

Senate Study Bill 250

Bill Text

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1 1 Section 1. Section [135C.2](#), Code 1997, is amended to read
1 2 as follows:

1 3 135C.2 PURPOSE RULES SPECIAL CLASSIFICATIONS
1 4 PROTECTION AND ADVOCACY AGENCY OFFICE OF STATE LONG-TERM
1 5 CARE OMBUDSMAN.

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

1 12 a.

~~For the~~

- ~~The~~ housing, care, and treatment of individuals
1 13 in health care facilities, and
1 14 b.

~~For the~~

- ~~The~~ location, construction, maintenance,
1 15 renovation, and sanitary operation of such health care
1 16 facilities which will promote safe and adequate care of
1 17 individuals in such homes so as to further the health,
1 18 welfare, and safety of such individuals.
1 19 2. Rules and standards prescribed, promulgated, and
1 20 enforced under this chapter shall not be arbitrary,
1 21 unreasonable, or confiscatory and the department or agency
1 22 prescribing, promulgating, or enforcing such rules or
1 23 standards shall have the burden of proof to establish that
1 24 such rules or standards meet such requirements and are
1 25 consistent with the economic problems and conditions involved
1 26 in the care and housing of persons in health care facilities.
1 27 3. a. The department shall establish by administrative
1 28 rule the following special classifications:
1 29 (1) Within the residential care facility category, a
1 30 special license classification for residential facilities
1 31 intended to serve persons with mental illness.
1 32 (2) Within the nursing facility category, a special
1 33 license classification for nursing facilities which designate
1 34 and dedicate the facility or a special unit within the
1 35 facility to provide care for persons who suffer from chronic
2 1 confusion or a dementing illness. A nursing facility which
2 2 designates and dedicates the facility or a special unit within
2 3 the facility for the care of persons who suffer from chronic
2 4 confusion or a dementing illness shall be specially licensed.
2 5 For the purposes of this subsection, "designate" means to
2 6 identify by a distinctive title or label and "dedicate" means
2 7 to set apart for a definite use or purpose and to promote that
2 8 purpose.
2 9 b. The department may also establish by administrative
2 10 rule special classifications within the residential care
2 11 facility, intermediate care facility for persons with mental
2 12 illness, intermediate care facility for persons with mental
2 13 retardation, or nursing facility categories, for facilities
2 14 intended to serve individuals who have special health care
2 15 problems or conditions in common. Rules establishing a

2 16 special classification shall define the problem or condition
2 17 to which the special classification is relevant and establish
2 18 requirements for an approved program of care commensurate with
2 19 the problem or condition. The rules may grant special
2 20 variances or considerations to facilities licensed within the
2 21 special classification.

2 22 c. The rules adopted for intermediate care facilities for
2 23 persons with mental retardation shall be consistent with, but
2 24 no more restrictive than, the federal standards for
2 25 intermediate care facilities for persons with mental
2 26 retardation established pursuant to the federal Social
2 27 Security Act, } 1905(c)(d), as codified in 42 U.S.C. } 1396d,
2 28 in effect on January 1, 1989. However, in order to be
2 29 licensed the state fire marshal must certify to the department
2 30 an intermediate care facility for persons with mental
2 31 retardation as meeting the applicable provisions of either the
2 32 health care occupancies chapter or the residential board and
2 33 care chapter of the life safety code of the national fire
2 34 protection association, 1985 edition. The department shall
2 35 adopt additional rules for intermediate care facilities for
3 1 persons with mental retardation pursuant to section 135C.14,
3 2 subsection 8.

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

3 13 4. The protection and advocacy agency designated in the
3 14 state, under Pub. L. No. 98-527, the Developmental
3 15 Disabilities Act of 1984, Pub. L. No. 99-319, the Protection
3 16 and Advocacy for Mentally Ill Individuals Act of 1986, and
3 17 Pub. L. No. 100-146, the federal Developmental Disabilities
3 18 Assistance and Bill of Rights Act Amendments of 1987, is
3 19 recognized as an agency legally authorized and constituted to
3 20 ensure the implementation of the purposes of this chapter for
3 21 populations under its authority and in the manner designated
3 22 by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No.
3 23 100-146 and in the assurances of the governor of the state.

3 24 4A. The office of the state long-term care ombudsman, as
3 25 established under the federal Older Americans Act of 1965, as
3 26 amended, is recognized as an entity legally authorized and
3 27 constituted to ensure the implementation of the purposes of
3 28 this chapter for elders in long-term care facilities as
3 29 defined in section 231.4.

3 30 5. The department shall establish a special classification
3 31 within the residential care facility category in order to
3 32 foster the development of residential care facilities which
3 33 serve persons with mental retardation, chronic mental illness,
3 34 a developmental disability, or brain injury, as described
3 35 under section 225C.26, and which contain five or fewer
4 1 residents. A facility within the special classification
4 2 established pursuant to this subsection is exempt from the
4 3 requirements of section 135.63. The department shall adopt
4 4 rules which are consistent with rules previously developed for
4 5 the waiver demonstration project pursuant to 1986 Iowa Acts,
4 6 chapter 1246, section 206, and which include all of the
4 7 following provisions:

4 8 a. A facility provider under the special classification
4 9 must comply with rules adopted by the department for the
4 10 special classification. However, a facility provider which
4 11 has been accredited by the accreditation council for services
4 12 to persons with mental retardation and other developmental

4 13 disabilities shall be deemed to be in compliance with the
4 14 rules adopted by the department.

4 15 b. A facility must be located in an area zoned for single
4 16 or multiple-family housing or in an unincorporated area and
4 17 must be constructed in compliance with applicable local
4 18 requirements and the rules adopted for the special
4 19 classification by the state fire marshal in accordance with
4 20 the concept of the least restrictive environment for the
4 21 facility residents. The rules adopted by the state fire
4 22 marshal for the special classification shall be no more
4 23 restrictive than the rules adopted by the state fire marshal
4 24 for demonstration waiver project facilities pursuant to 1986
4 25 Iowa Acts, chapter 1246, section 206, subsection 2. Local
4 26 requirements shall not be more restrictive than the rules
4 27 adopted for the special classification by the state fire
4 28 marshal and the state building code requirements for single or
4 29 multiple-family housing.

4 30 c. Facility provider plans for the facility's
4 31 accessibility to residents must be in place.

4 32 d. A written plan must be in place which documents that a
4 33 facility meets the needs of the facility's residents pursuant
4 34 to individual program plans developed according to age
4 35 appropriate and least restrictive program requirements.

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

5 6 f. A committee of not more than nine members must be
5 7 established to provide monitoring of the special
5 8 classification and the rules and procedures adopted regarding
5 9 the special classification. The recommendations of the
5 10 committee are subject to the approval of the director. The
5 11 committee shall include but is not limited to representatives
5 12 designated by each of the following:

5 13 (1) The association for retarded citizens of Iowa.

5 14 (2) The Iowa association of rehabilitation and residential
5 15 facilities.

5 16 (3) The governor's planning council for developmental
5 17 disabilities.

5 18 (4) The mental health and developmental disabilities
5 19 commission created in section 225C.5.

5 20 (5) The alliance for the mentally ill of Iowa.

5 21 (6) The Iowa state association of counties.

5 22 (7) The state fire marshal.

5 23 (8) The state long-term care ombudsman.

5 24 g. The facilities licensed under this subsection shall be
5 25 eligible for funding utilized by other licensed residential
5 26 care facilities for persons with mental retardation, or
5 27 licensed residential care facilities for persons with mental
5 28 illness, including but not limited to funding under or from
5 29 the federal social services block grant, the state
5 30 supplementary assistance program, state mental health and
5 31 developmental disabilities services funds, and county funding
5 32 provisions.

5 33 6. a. This chapter shall not apply to adult day care
5 34 services provided in a health care facility. However, adult
5 35 day care services shall not be provided by a health care
6 1 facility to persons requiring a level of care which is higher
6 2 than the level of care the facility is licensed to provide.

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

6 10 a level of care which is higher than the level of care the
6 11 facility is licensed to provide.

6 12 c. The department shall adopt rules to implement this
6 13 subsection.

6 14 7. The rules adopted by the department regarding nursing
6 15 facilities shall provide that a nursing facility may choose to
6 16 be inspected either by the department or by the joint
6 17 commission on accreditation of health care organizations. The
6 18 rules regarding acceptance of inspection by the joint
6 19 commission on accreditation of health care organizations shall
6 20 include recognition, in lieu of inspection by the department,
6 21 of comparable inspections and inspection findings of the joint
6 22 commission on accreditation of health care organizations, if
6 23 the department is provided with copies of all requested
6 24 materials relating to the inspection process.

6 25 Sec. 2. Section [135C.17](#), Code 1997, is amended to read as
6 26 follows:

6 27 135C.17 DUTIES OF OTHER DEPARTMENTS.

6 28 It shall be the duty of the department of human services,
6 29 state fire marshal, and the officers and agents of other state
6 30 and local governmental units,

~~and~~

- the designated protection

6 31 and advocacy agency, and the office of the state long-term
6 32 care ombudsman to assist the department in carrying out the
6 33 provisions of this chapter, insofar as the functions of these
6 34 respective offices and departments are concerned with the
6 35 health, welfare, and safety of any resident of any health care
7 1 facility. It shall be the duty of the department to cooperate
7 2 with the protection and advocacy agency by responding to all
7 3 reasonable requests for assistance and information as required
7 4 by federal law and this chapter.

7 5 Sec. 3. Section [135C.21](#), subsection 2, unnumbered
7 6 paragraph 1, Code 1997, is amended to read as follows:

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

7 15 Sec. 4. Section [135C.37](#), Code 1997, is amended to read as
7 16 follows:

7 17 135C.37 COMPLAINTS ALLEGING VIOLATIONS CONFIDENTIALITY.

7 18 A person may request an inspection of a health care
7 19 facility by filing with the department, care review committee
7 20 of the facility, or the office of the state long-term care
7 21

~~resident's advocate~~

- ombudsman as defined in section 231.4,
7 22

~~subsection 16,~~

- a complaint of an alleged violation of

7 23 applicable requirements of this chapter or the rules adopted
7 24 pursuant to this chapter. A person alleging abuse or neglect
7 25 of a resident with a developmental disability or with mental
7 26 illness may also file a complaint with the protection and
7 27 advocacy agency designated pursuant to section 135B.9 or
7 28 section 135C.2. A copy of a complaint filed with the

~~care~~

-
7 29

~~review committee or~~
- office of the state long-term care
7 30

~~resident's advocate~~
- ombudsman

~~shall~~
- may be forwarded to the
7 31 department. The complaint shall state in a reasonably
7 32 specific manner the basis of the complaint, and a statement of
7 33 the nature of the complaint shall be delivered to the facility
7 34 involved at the time of the inspection. The name or other
7 35 identifying information of the person who files a complaint
8 1 with the department, care review committee, or the office of
8 2 the state long-term care

~~resident's advocate~~
- ombudsman shall
8 3 be kept confidential and shall not be subject to discovery,
8 4 subpoena, or other means of legal compulsion for its release
8 5 to a person other than department or the office of the state
8 6 long-term care ombudsman employees involved in the
8 7 investigation of the complaint.
8 8 Sec. 5. Section [135C.38](#), subsection 1, paragraph c, Code
8 9 1997, is amended to read as follows:
8 10 c. The department may refer to the

~~care review committee~~
-
8 11

~~of a facility~~
- office of the state long-term care ombudsman any
8 12 complaint received by the department regarding that facility,
8 13 for initial evaluation and appropriate action by the

~~committee~~
-
8 14 office of the state long-term care ombudsman.
8 15 Sec. 6. Section [135C.38](#), subsection 2, paragraphs a and d,
8 16 Code 1997, are amended to read as follows:
8 17 a. The complainant shall be promptly informed of the
8 18 result of any action taken by the department or

~~committee~~
-
8 19 office of the state long-term care ombudsman in the matter.
8 20 The complainant shall also be notified of the name, address,
8 21 and telephone number of the office of the state long-term care
8 22 ombudsman if the alleged violation involves a long-term care
8 23 facility with one or more elder residents and of the
8 24 designated protection and advocacy agency if the alleged
8 25 violation involves a facility with one or more residents with
8 26 developmental disabilities or mental illness.
8 27 d. A person who is dissatisfied with any aspect of the
8 28 department's handling of the complaint may contact the state
8 29 long-term care

~~resident's advocate~~
- ombudsman, established
8 30 pursuant to section 231.42, or may contact the protection and
8 31 advocacy agency designated pursuant to section 135C.2 if the
8 32 complaint relates to a resident with a developmental
8 33 disability or a mental illness.
8 34 Sec. 7. Section [135C.46](#), Code 1997, is amended to read as

8 35 follows:

9 1 135C.46 RETALIATION BY FACILITY PROHIBITED.

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

9 12 2. Any attempt to expel from a health care facility a
9 13 resident by whom or upon whose behalf a complaint has been
9 14 submitted to the department under section 135C.37, within
9 15

~~— ninety days~~

~~— one year~~ after the date of the filing of the
9 16 complaint or the conclusion of any proceeding resulting from
9 17 the complaint, shall raise a rebuttable presumption that the
9 18 action was taken by the licensee in retaliation for the filing
9 19 of the complaint.

9 20 Sec. 8. Section 231.4, subsection 16, Code 1997, is
9 21 amended to read as follows:

9 22 16. "

~~— Resident's advocate~~

~~— State long-term care ombudsman~~

9 23 program" means the state long-term care

~~— resident's advocate~~

~~—~~
9 24 ombudsman program operated by the commission of elder affairs
9 25 and administered by the state long-term care

~~— resident's~~

~~—~~
9 26

~~— advocate~~

~~— ombudsman.~~

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

9 29 18. Coordinate activities in support of the

~~— statewide~~

~~—~~
9 30 state long-term care

~~— resident's advocate~~

~~— ombudsman~~ program.

9 31 Sec. 10. Section 231.41, Code 1997, is amended to read as
9 32 follows:

9 33 231.41 PURPOSE.

9 34 The purpose of this subchapter is to establish the state
9 35 long-term care

~~— resident's advocate~~

~~— ombudsman~~ program operated

10 1 by the Iowa commission of elder affairs in accordance with the
10 2 requirements of the Older Americans Act of 1965, and to adopt
10 3 the supporting federal regulations and guidelines for its
10 4 implementation. In accordance with chapter 17A, the
10 5 commission of elder affairs shall adopt and enforce rules for
10 6 the implementation of this subchapter.

10 7 Sec. 11. Section 231.42, Code 1997, is amended to read as

10 8 follows:
10 9 231.42 STATE LONG-TERM CARE

~~RESIDENT'S ADVOCATE~~
~~OMBUDSMAN~~

10 10 DUTIES.
10 11 The Iowa commission of elder affairs, in accordance with
10 12 section 3027(a)(12) of the federal Act, shall establish the
10 13 office of state long-term care

~~resident's advocate~~
~~ombudsman~~
10 14 within the commission. The state long-term care

~~resident's~~
~~advocate~~
10 15

~~advocate~~
~~ombudsman~~ shall:
10 16 1. Investigate and resolve complaints about administrative
10 17 actions that may adversely affect the health, safety, welfare,
10 18 or rights of elderly in long-term care facilities.
10 19 2. Monitor the development and implementation of federal,
10 20 state, and local laws, regulations, and policies that relate
10 21 to long-term care facilities in Iowa.
10 22 3. Provide information to other agencies and to the public
10 23 about the problems of elderly in long-term care facilities.
10 24 4. Train volunteers and assist in the development of
10 25 citizens' organizations to participate in the state long-term
10 26 care

~~resident's advocate~~
~~ombudsman~~ program.
10 27 5. Carry out other activities consistent with the
10 28

~~resident's advocate~~
~~state long-term care ombudsman~~ provisions
10 29 of the federal Act.
10 30 6. Administer the care review committee program.
10 31 7. Report annually to the general assembly on the
10 32 activities of the

~~resident's advocate~~
~~state long-term care~~
10 33 ombudsman office.
10 34 The

~~resident's advocate~~
~~state long-term care ombudsman~~
10 35 shall have access to long-term care facilities, private access
11 1 to residents, and access to residents' personal, social, and
11 2 medical records

~~, and~~
~~for the purpose of reviewing and, upon~~
11 3 request, copying the records. The state long-term care
11 4 ombudsman shall have access to other records maintained by the
11 5 facilities or governmental agencies only as necessary and
11 6 pertaining

~~only~~
~~to~~

~~the person~~
~~persons~~ on whose behalf a

11 7 complaint is being investigated.
11 8 Sec. 12. Section [231.43](#), subsection 3, Code 1997, is
11 9 amended to read as follows:
11 10 3. Procedures to enable the state long-term care
11 11

~~resident's advocate~~

- ombudsman to elicit, receive, and process
11 12 complaints regarding administrative actions which may
11 13 adversely affect the health, safety, welfare, or rights of
11 14

~~elderly~~

- residents in long-term care facilities.

11 15 Sec. 13. Section [231.44](#), subsection 1, Code 1997, is
11 16 amended to read as follows:
11 17 1. The care review committee program is administered by
11 18 the state long-term care

~~resident's advocate~~

- ombudsman

11 19 program.

11 20

EXPLANATION

11 21 This bill makes changes in the Code relating to the office
11 22 of the state long-term care ombudsman relative to health care
11 23 facilities. The bill establishes the office of the state
11 24 long-term care ombudsman as the entity legally authorized and
11 25 constituted to implement the health care facilities chapter as
11 26 it relates to residents of health care facilities pursuant to
11 27 federal law. The bill also includes the ombudsman in the
11 28 membership of the committee which is to monitor the special
11 29 licensing classifications and the rules and procedures adopted
11 30 regarding these classifications. The bill establishes that
11 31 it is the duty of the office of the ombudsman to assist the
11 32 department of inspections and appeals in carrying out the
11 33 chapter, and includes the office of the ombudsman in the
11 34 entities duly authorized as representative of the department
11 35 for the purposes of lawful enforcement of the chapter. The
12 1 bill prohibits discrimination or retaliation against a
12 2 representative of a resident of a health care facility and
12 3 extends to one year the time from which a complaint is made
12 4 regarding a facility until the discrimination or retaliation
12 5 takes place to establish a rebuttable presumption that the
12 6 discrimination or retaliation was based upon the complaint.
12 7 The bill also makes conforming changes throughout the Code to
12 8 replace the reference to the "resident's advocate" with the
12 9 "state long-term care ombudsman".

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