of
8 elderly residents in long-term care facilities.

9 Sec. 9. Section 231.44, subsection 1, Code 1997, is
10 amended to read as follows:

11 1. The care review committee program is administered by
12 the state long-term care resident's advocate ombudsperson
13 program.

14 Sec. 10. AREA LONG-TERM CARE RESIDENT'S OMBUDSPERSON
15 PROGRAM -- DEMONSTRATION PROJECT -- APPROPRIATION. There is
16 appropriated from the general fund of the state to the
17 department of elder affairs for the fiscal period beginning
18 July 1, 1998, and ending June 30, 2000, the following amount,
19 or so much thereof as is necessary, to be used for the purpose
20 designated:

21 For the establishment of a demonstration program beginning
22 July 1, 1998, and ending June 30, 2000, to create the position
23 of area long-term care resident's ombudsperson in each of
24 three area agency on aging planning and service areas in the
25 state to determine the efficacy of establishing an area
26 resident's ombudsperson program in all area agency on aging
27 planning and service area locations:

28 \$ 240,000

29 Notwithstanding section 8.33, the moneys appropriated in
30 this section that remain unencumbered and unobligated at the
31 end of each fiscal year shall not revert to the general fund
32 but shall remain available for expenditure during subsequent
33 fiscal years for the purposes for which originally
34 appropriated.

35 Sec. 11. EFFECTIVE DATE. Sections 1 through 9 of this Act

1 take effect July 1, 1999.

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EXPLANATION

3 This bill makes changes in the office of the state long-
4 term care resident's advocate program, including changing
5 references throughout the Code to replace the "resident's
6 advocate program" with references to the "state long-term care
7 resident's ombudsperson program". The bill also provides for
8 establishment of area ombudsperson entities in each of the
9 area agency on aging planning and service areas.

10 The bill specifies the duties of the area ombudsperson,
11 provides for the establishment of area ombudsperson pilot
12 projects in three areas of the state, provides an
13 appropriation for the pilot project, and provides for future
14 expansion of the area programs statewide by making the
15 provisions not related to the pilot project effective July 1,
16 1999.

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