

**House File 2328 - Introduced**

HOUSE FILE 2328  
BY COMMITTEE ON HUMAN  
RESOURCES

(SUCCESSOR TO HSB 621)

**A BILL FOR**

1 An Act relating to the office of the long-term care resident's  
2 advocate, and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135C.37, Code 2009, 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 facility  
5 by filing with the department, resident advocate committee  
6 of the facility, or the office of long-term care resident's  
7 advocate as established pursuant to section 231.42, a complaint  
8 of an alleged violation of applicable requirements of this  
9 chapter or the rules adopted pursuant to this chapter. A  
10 person alleging abuse or neglect of a resident with a  
11 developmental disability or with mental illness may also file a  
12 complaint with the protection and advocacy agency designated  
13 pursuant to section 135B.9 or section 135C.2. A copy of a  
14 complaint filed with the resident advocate committee or the  
15 office of long-term care resident's advocate shall be forwarded  
16 to the department. The complaint shall state in a reasonably  
17 specific manner the basis of the complaint, and a statement  
18 of the nature of the complaint shall be delivered to the  
19 facility involved at the time of the inspection. The name of  
20 the person who files a complaint with the department, resident  
21 advocate committee, or the office of long-term care resident's  
22 advocate shall be kept confidential and shall not be subject to  
23 discovery, subpoena, or other means of legal compulsion for its  
24 release to a person other than department employees involved in  
25 the investigation of the complaint.

26 Sec. 2. Section 135C.38, subsection 2, paragraph d, Code  
27 2009, is amended to read as follows:

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

35 Sec. 3. Section 231.4, Code Supplement 2009, is amended by

1 adding the following new subsections:

2 NEW SUBSECTION. 1A. "*Assisted living program*" means a  
3 program which provides assisted living as defined pursuant to  
4 section 231C.2 and which is certified under chapter 231C.

5 NEW SUBSECTION. 4A. "*Elder group home*" means elder group  
6 home as defined in section 231B.1 which is certified under  
7 chapter 231B.

8 NEW SUBSECTION. 7A. "*Legal representative*" means a tenant's  
9 legal representative as defined in section 231B.1 or 231C.2, or  
10 a guardian, conservator, or attorney in fact of a resident.

11 NEW SUBSECTION. 9A. "*Resident*" means a resident or tenant  
12 of a long-term care facility, assisted living program, or elder  
13 group home, excluding facilities licensed primarily to serve  
14 persons with mental retardation or mental illness.

15 Sec. 4. Section 231.4, subsection 10, Code Supplement 2009,  
16 is amended by striking the subsection.

17 Sec. 5. Section 231.23A, subsection 7, Code Supplement  
18 2009, is amended to read as follows:

19 7. Administration relating to the office of long-term care  
20 resident's advocate ~~program~~ and training for resident advocate  
21 committees.

22 Sec. 6. Section 231.41, Code Supplement 2009, is amended to  
23 read as follows:

24 **231.41 Purpose.**

25 The purpose of this subchapter is to establish the office  
26 of long-term care resident's advocate ~~program operated~~  
27 ~~by~~ within the ~~Iowa commission on aging~~ department in accordance  
28 with the requirements of the federal Act, and to adopt  
29 the supporting federal regulations and guidelines for its  
30 implementation operation. ~~In accordance with chapter 17A,~~  
31 ~~the commission on aging shall adopt and enforce rules for the~~  
32 ~~implementation of this subchapter.~~

33 Sec. 7. Section 231.42, Code Supplement 2009, is amended  
34 by striking the section and inserting in lieu thereof the  
35 following:

1     **231.42 Office of long-term care resident's advocate —**  
2 **duties— penalties for violations.**

3     1. *Office established.* The office of long-term care  
4 resident's advocate is established within the department, in  
5 accordance with section 712 of the federal Act, as codified  
6 at 42 U.S.C. § 3058g. The office shall consist of the state  
7 long-term care resident's advocate and any local long-term care  
8 resident's advocates.

9     2. *State long-term care resident's advocate.* The director  
10 of the department shall appoint the state long-term care  
11 resident's advocate who shall do all of the following:

12     a. Establish and implement a statewide confidential  
13 uniform reporting system for receiving, analyzing, referring,  
14 investigating, and resolving complaints about administrative  
15 actions and the health, safety, welfare, and rights of  
16 residents or tenants of long-term care facilities, assisted  
17 living programs, and elder group homes, excluding facilities  
18 licensed primarily to serve persons with mental retardation or  
19 mental illness.

20     b. Publicize the office of long-term care resident's  
21 advocate and provide information and education to consumers,  
22 the public, and other agencies about issues related to  
23 long-term care in Iowa.

24     c. Monitor the development and implementation of federal,  
25 state, and local laws, regulations, and policies that relate to  
26 long-term care in Iowa.

27     d. Annually report to the governor and general assembly  
28 on the activities of the office and make recommendations for  
29 improving the health, safety, welfare, and rights of residents  
30 and tenants of long-term care facilities, assisted living  
31 programs, and elder group homes.

32     e. Cooperate with persons and public or private agencies  
33 with regard to, and participate in, inquiries, meetings,  
34 or studies that may lead to improvements in the health,  
35 safety, welfare, and rights of residents and tenants and the

1 functioning of long-term care facilities, assisted living  
2 programs, and elder group homes.

3 *f.* Recruit, train, educate, support, and monitor volunteers  
4 associated with the office.

5 3. *Local long-term care resident's advocates.* The local  
6 long-term care resident's advocates established pursuant to  
7 this section shall do all of the following:

8 *a.* Accept, investigate, verify, and work to resolve  
9 complaints, whether reported to or initiated by a long-term  
10 care resident's advocate, relating to any action or inaction  
11 that may adversely affect the health, safety, welfare, or  
12 rights of residents or tenants of a long-term care facility,  
13 assisted living program, or elder group home.

14 *b.* Provide information about long-term care, the rights of  
15 residents and tenants, payment sources for care, and selection  
16 of a long-term care facility, assisted living program, or elder  
17 group home to providers, consumers, family members, volunteers,  
18 and the public.

19 *c.* Make referrals to appropriate licensing, certifying, and  
20 enforcement agencies to assure appropriate investigation of  
21 abuse complaints and corrective actions.

22 *d.* Assist in the recruitment, training, education, support,  
23 and monitoring of volunteers associated with the office of the  
24 long-term care resident's advocate.

25 *e.* Make noncomplaint-related visits to long-term care  
26 facilities, assisted living programs, and elder group homes  
27 to observe daily routines, meals, and activities, and work to  
28 resolve complaints if any are identified during these visits.

29 4. *Referrals of abuse, neglect, or exploitation.*

30 *a.* If abuse, neglect, or exploitation of a resident or  
31 tenant of a long-term care facility, assisted living program,  
32 or elder group home is suspected, the state or a local  
33 long-term care resident's advocate shall, with the permission  
34 of the resident or tenant as applicable under federal law,  
35 make an immediate referral to the department of inspections

1 and appeals or the department of human services as applicable,  
2 and to the appropriate law enforcement agency. The state or  
3 a local long-term care resident's advocate shall cooperate,  
4 if requested, with the department of inspections and appeals,  
5 department of human services, or any law enforcement agency  
6 pursuant to any investigation of such abuse, neglect, or  
7 exploitation.

8     *b.* If the department of inspections and appeals responds  
9 to a complaint referred by the state or a local long-term  
10 care resident's advocate against a long-term care facility,  
11 assisted living program, elder group home, or an employee of  
12 such entity, copies of related inspection reports, plans of  
13 correction, and notice of any citations and sanctions levied  
14 against the facility, program, or home shall be forwarded to  
15 the office of the long-term care resident's advocate.

16     5. *Access to facility, program, or home.* The state or a  
17 local long-term care resident's advocate or a trained volunteer  
18 may enter any long-term care facility, assisted living program,  
19 or elder group home at any time with or without prior notice  
20 or complaint and shall be granted access to residents and  
21 tenants at all times for the purpose of carrying out the duties  
22 specified in this section. As used in this section, "access"  
23 means the right to do all of the following:

24     *a.* Enter any long-term care facility, assisted living  
25 program, or elder group home and provide identification.

26     *b.* Seek consent to communicate privately and without  
27 restriction with any resident or tenant.

28     *c.* Communicate privately and without restriction with any  
29 resident, tenant, legal representative, or other representative  
30 who consents to communication.

31     *d.* Review the clinical or other records of a resident or  
32 tenant.

33     *e.* Observe all resident or tenant areas of a facility,  
34 program, or housing establishment except the living area of any  
35 resident or tenant who protests the observation.

1     6. *Access to medical and personal records.*

2     a. The state or a local long-term care resident's advocate  
3 shall have access to the medical and personal records of an  
4 individual who is a resident or tenant of a long-term care  
5 facility, assisted living program, or elder group home retained  
6 by the facility, program, or home.

7     b. Records may be reproduced by the state or a local  
8 long-term care resident's advocate.

9     c. Upon request of the state or a local long-term care  
10 resident's advocate, a long-term care facility, assisted living  
11 program, or elder group home shall provide the name, address,  
12 and telephone number of the legal representative or next of kin  
13 of any resident or tenant.

14     d. A long-term care facility, assisted living program, or  
15 elder group home or personnel of such a facility, program, or  
16 home who discloses records in compliance with this section and  
17 the procedures adopted pursuant to this section shall not be  
18 liable for such disclosure.

19     7. *Interference prohibited — penalties.*

20     a. An officer, owner, director, or employee of a long-term  
21 care facility, assisted living program, or elder group home who  
22 intentionally prevents, interferes with, or attempts to impede  
23 the work of the state or a local long-term care resident's  
24 advocate is subject to a penalty imposed by the director of not  
25 more than one thousand five hundred dollars for each violation.  
26 If the director imposes a penalty for a violation under this  
27 paragraph, no other state agency shall impose a penalty for the  
28 same interference violation. Any moneys collected pursuant to  
29 this subsection shall be deposited in the general fund of the  
30 state.

31     b. The office of the long-term care resident's advocate  
32 shall adopt rules specifying procedures for notice and appeal  
33 of penalties imposed pursuant to this subsection.

34     c. The director, in consultation with the office of the  
35 long-term care resident's advocate, shall notify the county

1 attorney of the county in which the long-term care facility,  
2 assisted living program, or elder group home is located, or the  
3 attorney general, of any violation of this subsection.

4 8. *Retaliation prohibited — penalties.* An officer, owner,  
5 director, or employee of a long-term care facility, assisted  
6 living program, or elder group home shall not retaliate against  
7 any person for having filed a complaint with, or provided  
8 information to, the state or a local long-term care resident's  
9 advocate. A person who retaliates or discriminates in  
10 violation of this subsection is guilty of a simple misdemeanor.

11 9. *Change in operations.* A long-term care facility,  
12 assisted living program, or elder group home shall inform the  
13 office of the long-term care resident's advocate in writing at  
14 least thirty days prior to any change in operations, programs,  
15 services, licensure, or certification that affects residents or  
16 tenants, including but not limited to the intention to close,  
17 decertify, or change ownership. In an emergency situation, or  
18 when a long-term care facility, assisted living program, or  
19 elder group home is evacuated, the department of inspections  
20 and appeals shall notify the office of the state long-term care  
21 resident's advocate.

22 10. *Immunity.* The state or a local long-term care  
23 resident's advocate or any representative of the office  
24 participating in the good faith performance of their official  
25 duties shall have immunity from any civil or criminal liability  
26 that otherwise might result by reason of taking, investigating,  
27 or pursuing a complaint under this section.

28 11. *Confidentiality.* Information relating to any complaint  
29 made to or investigation by the state or a local long-term  
30 care resident's advocate that discloses the identity of a  
31 complainant, resident, or tenant, or information related to  
32 a resident's or tenant's personal or medical records, shall  
33 remain confidential except as follows:

34 a. If permission is granted by the director in consultation  
35 with the state long-term care resident's advocate.



1     *b.* If disclosure is authorized in writing by the complainant  
2 and the resident, tenant, or the individual's guardian or legal  
3 representative.

4     *c.* If disclosure is necessary for the provision of services  
5 to a resident or tenant, or the resident or tenant is unable to  
6 express written or oral consent.

7     *d.* If ordered by a court.

8     12. *Posting of state long-term care resident's advocate*  
9 *information.* Every long-term care facility, assisted living  
10 program, and elder group home shall post information in  
11 a prominent location that includes the name, address, and  
12 telephone number, and a brief description of the services  
13 provided by the office of the long-term care resident's  
14 advocate. The information posted shall be approved or provided  
15 by the office of the long-term care resident's advocate.

16     Sec. 8. Section 231.44, subsections 1 and 3, Code Supplement  
17 2009, are amended to read as follows:

18     1. The resident advocate committee volunteer program is  
19 administered by the office of the long-term care resident's  
20 advocate program. The state and any local long-term care  
21 resident's advocate shall provide information, assistance,  
22 and support to resident advocate committee program volunteers  
23 to the extent possible. If funding becomes insufficient to  
24 process applications and new appointments to resident advocate  
25 committees can no longer be made, the director shall notify  
26 the director of the department of inspections and appeals. A  
27 health care facility shall not be found in violation of section  
28 135C.25 for not having a resident advocate committee if new  
29 appointments cannot be made as documented in accordance with  
30 this subsection.

31     3. A An elder group home or long-term care facility  
32 shall disclose the names, addresses, and phone numbers of a  
33 resident's family members, if requested, to a resident advocate  
34 committee member, unless permission for this disclosure is  
35 refused in writing by a family member.

1     Sec. 9. Section 235B.6, subsection 2, paragraph e,  
2 subparagraph (10), Code Supplement 2009, is amended to read as  
3 follows:

4     (10) The state or a local long-term care resident's  
5 advocate if the victim resides in a long-term care facility  
6 or the alleged perpetrator is an employee of a long-term care  
7 facility.

8     Sec. 10. REPEAL. Section 231.43, Code Supplement 2009, is  
9 repealed.

10

EXPLANATION

11     This bill provides for the establishment of the office of  
12 long-term care resident's advocate which consists of the state  
13 long-term care resident's advocate and any local long-term care  
14 resident's advocates. The bill provides that the director  
15 of the department on aging is to appoint the state long-term  
16 care resident's advocate and specifies the duties of the state  
17 and local long-term care resident's advocates. In addition to  
18 residents of long-term care facilities, the duties of the state  
19 and local long-term care resident's advocates under the bill  
20 also extend to tenants of elder group homes and assisted living  
21 programs.

22     The bill also provides for referrals of reports of  
23 suspected abuse, neglect, or exploitation of a resident  
24 or tenant by the state or local long-term care resident's  
25 advocate to the department of inspections and appeals or the  
26 department of human services, as applicable, and to local  
27 law enforcement; provides for access to certain areas of  
28 a facility, assisted living program, or elder group home  
29 under certain circumstances; provides for access to medical  
30 and personal records of residents and tenants and provides  
31 protection of confidentiality for information relating to a  
32 complaint; establishes penalties for interference with the work  
33 of the state or a local long-term care resident's advocate  
34 and for retaliation against a person who assists a resident's  
35 advocate; requires the reporting by a facility, assisted living

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1 program, or elder group home to the office of the long-term  
2 care resident's advocate at least 30 days prior to any change  
3 in operations, programs, services, licensure, or certification  
4 that affects residents or tenants; provides immunity and  
5 confidentiality provisions relating to the duties of the  
6 resident's advocates; provides for the posting of information  
7 about the state long-term care resident's advocate at each  
8 facility, program, or home; and makes other conforming changes.