

House Study Bill 570

Bill Text

PAG LIN

1 1 Section 1. Section [135C.11](#), subsection 2, Code 2001, is
1 2 amended to read as follows:

1 3 2. The procedure governing hearings authorized by this
1 4 section shall be in accordance with the rules promulgated by
1 5 the department. A full and complete record shall be kept of
1 6 all proceedings, and all testimony shall be reported but need
1 7 not be transcribed unless judicial review is sought pursuant
1 8 to section 135C.13. Copies of the transcript may be obtained
1 9 by an interested party upon payment of the cost of preparing
1 10 the copies. Witnesses may be subpoenaed by either party and
1 11 shall be allowed fees at a rate prescribed by the department's
1 12 rules. The director may

~~1 13 , after advising the resident advocate~~

~~1 14~~

~~1 15 committee established pursuant to section 135C.25,~~

~~1 16 either~~

1 14 proceed in accordance with section 135C.30, or remove all
1 15 residents and suspend the license or licenses of any health
1 16 care facility, prior to a hearing, when the director finds
1 17 that the health or safety of residents of the health care
1 18 facility requires such action on an emergency basis.

~~1 19 The fact~~

~~1 20~~

~~1 21 that no resident advocate committee has been appointed for a~~

~~1 22~~

~~1 23 particular facility shall not bar the director from exercising~~

~~1 24~~

~~1 25 the emergency powers granted by this subsection with respect~~

~~1 26~~

~~1 27 to that facility.~~

1 23 Sec. 2. Section [135C.13](#), Code 2001, is amended to read as
1 24 follows:

1 25 135C.13 JUDICIAL REVIEW.

1 26 Judicial review of any action of the director may be sought
1 27 in accordance with the terms of the Iowa administrative
1 28 procedure Act. Notwithstanding the terms of said Act,
1 29 petitions for judicial review may be filed in the district
1 30 court of the county where the facility or proposed facility is
1 31 located, and pending final disposition of the matter the
1 32 status quo of the applicant or licensee shall be preserved
1 33 except when the director

~~1 34 , with the advice and consent of the~~

1 34

~~resident advocate committee established pursuant to section~~

1 35

~~135C.25,~~

- determines that the health, safety or welfare of the
2 1 residents of the facility is in immediate danger, in which
2 2 case the director may order the immediate removal of such
2 3 residents.

~~The fact that no resident advocate committee has~~

2 4

~~been appointed for a particular facility shall not bar the~~

2 5

~~director from exercising the emergency powers granted by this~~

2 6

~~subsection with respect to that facility.~~

2 7 Sec. 3. Section [135C.14](#), subsection 8, paragraph d, Code
2 8 Supplement 2001, is amended by striking the paragraph.

2 9 Sec. 4. Section [135C.20B](#), subsection 2, paragraph c, Code
2 10 2001, is amended to read as follows:

2 11 c. Any information submitted by

~~care review~~

- resident

2 12 advocate committee members or residents with regard to the
2 13 quality of care of the facility.

2 14 Sec. 5. Section [135C.25](#), subsections 1, 2, and 3, Code
2 15 2001, are amended to read as follows:

2 16 1. Each

~~health~~

- nursing facility and residential care

2 17 facility excluding residential care facilities licensed to
2 18 serve only persons with mental illness or mental retardation

2 19 and county and private institutions regulated pursuant to
2 20 chapter 227 shall have a resident advocate committee whose

2 21 members shall be appointed by the director of the department
2 22 of elder affairs or the director's designee. A person shall

2 23 not be appointed a member of a resident advocate committee for
2 24 a

~~health care~~

- facility unless the person is a resident of the
2 25 service area where the facility is located.

~~The resident~~

2 26

~~advocate committee for any facility caring primarily for~~

2 27

~~persons with mental illness, mental retardation, or a~~

2 28

~~developmental disability shall only be appointed after~~

2 29

~~consultation with the administrator of the division of mental~~

2 30

~~health and developmental disabilities of the department of~~

2 31

~~human services on the proposed appointments.~~

- Recommendations

2 32 to the director or the director's designee for membership on
2 33 resident advocate committees are encouraged from any agency,
2 34 organization, or individual. The administrator of the
2 35 facility shall not be appointed to the resident advocate
3 1 committee and shall not be present at committee meetings
3 2 except upon request of the committee.

3 3 2. Each resident advocate committee shall periodically
3 4 review the needs of each individual resident of the facility
3 5 and shall perform the functions pursuant to

~~sections 135C.38~~

3 6

~~and~~

- section 231.44.

3 7 3. A

~~health care~~

- facility shall disclose the names,

3 8 addresses, and phone numbers of a resident's family members,
3 9 if requested, to a resident advocate committee member, unless
3 10 permission for this disclosure is refused in writing by the
3 11 family member. The facility shall provide a form on which a
3 12 family member may indicate a refusal to grant this permission.

3 13 Sec. 6. Section [135C.37](#), Code 2001, is amended to read as
3 14 follows:

3 15 135C.37 COMPLAINTS ALLEGING VIOLATIONS CONFIDENTIALITY.

3 16 A person may request an inspection of a health care
3 17 facility by filing with the department, resident advocate
3 18 committee of the facility, or the long-term care resident's
3 19 advocate as defined in section 231.4, subsection 16, a
3 20 complaint of an alleged violation of applicable requirements
3 21 of this chapter or the rules adopted pursuant to this chapter.
3 22 A person alleging abuse or neglect of a resident with a
3 23 developmental disability or with mental illness may also file
3 24 a complaint with the protection and advocacy agency designated
3 25 pursuant to section 135B.9 or section 135C.2. A copy of a
3 26 complaint filed with the resident advocate committee or the
3 27 long-term care resident's advocate

~~shall~~

- may be forwarded to

3 28 the department. The complaint shall state in a reasonably
3 29 specific manner the basis of the complaint, and a statement of
3 30 the nature of the complaint shall be delivered to the facility
3 31 involved at the time of the inspection. The name of the
3 32 person who files a complaint with the department, resident
3 33 advocate committee, or the long-term care resident's advocate
3 34 shall be kept confidential and shall not be subject to
3 35 discovery, subpoena, or other means of legal compulsion for
4 1 its release to a person other than department employees

4 2 involved in the investigation of the complaint.
4 3 Sec. 7. Section 135C.38, Code 2001, is amended to read as
4 4 follows:
4 5 135C.38 INSPECTIONS UPON COMPLAINTS.
4 6 1. a. Upon receipt of a complaint made in accordance with
4 7 section 135C.37, the department

~~or resident advocate committee~~

4 8 shall make a preliminary review of the complaint. Unless the
4 9 department

~~or committee~~

- concludes that the complaint is
4 10 intended to harass a facility or a licensee or is without
4 11 reasonable basis, it shall within twenty working days of
4 12 receipt of the complaint make or cause to be made an on-site
4 13 inspection of the health care facility which is the subject of
4 14 the complaint.

4 15 b. The complaint investigation shall include, at a
4 16 minimum, an interview with the complainant, the alleged
4 17 perpetrator, and the victim of the alleged violation, if the
4 18 victim is able to communicate, if the complainant, alleged
4 19 perpetrator, or victim is identifiable, and if the
4 20 complainant, alleged perpetrator, or victim is available.
4 21 Additionally, witnesses who have knowledge of facts related to
4 22 the complaint shall be interviewed, if identifiable and
4 23 available. The names of witnesses may be obtained from the
4 24 complainant or the victim. The files of the facility may be
4 25 reviewed to ascertain the names of staff persons on duty at
4 26 the time relevant to the complaint. The department shall
4 27 apply a preponderance of the evidence standard in determining
4 28 whether or not a complaint is substantiated. For the purposes
4 29 of this subsection, "a preponderance of the evidence standard"
4 30 means that the evidence, considered and compared with the
4 31 evidence opposed to it, produces the belief in a reasonable
4 32 mind that the allegations are more likely true than not true.
4 33 "A preponderance of the evidence standard" does not require
4 34 that the investigator personally witnessed the alleged
4 35 violation.

5 1 c. The department may refer to the resident advocate
5 2 committee of a facility any complaint received by the
5 3 department regarding that facility, for initial evaluation and
5 4 appropriate action by the committee.

5 5 2. a. The complainant shall be promptly informed of the
5 6 result of any action taken by the department

~~or committee~~

- in

5 7 the matter. The complainant shall also be notified of the
5 8 name, address, and telephone number of the designated
5 9 protection and advocacy agency if the alleged violation
5 10 involves a facility with one or more residents with
5 11 developmental disabilities or mental illness.

5 12 b. Upon conclusion of the investigation, the department
5 13 shall notify the complainant of the results. The notification
5 14 shall include a statement of the factual findings as
5 15 determined by the investigator, the statutory or regulatory
5 16 provisions alleged to have been violated, and a summary of the
5 17 reasons for which the complaint was or was not substantiated.

5 18 c. The department shall mail the notification to the
5 19 complainant without charge. Upon the request of the
5 20 complainant, the department shall mail to the complainant,
5 21 without charge, a copy of the most recent final findings
5 22 regarding compliance with licensing requirements by the
5 23 facility against which the complaint was filed.

5 24 d. A person who is dissatisfied with any aspect of the

5 25 department's handling of the complaint may contact the long-
5 26 term care resident's advocate, established pursuant to section
5 27 231.42, or may contact the protection and advocacy agency
5 28 designated pursuant to section 135C.2 if the complaint relates
5 29 to a resident with a developmental disability or a mental
5 30 illness.

5 31 3. An inspection made pursuant to a complaint filed under
5 32 section 135C.37 need not be limited to the matter or matters
5 33 included in the complaint. However, the inspection shall not
5 34 be a general inspection unless the complaint inspection
5 35 coincides with a scheduled general inspection or unless in the
6 1 course of the complaint investigation a violation is evident
6 2 to the inspector. Upon arrival at the facility to be
6 3 inspected, the inspector shall show identification to the
6 4 person in charge of the facility and state that an inspection
6 5 is to be made, before beginning the inspection. Upon request
6 6 of either the complainant or the department or resident
6 7 advocate committee, the complainant or the complainant's
6 8 representative or both may be allowed the privilege of
6 9 accompanying the inspector during any on-site inspection made
6 10 pursuant to this section. The inspector may cancel the
6 11 privilege at any time if the inspector determines that the
6 12 privacy of any resident of the facility to be inspected would
6 13 otherwise be violated. The protection and dignity of the
6 14 resident shall be given first priority by the inspector and
6 15 others.
6 16

~~4. If upon an inspection of a facility by its resident~~

~~6 17~~

~~advocate committee pursuant to this section, the committee~~

~~6 18~~

~~advises the department of any circumstance believed to~~

~~6 19~~

~~constitute a violation of this chapter or of any rule adopted~~

~~6 20~~

~~pursuant to it, the committee shall similarly advise the~~

~~6 21~~

~~facility at the same time. If the facility's licensee or~~

~~6 22~~

~~administrator disagrees with the conclusion of the committee~~

~~6 23~~

~~regarding the supposed violation, an informal conference may~~

~~6 24~~

~~be requested and if requested shall be arranged by the~~

~~6 25~~

~~department as provided in section 135C.42 before a citation is~~

~~6 26~~

~~issued. If the department thereafter issues a citation~~

6 27

~~pursuant to the committee's finding, the facility shall not be~~

6 28

~~entitled to a second informal conference on the same violation~~

6 29

~~and the citation shall be considered affirmed. The facility~~

6 30

~~cited may proceed under section 135C.43 if it so desires.~~

6 31 Sec. 8. Section [227.2](#), subsection 2, Code 2001, is amended
6 32 to read as follows:

6 33 2. A copy of the written report prescribed by subsection 1
6 34 shall be furnished to the county board of supervisors, to the
6 35 county mental health and mental retardation coordinating board
7 1 or to its advisory board if the county board of supervisors
7 2 constitutes ex officio the coordinating board

~~and to the~~

7 3 administrator of the county care facility inspected

~~and to its~~

7 4

~~resident advocate committee, and to the department of elder~~

7 5

~~affairs~~

7 6 Sec. 9. Section [227.4](#), Code 2001, is amended to read as
7 7 follows:

7 8 227.4 STANDARDS FOR CARE OF PERSONS WITH MENTAL ILLNESS OR
7 9 MENTAL RETARDATION IN COUNTY CARE FACILITIES.

7 10 The administrator, in cooperation with the department of
7 11 inspections and appeals, shall recommend, and the mental
7 12 health and developmental disabilities commission created in
7 13 section 225C.5 shall adopt standards for the care of and
7 14 services to persons with mental illness or mental retardation
7 15 residing in county care facilities. The standards shall be
7 16 enforced by the department of inspections and appeals as a
7 17 part of the licensure inspection conducted pursuant to chapter
7 18 135C. The objective of the standards is to ensure that
7 19 persons with mental illness or mental retardation who are
7 20 residents of county care facilities are not only adequately
7 21 fed, clothed, and housed, but are also offered reasonable
7 22 opportunities for productive work and recreational activities
7 23 suited to their physical and mental abilities and offering
7 24 both a constructive outlet for their energies and, if
7 25 possible, therapeutic benefit. When recommending standards
7 26 under this section, the administrator shall designate an
7 27 advisory committee representing administrators of county care
7 28 facilities

~~and county mental health and developmental~~

7 29 disabilities regional planning councils

~~7 30 , and county care~~

7 30

~~7 31 facility resident advocate committees~~

~~7 32 to assist in the~~

7 31 establishment of standards.

7 32 Sec. 10. Section [231.44](#), subsection 2, Code 2001, is

7 33 amended to read as follows:

7 34 2. The responsibilities of the resident advocate committee

7 35 are in accordance with the rules adopted by the commission

8 1 pursuant to chapter 17A. When adopting the rules, the

8 2 commission shall consider the needs of residents of each

8 3

~~8 4 category of~~

~~8 5 licensed~~

~~8 6 health~~

~~8 7 nursing facility and residential~~

8 4 care facility as defined in section 135C.1,

~~8 5 subsection 6,~~

8 5 excluding residential care facilities licensed to serve only

8 6 persons with mental illness or mental retardation, and the

8 7 services each facility may render.

~~8 8 The commission shall~~

8 8

~~8 9 coordinate the development of rules with the mental health and~~

8 9

~~8 10 developmental disabilities commission created in section~~

8 10

~~8 11 225C.5 to the extent the rules would apply to a facility~~

8 11

~~8 12 primarily serving persons with mental illness, mental~~

8 12

~~8 13 retardation, or a developmental disability.~~

~~8 14 The commission~~

8 13 shall coordinate the development of appropriate rules with

8 14 other state agencies.

8 15

EXPLANATION

8 16 This bill makes changes related to the resident advocate
8 17 committee in the regulation of certain health care facilities.

8 18 The bill eliminates the directive to the director of the
8 19 department of inspections and appeals to advise the resident
8 20 advocate committee when, based upon an action to deny,

8 21 suspend, or revoke a health care facility license, and prior
8 22 to a hearing, the director proceeds with an action for
8 23 receivership or to remove residents on an emergency basis.

8 24 The bill also eliminates the requirement that the director of
8 25 the department of inspections and appeals obtain the advice
8 26 and consent of the resident advocate committee when, pending
8 27 judicial review of an action, the director determines that the

8 28 health, safety, or welfare of the residents of a facility is
8 29 in immediate danger and orders the removal of the residents.
8 30 The bill also eliminates the provision that the director of
8 31 the department of inspections and appeals is not barred from
8 32 exercising emergency powers due to the lack of appointment of
8 33 a resident advocate committee for a facility.

8 34 The bill provides that only nursing facilities and
8 35 residential care facilities that do not serve only persons
9 1 with mental illness or mental retardation, not all health care
9 2 facilities, are required to have a resident advocate
9 3 committee. The bill specifically excludes county and private
9 4 institutions regulated under Code chapter 227, from this
9 5 requirement.

9 6 The bill provides that a copy of a complaint filed with the
9 7 resident advocate committee or the long-term care resident's
9 8 advocate may be forwarded to the department of inspections and
9 9 appeals, but is not required to be forwarded.

9 10 The bill provides that upon receipt of a complaint alleging
9 11 a violation, the department, and not the department or the
9 12 resident advocate committee, is to make a preliminary review
9 13 of the complaint. The bill also provides that the complainant
9 14 is to be promptly informed of any action taken by the
9 15 department regarding the complaint. Current law also includes
9 16 the committee as an entity that might take action relative to
9 17 a complaint and thereby be required to also inform a
9 18 complainant of action taken. The bill also eliminates a
9 19 provision establishing a process upon inspection of a health
9 20 care facility by the resident advocate committee, to advise
9 21 the department of inspections and appeals and the facility of
9 22 circumstances believed to constitute a violation.

9 23 LSB 5337DP 79

9 24 pf/sh/8

9 25