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4/8/97 Request from Unfinished Business Calendar
to Human Res. Comm.

FILED APR 3 1997

SENATE FILE **534**
BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO SSB 250)

Passed Senate, Date _____ Passed House, Date _____

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

Approved _____

A BILL FOR

1 An Act relating to the role of the state long-term care ombudsman
2 in regulation of health care facilities.

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

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S.F. 534

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

3 135C.2 PURPOSE -- RULES -- SPECIAL CLASSIFICATIONS --
4 PROTECTION AND ADVOCACY AGENCY -- OFFICE OF STATE LONG-TERM
5 CARE OMBUDSMAN.

6 1. The purpose of this chapter is to promote and encourage
7 adequate and safe care and housing for individuals who are
8 aged or who, regardless of age, are infirm, convalescent, or
9 mentally or physically dependent, by both public and private
10 agencies by providing for the adoption and enforcement of
11 rules and standards for all of the following:

12 a. ~~For-the~~ The housing, care, and treatment of individuals
13 in health care facilities, and

14 b. ~~For-the~~ The location, construction, maintenance,
15 renovation, and sanitary operation of such health care
16 facilities which will promote safe and adequate care of
17 individuals in such homes so as to further the health,
18 welfare, and safety of such individuals.

19 2. Rules and standards prescribed, promulgated, and
20 enforced under this chapter shall not be arbitrary,
21 unreasonable, or confiscatory and the department or agency
22 prescribing, promulgating, or enforcing such rules or
23 standards shall have the burden of proof to establish that
24 such rules or standards meet such requirements and are
25 consistent with the economic problems and conditions involved
26 in the care and housing of persons in health care facilities.

27 3. a. The department shall establish by administrative
28 rule the following special classifications:

29 (1) Within the residential care facility category, a
30 special license classification for residential facilities
31 intended to serve persons with mental illness.

32 (2) Within the nursing facility category, a special
33 license classification for nursing facilities which designate
34 and dedicate the facility or a special unit within the
35 facility to provide care for persons who suffer from chronic

1 confusion or a dementing illness. A nursing facility which
2 designates and dedicates the facility or a special unit within
3 the facility for the care of persons who suffer from chronic
4 confusion or a dementing illness shall be specially licensed.
5 For the purposes of this subsection, "designate" means to
6 identify by a distinctive title or label and "dedicate" means
7 to set apart for a definite use or purpose and to promote that
8 purpose.

9 b. The department may also establish by administrative
10 rule special classifications within the residential care
11 facility, intermediate care facility for persons with mental
12 illness, intermediate care facility for persons with mental
13 retardation, or nursing facility categories, for facilities
14 intended to serve individuals who have special health care
15 problems or conditions in common. Rules establishing a
16 special classification shall define the problem or condition
17 to which the special classification is relevant and establish
18 requirements for an approved program of care commensurate with
19 the problem or condition. The rules may grant special
20 variances or considerations to facilities licensed within the
21 special classification.

22 c. The rules adopted for intermediate care facilities for
23 persons with mental retardation shall be consistent with, but
24 no more restrictive than, the federal standards for
25 intermediate care facilities for persons with mental
26 retardation established pursuant to the federal Social
27 Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d,
28 in effect on January 1, 1989. However, in order to be
29 licensed the state fire marshal must certify to the department
30 an intermediate care facility for persons with mental
31 retardation as meeting the applicable provisions of either the
32 health care occupancies chapter or the residential board and
33 care chapter of the life safety code of the national fire
34 protection association, 1985 edition. The department shall
35 adopt additional rules for intermediate care facilities for

1 persons with mental retardation pursuant to section 135C.14,
2 subsection 8.

3 d. Notwithstanding the limitations set out in this
4 subsection regarding rules for intermediate care facilities
5 for persons with mental retardation, the department shall
6 consider the federal interpretive guidelines issued by the
7 federal health care financing administration when interpreting
8 the department's rules for intermediate care facilities for
9 persons with mental retardation. This use of the guidelines
10 is not subject to the rulemaking provisions of sections 17A.4
11 and 17A.5, but the guidelines shall be published in the Iowa
12 administrative bulletin and the Iowa administrative code.

13 4. The protection and advocacy agency designated in the
14 state, under Pub. L. No. 98-527, the Developmental
15 Disabilities Act of 1984, Pub. L. No. 99-319, the Protection
16 and Advocacy for Mentally Ill Individuals Act of 1986, and
17 Pub. L. No. 100-146, the federal Developmental Disabilities
18 Assistance and Bill of Rights Act Amendments of 1987, is
19 recognized as an agency legally authorized and constituted to
20 ensure the implementation of the purposes of this chapter for
21 populations under its authority and in the manner designated
22 by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No.
23 100-146 and in the assurances of the governor of the state.

24 4A. The office of the state long-term care ombudsman, as
25 established under the federal Older Americans Act of 1965, as
26 amended, is recognized as an entity legally authorized and
27 constituted to ensure the implementation of the purposes of
28 this chapter for elders in long-term care facilities as
29 defined in section 231.4.

30 5. The department shall establish a special classification
31 within the residential care facility category in order to
32 foster the development of residential care facilities which
33 serve persons with mental retardation, chronic mental illness,
34 a developmental disability, or brain injury, as described
35 under section 225C.26, and which contain five or fewer

1 residents. A facility within the special classification
2 established pursuant to this subsection is exempt from the
3 requirements of section 135.63. The department shall adopt
4 rules which are consistent with rules previously developed for
5 the waiver demonstration project pursuant to 1986 Iowa Acts,
6 chapter 1246, section 206, and which include all of the
7 following provisions:

8 a. A facility provider under the special classification
9 must comply with rules adopted by the department for the
10 special classification. However, a facility provider which
11 has been accredited by the accreditation council for services
12 to persons with mental retardation and other developmental
13 disabilities shall be deemed to be in compliance with the
14 rules adopted by the department.

15 b. A facility must be located in an area zoned for single
16 or multiple-family housing or in an unincorporated area and
17 must be constructed in compliance with applicable local
18 requirements and the rules adopted for the special
19 classification by the state fire marshal in accordance with
20 the concept of the least restrictive environment for the
21 facility residents. The rules adopted by the state fire
22 marshal for the special classification shall be no more
23 restrictive than the rules adopted by the state fire marshal
24 for demonstration waiver project facilities pursuant to 1986
25 Iowa Acts, chapter 1246, section 206, subsection 2. Local
26 requirements shall not be more restrictive than the rules
27 adopted for the special classification by the state fire
28 marshal and the state building code requirements for single or
29 multiple-family housing.

30 c. Facility provider plans for the facility's
31 accessibility to residents must be in place.

32 d. A written plan must be in place which documents that a
33 facility meets the needs of the facility's residents pursuant
34 to individual program plans developed according to age
35 appropriate and least restrictive program requirements.

1 e. A written plan must be in place which documents that a
2 facility's residents have reasonable access to employment or
3 employment-related training, education, generic community
4 resources, and integrated opportunities to promote interaction
5 with the community.

6 f. A committee of not more than nine members must be
7 established to provide monitoring of the special
8 classification and the rules and procedures adopted regarding
9 the special classification. The recommendations of the
10 committee are subject to the approval of the director. The
11 committee shall include but is not limited to representatives
12 designated by each of the following:

- 13 (1) The association for retarded citizens of Iowa.
- 14 (2) The Iowa association of rehabilitation and residential
15 facilities.
- 16 (3) The governor's planning council for developmental
17 disabilities.
- 18 (4) The mental health and developmental disabilities
19 commission created in section 225C.5.
- 20 (5) The alliance for the mentally ill of Iowa.
- 21 (6) The Iowa state association of counties.
- 22 (7) The state fire marshal.
- 23 (8) The state long-term care ombudsman.

24 g. The facilities licensed under this subsection shall be
25 eligible for funding utilized by other licensed residential
26 care facilities for persons with mental retardation, or
27 licensed residential care facilities for persons with mental
28 illness, including but not limited to funding under or from
29 the federal social services block grant, the state
30 supplementary assistance program, state mental health and
31 developmental disabilities services funds, and county funding
32 provisions.

33 6. a. This chapter shall not apply to adult day care
34 services provided in a health care facility. However, adult
35 day care services shall not be provided by a health care

1 facility to persons requiring a level of care which is higher
2 than the level of care the facility is licensed to provide.

3 b. The level of care certification provisions pursuant to
4 sections 135C.3 and 135C.4, the license application and fee
5 provisions pursuant to section 135C.7, and the involuntary
6 discharge provisions pursuant to section 135C.14, subsection
7 8, shall not apply to respite care services provided in a
8 health care facility. However, respite care services shall
9 not be provided by a health care facility to persons requiring
10 a level of care which is higher than the level of care the
11 facility is licensed to provide.

12 c. The department shall adopt rules to implement this
13 subsection.

14 7. The rules adopted by the department regarding nursing
15 facilities shall provide that a nursing facility may choose to
16 be inspected either by the department or by the joint
17 commission on accreditation of health care organizations. The
18 rules regarding acceptance of inspection by the joint
19 commission on accreditation of health care organizations shall
20 include recognition, in lieu of inspection by the department,
21 of comparable inspections and inspection findings of the joint
22 commission on accreditation of health care organizations, if
23 the department is provided with copies of all requested
24 materials relating to the inspection process.

25 Sec. 2. Section 135C.17, Code 1997, is amended to read as
26 follows:

27 135C.17 DUTIES OF OTHER DEPARTMENTS.

28 It shall be the duty of the department of human services,
29 state fire marshal, and the officers and agents of other state
30 and local governmental units, ~~and~~ the designated protection
31 and advocacy agency, and the office of the state long-term
32 care ombudsman to assist the department in carrying out the
33 provisions of this chapter, insofar as the functions of these
34 respective offices and departments are concerned with the
35 health, welfare, and safety of any resident of any health care

1 facility. It shall be the duty of the department to cooperate
2 with the protection and advocacy agency by responding to all
3 reasonable requests for assistance and information as required
4 by federal law and this chapter.

5 Sec. 3. Section 135C.21, subsection 2, unnumbered
6 paragraph 1, Code 1997, is amended to read as follows:

7 Any person who prevents or interferes with or attempts to
8 impede in any way any duly authorized representative of the
9 department, the office of the state long-term care ombudsman,
10 or of any of the agencies referred to in section 135C.17 in
11 the lawful enforcement of this chapter or of the rules adopted
12 pursuant to it is guilty of a simple misdemeanor. As used in
13 this subsection, lawful enforcement includes but is not
14 limited to:

15 Sec. 4. Section 135C.37, Code 1997, is amended to read as
16 follows:

17 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

18 A person may request an inspection of a health care
19 facility by filing with the department, care review committee
20 of the facility, or the office of the state long-term care
21 ~~resident's-advocate~~ ombudsman as defined in section 231.4,
22 ~~subsection 16,~~ a complaint of an alleged violation of
23 applicable requirements of this chapter or the rules adopted
24 pursuant to this chapter. A person alleging abuse or neglect
25 of a resident with a developmental disability or with mental
26 illness may also file a complaint with the protection and
27 advocacy agency designated pursuant to section 135B.9 or
28 section 135C.2. A copy of a complaint filed with the care
29 ~~review-committee-or~~ office of the state long-term care
30 ~~resident's-advocate~~ ombudsman shall may be forwarded to the
31 department. The complaint shall state in a reasonably
32 specific manner the basis of the complaint, and a statement of
33 the nature of the complaint shall be delivered to the facility
34 involved at the time of the inspection. The name or other
35 identifying information of the person who files a complaint

1 with the department, care review committee, or the office of
2 the state long-term care resident's-advocate ombudsman shall
3 be kept confidential and shall not be subject to discovery,
4 subpoena, or other means of legal compulsion for its release
5 to a person other than department or the office of the state
6 long-term care ombudsman employees involved in the
7 investigation of the complaint.

8 Sec. 5. Section 135C.38, subsection 1, paragraph c, Code
9 1997, is amended to read as follows:

10 c. The department may refer to the care-review-committee
11 of-a-facility office of the state long-term care ombudsman any
12 complaint received by the department regarding that facility,
13 for initial evaluation and appropriate action by the committee
14 office of the state long-term care ombudsman.

15 Sec. 6. Section 135C.38, subsection 2, paragraphs a and d,
16 Code 1997, are amended to read as follows:

17 a. The complainant shall be promptly informed of the
18 result of any action taken by the department or committee
19 office of the state long-term care ombudsman in the matter.
20 The complainant shall also be notified of the name, address,
21 and telephone number of the office of the state long-term care
22 ombudsman if the alleged violation involves a long-term care
23 facility with one or more elder residents and of the
24 designated protection and advocacy agency if the alleged
25 violation involves a facility with one or more residents with
26 developmental disabilities or mental illness.

27 d. A person who is dissatisfied with any aspect of the
28 department's handling of the complaint may contact the state
29 long-term care resident's-advocate ombudsman, established
30 pursuant to section 231.42, or may contact the protection and
31 advocacy agency designated pursuant to section 135C.2 if the
32 complaint relates to a resident with a developmental
33 disability or a mental illness.

34 Sec. 7. Section 135C.46, Code 1997, is amended to read as
35 follows:

1 135C.46 RETALIATION BY FACILITY PROHIBITED.

2 1. A facility shall not discriminate or retaliate in any
3 way against a resident, a resident's representative, or an
4 employee of the facility who has initiated or participated in
5 any proceeding authorized by this chapter. A facility which
6 violates this section is subject to a penalty of not less than
7 two hundred fifty nor more than five thousand dollars, to be
8 assessed and collected by the director in substantially the
9 manner prescribed by sections 135C.40 to 135C.43 and paid into
10 the state treasury to be credited to the general fund, or to
11 immediate revocation of the facility's license.

12 2. Any attempt to expel from a health care facility a
13 resident by whom or upon whose behalf a complaint has been
14 submitted to the department under section 135C.37, within
15 ninety-days one year after the date of the filing of the
16 complaint or the conclusion of any proceeding resulting from
17 the complaint, shall raise a rebuttable presumption that the
18 action was taken by the licensee in retaliation for the filing
19 of the complaint.

20 Sec. 8. Section 231.4, subsection 16, Code 1997, is
21 amended to read as follows:

22 16. "Resident's-advocate State long-term care ombudsman
23 program" means the state long-term care ~~resident's-advocate~~
24 ombudsman program operated by the commission of elder affairs
25 and administered by the state long-term care ~~resident's~~
26 advocate ombudsman.

27 Sec. 9. Section 231.33, subsection 18, Code 1997, is
28 amended to read as follows:

29 18. Coordinate activities in support of the statewide
30 state long-term care resident's-advocate ombudsman program.

31 Sec. 10. Section 231.41, Code 1997, is amended to read as
32 follows:

33 231.41 PURPOSE.

34 The purpose of this subchapter is to establish the state
35 long-term care ~~resident's-advocate~~ ombudsman program operated

1 by the Iowa commission of elder affairs in accordance with the
2 requirements of the Older Americans Act of 1965, and to adopt
3 the supporting federal regulations and guidelines for its
4 implementation. In accordance with chapter 17A, the
5 commission of elder affairs shall adopt and enforce rules for
6 the implementation of this subchapter.

7 Sec. 11. Section 231.42, Code 1997, is amended to read as
8 follows:

9 231.42 STATE LONG-TERM CARE RESIDENT'S-ADVOCATE OMBUDSMAN
10 -- DUTIES.

11 The Iowa commission of elder affairs, in accordance with
12 section 3027(a)(12) of the federal Act, shall establish the
13 office of state long-term care resident's-advocate ombudsman
14 within the commission. The state long-term care resident's
15 advocate ombudsman shall:

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

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

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

24 4. Train volunteers and assist in the development of
25 citizens' organizations to participate in the state long-term
26 care resident's-advocate ombudsman program.

27 5. Carry out other activities consistent with the
28 resident's-advocate state long-term care ombudsman provisions
29 of the federal Act.

30 6. Administer the care review committee program.

31 7. Report annually to the general assembly on the
32 activities of the resident's-advocate state long-term care
33 ombudsman office.

34 The resident's-advocate state long-term care ombudsman
35 shall have access to long-term care facilities, private access

1 to residents, and access to residents' personal, social, and
2 medical records,--and for the purpose of reviewing and, upon
3 request, copying the records. The state long-term care
4 ombudsman shall have access to other records maintained by the
5 facilities or governmental agencies only as necessary and
6 pertaining only to the-person persons on whose behalf a
7 complaint is being investigated.

8 Sec. 12. Section 231.43, subsection 3, Code 1997, is
9 amended to read as follows:

10 3. Procedures to enable the state long-term care
11 ~~resident's-advocate~~ ombudsman to elicit, receive, and process
12 complaints regarding administrative actions which may
13 adversely affect the health, safety, welfare, or rights of
14 elderly residents in long-term care facilities.

15 Sec. 13. Section 231.44, subsection 1, Code 1997, is
16 amended to read as follows:

17 1. The care review committee program is administered by
18 the state long-term care resident's-advocate ombudsman
19 program.

20 EXPLANATION

21 This bill makes changes in the Code relating to the office
22 of the state long-term care ombudsman relative to health care
23 facilities. The bill establishes the office of the state
24 long-term care ombudsman as the entity legally authorized and
25 constituted to implement the health care facilities chapter as
26 it relates to residents of health care facilities pursuant to
27 federal law. The bill also includes the ombudsman in the
28 membership of the committee which is to monitor the special
29 licensing classifications and the rules and procedures adopted
30 regarding these classifications. The bill establishes that
31 it is the duty of the office of the ombudsman to assist the
32 department of inspections and appeals in carrying out the
33 chapter, and includes the office of the ombudsman in the
34 entities duly authorized as representative of the department
35 for the purposes of lawful enforcement of the chapter. The

1 bill prohibits discrimination or retaliation against a
2 representative of a resident of a health care facility and
3 extends to one year the time from which a complaint is made
4 regarding a facility until the discrimination or retaliation
5 takes place to establish a rebuttable presumption that the
6 discrimination or retaliation was based upon the complaint.
7 The bill also makes conforming changes throughout the Code to
8 replace the reference to the "resident's advocate" with the
9 "state long-term care ombudsman".

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Lundby, Chair
McLaren
McCoy

SSB 250
Appropriations

SENATE FILE SF/HF 524
Succeeded By
BY (PROPOSED COMMITTEE ON
APPROPRIATIONS BILL BY
CHAIRPERSON McLAREN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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7 adequate and safe care and housing for individuals who are
8 aged or who, regardless of age, are infirm, convalescent, or
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17 individuals in such homes so as to further the health,
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20 enforced under this chapter shall not be arbitrary,
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 10 rule special classifications within the residential care
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 33 care chapter of the life safety code of the national fire
 34 protection association, 1985 edition. The department shall
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1 persons with mental retardation pursuant to section 135C.14,
2 subsection 8.

3 d. Notwithstanding the limitations set out in this
4 subsection regarding rules for intermediate care facilities
5 for persons with mental retardation, the department shall
6 consider the federal interpretive guidelines issued by the
7 federal health care financing administration when interpreting
8 the department's rules for intermediate care facilities for
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11 and 17A.5, but the guidelines shall be published in the Iowa
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25 established under the federal Older Americans Act of 1965, as
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32 provisions.

33 6. a. This chapter shall not apply to adult day care
34 services provided in a health care facility. However, adult
35 day care services shall not be provided by a health care

1 facility to persons requiring a level of care which is higher
2 than the level of care the facility is licensed to provide.

3 b. The level of care certification provisions pursuant to
4 sections 135C.3 and 135C.4, the license application and fee
5 provisions pursuant to section 135C.7, and the involuntary
6 discharge provisions pursuant to section 135C.14, subsection
7 8, shall not apply to respite care services provided in a
8 health care facility. However, respite care services shall
9 not be provided by a health care facility to persons requiring
10 a level of care which is higher than the level of care the
11 facility is licensed to provide.

12 c. The department shall adopt rules to implement this
13 subsection.

14 7. The rules adopted by the department regarding nursing
15 facilities shall provide that a nursing facility may choose to
16 be inspected either by the department or by the joint
17 commission on accreditation of health care organizations. The
18 rules regarding acceptance of inspection by the joint
19 commission on accreditation of health care organizations shall
20 include recognition, in lieu of inspection by the department,
21 of comparable inspections and inspection findings of the joint
22 commission on accreditation of health care organizations, if
23 the department is provided with copies of all requested
24 materials relating to the inspection process.

25 Sec. 2. Section 135C.17, Code 1997, is amended to read as
26 follows:

27 135C.17 DUTIES OF OTHER DEPARTMENTS.

28 It shall be the duty of the department of human services,
29 state fire marshal, and the officers and agents of other state
30 and local governmental units, and the designated protection
31 and advocacy agency, and the office of the state long-term
32 care ombudsman to assist the department in carrying out the
33 provisions of this chapter, insofar as the functions of these
34 respective offices and departments are concerned with the
35 health, welfare, and safety of any resident of any health care

1 facility. It shall be the duty of the department to cooperate
2 with the protection and advocacy agency by responding to all
3 reasonable requests for assistance and information as required
4 by federal law and this chapter.

5 Sec. 3. Section 135C.21, subsection 2, unnumbered
6 paragraph 1, Code 1997, is amended to read as follows:

7 Any person who prevents or interferes with or attempts to
8 impede in any way any duly authorized representative of the
9 department, the office of the state long-term care ombudsman,
10 or of any of the agencies referred to in section 135C.17 in
11 the lawful enforcement of this chapter or of the rules adopted
12 pursuant to it is guilty of a simple misdemeanor. As used in
13 this subsection, lawful enforcement includes but is not
14 limited to:

15 Sec. 4. Section 135C.37, Code 1997, is amended to read as
16 follows:

17 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

18 A person may request an inspection of a health care
19 facility by filing with the department, care review committee
20 of the facility, or the office of the state long-term care
21 resident's-advocate ombudsman as defined in section 231.4,
22 ~~subsection-16~~ a complaint of an alleged violation of
23 applicable requirements of this chapter or the rules adopted
24 pursuant to this chapter. A person alleging abuse or neglect
25 of a resident with a developmental disability or with mental
26 illness may also file a complaint with the protection and
27 advocacy agency designated pursuant to section 135B.9 or
28 section 135C.2. A copy of a complaint filed with the care
29 ~~review-committee-or~~ office of the state long-term care
30 resident's-advocate ombudsman ~~shall~~ may be forwarded to the
31 department. The complaint shall state in a reasonably
32 specific manner the basis of the complaint, and a statement of
33 the nature of the complaint shall be delivered to the facility
34 involved at the time of the inspection. The name or other
35 identifying information of the person who files a complaint

1 with the department, care review committee, or the office of
2 the state long-term care ~~resident's-advocate~~ ombudsman shall
3 be kept confidential and shall not be subject to discovery,
4 subpoena, or other means of legal compulsion for its release
5 to a person other than department or the office of the state
6 long-term care ombudsman employees involved in the
7 investigation of the complaint.

8 Sec. 5. Section 135C.38, subsection 1, paragraph c, Code
9 1997, is amended to read as follows:

10 c. The department may refer to the ~~care-review-committee~~
11 ~~of-a-facility~~ office of the state long-term care ombudsman any
12 complaint received by the department regarding that facility,
13 for initial evaluation and appropriate action by the ~~committee~~
14 office of the state long-term care ombudsman.

15 Sec. 6. Section 135C.38, subsection 2, paragraphs a and d,
16 Code 1997, are amended to read as follows:

17 a. The complainant shall be promptly informed of the
18 result of any action taken by the department or ~~committee~~
19 office of the state long-term care ombudsman in the matter.
20 The complainant shall also be notified of the name, address,
21 and telephone number of the office of the state long-term care
22 ombudsman if the alleged violation involves a long-term care
23 facility with one or more elder residents and of the
24 designated protection and advocacy agency if the alleged
25 violation involves a facility with one or more residents with
26 developmental disabilities or mental illness.--

27 d. A person who is dissatisfied with any aspect of the
28 department's handling of the complaint may contact the state
29 long-term care ~~resident's-advocate~~ ombudsman, established
30 pursuant to section 231.42, or may contact the protection and
31 advocacy agency designated pursuant to section 135C.2 if the
32 complaint relates to a resident with a developmental
33 disability or a mental illness.

34 Sec. 7. Section 135C.46, Code 1997, is amended to read as
35 follows:

1 135C.46 RETALIATION BY FACILITY PROHIBITED.

2 1. A facility shall not discriminate or retaliate in any
3 way against a resident, a resident's representative, or an
4 employee of the facility who has initiated or participated in
5 any proceeding authorized by this chapter. A facility which
6 violates this section is subject to a penalty of not less than
7 two hundred fifty nor more than five thousand dollars, to be
8 assessed and collected by the director in substantially the
9 manner prescribed by sections 135C.40 to 135C.43 and paid into
10 the state treasury to be credited to the general fund, or to
11 immediate revocation of the facility's license.

12 2. Any attempt to expel from a health care facility a
13 resident by whom or upon whose behalf a complaint has been
14 submitted to the department under section 135C.37, within
15 ninety-days one year after the date of the filing of the
16 complaint or the conclusion of any proceeding resulting from
17 the complaint, shall raise a rebuttable presumption that the
18 action was taken by the licensee in retaliation for the filing
19 of the complaint.

20 Sec. 8. Section 231.4, subsection 16, Code 1997, is
21 amended to read as follows:

22 16. "~~Resident's-advocate~~ State long-term care ombudsman
23 program" means the state long-term care ~~resident's-advocate~~
24 ombudsman program operated by the commission of elder affairs
25 and administered by the state long-term care resident's
26 advocate ombudsman.

27 Sec. 9. Section 231.33, subsection 18, Code 1997, is
28 amended to read as follows:

29 18. Coordinate activities in support of the statewide
30 state long-term care resident's-advocate ombudsman program.

31 Sec. 10. Section 231.41, Code 1997, is amended to read as
32 follows:

33 231.41 PURPOSE.

34 The purpose of this subchapter is to establish the state
35 long-term care ~~resident's-advocate~~ ombudsman program operated

1 by the Iowa commission of elder affairs in accordance with the
2 requirements of the Older Americans Act of 1965, and to adopt
3 the supporting federal regulations and guidelines for its
4 implementation. In accordance with chapter 17A, the
5 commission of elder affairs shall adopt and enforce rules for
6 the implementation of this subchapter.

7 Sec. 11. Section 231.42, Code 1997, is amended to read as
8 follows:

9 231.42 STATE LONG-TERM CARE RESIDENT'S-ADVOCATE OMBUDSMAN
10 -- DUTIES.

11 The Iowa commission of elder affairs, in accordance with
12 section 3027(a)(12) of the federal Act, shall establish the
13 office of state long-term care resident's-advocate ombudsman
14 within the commission. The state long-term care resident's
15 advocate ombudsman shall:

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

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

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

24 4. Train volunteers and assist in the development of
25 citizens' organizations to participate in the state long-term
26 care resident's-advocate ombudsman program. --

27 5. Carry out other activities consistent with the
28 resident's-advocate state long-term care ombudsman provisions
29 of the federal Act.

30 6. Administer the care review committee program.

31 7. Report annually to the general assembly on the
32 activities of the resident's-advocate state long-term care
33 ombudsman office.

34 The resident's-advocate state long-term care ombudsman
35 shall have access to long-term care facilities, private access

1 to residents, and access to residents' personal, social, and
2 medical records, and for the purpose of reviewing and, upon
3 request, copying the records. The state long-term care
4 ombudsman shall have access to other records maintained by the
5 facilities or governmental agencies only as necessary and
6 pertaining only to the-person persons on whose behalf a
7 complaint is being investigated.

8 Sec. 12. Section 231.43, subsection 3, Code 1997, is
9 amended to read as follows:

10 3. Procedures to enable the state long-term care
11 ~~resident's-advocate~~ ombudsman to elicit, receive, and process
12 complaints regarding administrative actions which may
13 adversely affect the health, safety, welfare, or rights of
14 ~~elderly~~ residents in long-term care facilities.

15 Sec. 13. Section 231.44, subsection 1, Code 1997, is
16 amended to read as follows:

17 1. The care review committee program is administered by
18 the state long-term care ~~resident's-advocate~~ ombudsman
19 program.

20 EXPLANATION

21 This bill makes changes in the Code relating to the office
22 of the state long-term care ombudsman relative to health care
23 facilities. The bill establishes the office of the state
24 long-term care ombudsman as the entity legally authorized and
25 constituted to implement the health care facilities chapter as
26 it relates to residents of health care facilities pursuant to
27 federal law. The bill also includes the ombudsman in the
28 membership of the committee which is to monitor the special
29 licensing classifications and the rules and procedures adopted
30 regarding these classifications. The bill establishes that
31 it is the duty of the office of the ombudsman to assist the
32 department of inspections and appeals in carrying out the
33 chapter, and includes the office of the ombudsman in the
34 entities duly authorized as representative of the department
35 for the purposes of lawful enforcement of the chapter. The

1 bill prohibits discrimination or retaliation against a
 2 representative of a resident of a health care facility and
 3 extends to one year the time from which a complaint is made
 4 regarding a facility until the discrimination or retaliation
 5 takes place to establish a rebuttable presumption that the
 6 discrimination or retaliation was based upon the complaint.
 7 The bill also makes conforming changes throughout the Code to
 8 replace the reference to the "resident's advocate" with the
 9 "state long-term care ombudsman".

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