

# House File 825 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON GOVERNMENT  
OVERSIGHT

(SUCCESSOR TO HSB 289)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to regulatory requirements involving boarding  
2 homes and dependent adults and providing an appropriation and  
3 a penalty.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 2692HV 83  
6 jp/rj/5

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1 1 Section 1. Section 10A.104, subsection 9, Code 2009, is  
1 2 amended to read as follows:  
1 3 9. Administer and enforce this chapter, and chapters 99B,  
1 4 135B, 135C, 135H, 135J, 135O, 137C, 137D, and 137F.  
1 5 Sec. 2. Section 91A.9, Code 2009, is amended by adding the  
1 6 following new subsection:  
1 7 NEW SUBSECTION. 3A. The commissioner shall, in  
1 8 consultation with the United States department of labor,  
1 9 develop a database of the employers in this state utilizing  
1 10 special certificates issued by the United States secretary of  
1 11 labor as authorized under 29 U.S.C. } 214, and shall maintain  
1 12 the database.  
1 13 Sec. 3. NEW SECTION. 1350.1 DEFINITIONS.  
1 14 For the purposes of this chapter unless the context  
1 15 otherwise requires:  
1 16 "Boarding home" means a premises used by its owner or  
1 17 lessee for the purpose of letting rooms for rental to three or  
1 18 more persons not related within the third degree of  
1 19 consanguinity to the owner or lessee where supervision or  
1 20 assistance with activities of daily living is provided to such  
1 21 persons. A boarding home does not include a facility, home,  
1 22 or program otherwise subject to licensure or regulation by the  
1 23 department of human services, department of inspections and  
1 24 appeals, or department of public health.  
1 25 Sec. 4. NEW SECTION. 1350.2 REQUIRED REGISTRATION AND  
1 26 REPORTING == RULES == PENALTY.  
1 27 1. The owner or lessee of a boarding home in this state  
1 28 shall register with and submit occupancy reports to the  
1 29 department. The content of the required occupancy reports  
1 30 shall include but is not limited to the number of individuals  
1 31 living in the boarding home and the supervision or assistance  
1 32 with activities of daily living being provided to the  
1 33 individuals.  
1 34 2. The department of inspections and appeals shall adopt  
1 35 rules to administer this chapter in consultation with the  
2 1 departments of human services and public safety.  
2 2 3. a. The owner or lessee of a boarding home who fails to  
2 3 register with the department or to timely submit occupancy  
2 4 reports required by this section and rules adopted pursuant to  
2 5 this chapter is subject to a civil penalty of not more than  
2 6 five hundred dollars.  
2 7 b. The department may reduce, alter, or waive a penalty  
2 8 under paragraph "a" upon the owner's or lessee's showing of  
2 9 good faith compliance with the department's request to  
2 10 immediately cease and desist from conduct in violation of this  
2 11 chapter.  
2 12 Sec. 5. NEW SECTION. 1350.3 RESPONSE TO ALLEGATIONS.  
2 13 1. If the department or other state agency receives an  
2 14 allegation of a violation of this chapter by a boarding home  
2 15 or an allegation regarding the care or safety of an individual  
2 16 living in a boarding home, a coordinated, interagency approach

2 17 shall be used to respond to the allegation.

2 18 2. a. The interagency approach may involve a  
2 19 multidisciplinary team consisting of employees of the  
2 20 department of inspections and appeals, the department of human  
2 21 services, the state fire marshal, and the division of criminal  
2 22 investigation of the department of public safety, or other  
2 23 local, state, and federal agencies.

2 24 b. The multidisciplinary team may consult with local,  
2 25 state, and federal law enforcement agencies, first responders,  
2 26 health and human services professionals, and governmental and  
2 27 nongovernmental advocacy organizations, and other appropriate  
2 28 persons.

2 29 3. The name of a person who files an allegation shall be  
2 30 kept confidential and shall not be subject to discovery,  
2 31 subpoena, or other means of legal compulsion for its release  
2 32 to a person other than department employees or the members of  
2 33 a multidisciplinary team involved in the investigation of the  
2 34 allegation.

2 35 4. If the department or a multidisciplinary team has  
3 1 probable cause to believe that a boarding home is in violation  
3 2 of this chapter or licensing or other regulatory requirements  
3 3 of the department of human services, department of inspections  
3 4 and appeals, or department of public health, or that dependent  
3 5 adult abuse of any individual living in a boarding home has  
3 6 occurred, and upon producing proper identification, is denied  
3 7 entry to the boarding home or access to any individual living  
3 8 in the boarding home for the purpose of making an inspection  
3 9 or conducting an investigation, the department or  
3 10 multidisciplinary team may, with the assistance of the county  
3 11 attorney of the county in which the boarding home is located,  
3 12 apply to the district court for an order requiring the owner  
3 13 or lessee to permit entry to the boarding home and access to  
3 14 the individuals living in the boarding home.

3 15 Sec. 6. NEW SECTION. 1350.4 PUBLIC DISCLOSURE OF  
3 16 FINDINGS.

3 17 Following an inspection or investigation of a boarding home  
3 18 under this chapter by the department or a multidisciplinary  
3 19 team, the final findings with respect to compliance by the  
3 20 boarding home shall be made available to the public. Other  
3 21 information relating to a boarding home obtained by the  
3 22 department or a multidisciplinary team which does not  
3 23 constitute the findings from an inspection or investigation of  
3 24 the boarding home shall not be made available to the public  
3 25 except in proceedings involving the denial, suspension, or  
3 26 revocation of a boarding home registration under this chapter.

3 27 Sec. 7. Section 235B.3, subsection 1, paragraph a, Code  
3 28 2009, is amended to read as follows:

3 29 a. (1) The department shall receive dependent adult abuse  
3 30 reports and shall collect, maintain, and disseminate the  
3 31 reports by establishing a central registry for dependent adult  
3 32 abuse information. The department shall evaluate the reports  
3 33 expeditiously.

3 34 (2) However, the department of inspections and appeals is  
3 35 solely responsible for the evaluation and disposition of  
4 1 dependent adult abuse cases within facilities and programs  
4 2 pursuant to chapter 235E and shall inform the department of  
4 3 human services of such evaluations and dispositions pursuant  
4 4 to section 235E.2.

4 5 (3) If, in the course of an assessment or evaluation of a  
4 6 report of dependent adult abuse, the department of human  
4 7 services or the department of inspections and appeals  
4 8 determines the case involves wages, workplace safety, or other  
4 9 labor and employment matters under the jurisdiction of the  
4 10 division of labor services of the department of workforce  
4 11 development, the relevant portions of the case shall be  
4 12 referred to the division.

4 13 (4) If, in the course of an assessment or evaluation of a  
4 14 report of dependent adult abuse, the department of human  
4 15 services or the department of inspections and appeals  
4 16 determines that the case involves discrimination under the  
4 17 jurisdiction of the civil rights commission, the relevant  
4 18 portions of the case shall be referred to the commission.

4 19 Sec. 8. Section 235B.9, subsection 2, Code 2009, is  
4 20 amended to read as follows:

4 21 2. a. Dependent adult abuse reports that are rejected for  
4 22 evaluation, assessment, or disposition for failure to meet the  
4 23 definition of dependent adult abuse shall be expunged three  
4 24 years from the rejection date.

4 25 b. Dependent adult abuse information which is determined  
4 26 by a preponderance of the evidence to be unfounded shall be  
4 27 expunged ~~one year~~ five years from the date it is determined to

4 28 be unfounded.

4 29 Sec. 9. NEW SECTION. 235B.16A DEPENDENT ADULTS ==  
4 30 DEPENDENCY ASSESSMENTS == INTERAGENCY TRAINING.

4 31 1. The dependent adult protective advisory council  
4 32 established pursuant to section 235B.1 shall recommend a  
4 33 uniform assessment instrument and process for adoption and use  
4 34 by the department of human services and other agencies  
4 35 involved with assessing a dependent adult's degree of  
5 1 dependency and determining whether dependent adult abuse has  
5 2 occurred. However, this section shall not apply to dependent  
5 3 adult abuse assessments and determinations made under chapter  
5 4 235E.

5 5 2. The instrument and process design under subsection 1  
5 6 shall address but is not limited to all of the following:

5 7 a. Evaluation of conformity with applicable federal law  
5 8 and regulations on the part of the persons employing, housing,  
5 9 or providing services to the dependent adult.

5 10 b. Provision for the final step in the dependency  
5 11 assessment of a dependent adult to be a formal assessment of  
5 12 the existence of risk to the health or safety of the  
5 13 individual or of the degree of the individual's impairment in  
5 14 ability under the definition of dependent adult in section  
5 15 235B.2.

5 16 c. If the assessment under paragraph "b" determines that a  
5 17 risk to the health or safety of the individual exists or the  
5 18 individual has a significant impairment in ability, and the  
5 19 individual being assessed agrees, provision for a case manager  
5 20 to be assigned to assist in preparing and implementing a  
5 21 safety plan which includes protective services for the  
5 22 individual.

5 23 d. If the assessment under paragraph "b" determines that a  
5 24 risk to the health or safety of the individual exists or the  
5 25 individual has a significant impairment in ability, the  
5 26 individual being assessed does not agree to the safety plan  
5 27 provisions under paragraph "c" or accept other services, and  
5 28 the options available under sections 235B.17, 235B.18, and  
5 29 235B.19 are not utilized, provision for the department of  
5 30 human services to maintain periodic contact with the  
5 31 individual in accordance with rules adopted for this purpose.  
5 32 The purpose of the contact is to assess any increased risk or  
5 33 impairment and to monitor the individual's goals, feelings,  
5 34 and concerns so that the department can intervene when  
5 35 necessary or offer services and other support to maintain or  
6 1 sustain the individual's safety and independence when the  
6 2 individual is ready to agree to a safety plan or accept  
6 3 services.

6 4 3. The department of human services and other agencies  
6 5 involved with assessing a dependent adult's degree of  
6 6 dependency and whether dependent adult abuse has occurred  
6 7 shall adopt rules and take other steps necessary to implement  
6 8 the uniform assessment instrument and process addressed by  
6 9 this section on or before July 1, 2010.

6 10 4. The department of human services shall cooperate with  
6 11 the departments of elder affairs, inspections and appeals,  
6 12 public health, public safety, and workforce development, the  
6 13 civil rights commission, and other state and local agencies  
6 14 performing inspections or otherwise visiting residential  
6 15 settings where dependent adults live, to regularly provide  
6 16 training to the appropriate staff in the agencies concerning  
6 17 each agency's procedures involving dependent adults, and to  
6 18 build awareness concerning dependent adults and reporting of  
6 19 dependent adult abuse.

6 20 Sec. 10. Section 249A.7, Code 2009, is amended by adding  
6 21 the following new unnumbered paragraph:

6 22 NEW UNNUMBERED PARAGRAPH. A Medicaid fraud account is  
6 23 created in the general fund of the state under the authority  
6 24 of the department of inspections and appeals. Moneys from  
6 25 penalties and other amounts received as a result of  
6 26 prosecutions involving the department of inspections and  
6 27 appeals investigations and audits to ensure compliance with  
6 28 the medical assistance program that are not credited to the  
6 29 program may be credited to the account. Notwithstanding  
6 30 sections 8.33 and 8.39, moneys credited to the account shall  
6 31 not revert to any other account or fund and are not subject to  
6 32 transfer except as specifically provided by law. The first  
6 33 five percent of moneys credited to the account are  
6 34 appropriated to the department of inspections and appeals to  
6 35 be used for the purposes of meeting federal mandates of that  
7 1 department's investigations and audits pertaining to the  
7 2 medical assistance program. All remaining moneys in the  
7 3 account are appropriated to the department of inspections and

7 4 appeals to be used for costs incurred by the department of  
7 5 inspections and appeals or other agencies in providing  
7 6 regulation, responding to allegations, or other activity  
7 7 involving chapter 1350. The department of inspections and  
7 8 appeals and other agencies receiving moneys from the account  
7 9 shall provide a joint annual report to the governor and  
7 10 general assembly detailing the expenditures from the account  
7 11 and activities performed relating to the expenditures.

7 12 EXPLANATION

7 13 This bill relates to regulatory requirements involving  
7 14 boarding homes and dependent adults.

7 15 Code section 91A.9, relating to the duties of the  
7 16 commissioner of labor, is amended to include the duty of  
7 17 developing, in consultation with the United States department  
7 18 of labor, a database of the employers in this state utilizing  
7 19 special certificates issued by the United States secretary of  
7 20 labor as authorized under 29 U.S.C. } 214. The federal law  
7 21 authorizes payment of wages below the minimum wage, under  
7 22 certain circumstances, for workers with handicaps. The  
7 23 commissioner is required to maintain the database.

7 24 New Code chapter 1350 provides for regulation of boarding  
7 25 homes by the department of inspections and appeals. Code  
7 26 section 10A.104 is amended to include a reference to the new  
7 27 Code chapter among the department's duties.

7 28 Code chapter 1350 defines the term "boarding home". The  
7 29 term does not include various facilities, homes, or programs  
7 30 subject to licensure or regulated by the department of human  
7 31 services, department of inspection and appeals, or department  
7 32 of public health. The owner or lessee of a boarding home is  
7 33 required to register with the department of inspections and  
7 34 appeals and to submit occupancy information. The owner or  
7 35 lessee of a boarding home who fails to register or comply with  
8 1 reporting requirements is subject to a civil penalty of not  
8 2 more than \$500. The department may reduce, alter, or waive  
8 3 the penalty. The department is required to adopt rules in  
8 4 consultation with the departments of human services and public  
8 5 safety.

8 6 If allegations are received concerning a boarding home or  
8 7 the safety of boarding home tenants, an interagency approach  
8 8 is required to be used to address the allegations. The name  
8 9 of a person who files an allegation is kept confidential. If  
8 10 the department or a multidisciplinary team has probable cause  
8 11 to believe there is a boarding home violation or that  
8 12 dependent adult abuse of an individual living in the boarding  
8 13 home has occurred and is denied entry to inspect or  
8 14 investigate, upon application, the court may enter an order  
8 15 requiring the owner or lessee to permit entry and access to  
8 16 the individuals living in the boarding home.

8 17 After an inspection or investigation of a boarding home,  
8 18 the final findings are required to be made public. Other  
8 19 information is not made public except in proceedings involving  
8 20 a boarding home's registration status.

8 21 Code chapter 235B, relating to dependent adult abuse  
8 22 services administered by the department of human services, is  
8 23 amended.

8 24 Under current law, Code section 235B.3, relating to the  
8 25 procedure for dependent adult abuse reports, generally  
8 26 provides for the reports to be evaluated or assessed by the  
8 27 department of human services. An exception under Code chapter  
8 28 235E provides for reports involving a health care facility,  
8 29 hospital, elder group home, assisted living program, or an  
8 30 adult day services program, to be evaluated by the department  
8 31 of inspections and appeals. If while either department is  
8 32 performing a case evaluation, it is determined the case  
8 33 involves various labor and employment matters under the  
8 34 jurisdiction of the division of labor services of the  
8 35 department of workforce development, the bill requires the  
9 1 respective department to refer such portions of the case to  
9 2 the division. A similar requirement is included for portions  
9 3 of cases involving discrimination under the jurisdiction of  
9 4 the civil rights commission.

9 5 Code section 235B.9 requirements involving the period of  
9 6 time certain dependent adult abuse information is retained by  
9 7 the department of human services, are amended. The bill  
9 8 increases the period of time that information determined to be  
9 9 unfounded is held before expungement from one year to five  
9 10 years and requires rejected reports to be expunged after three  
9 11 years.

9 12 New Code section 235B.16A provides for the dependent adult  
9 13 protective advisory council to recommend a uniform assessment  
9 14 instrument and process for use by the department of human

9 15 services and other agencies involved with assessing a  
9 16 dependent adult's degree of dependency and whether dependent  
9 17 adult abuse has occurred. The council's membership includes  
9 18 various professionals, members of the public, caregivers, and  
9 19 the directors or directors' designees of the departments of  
9 20 human services, public health, inspections and appeals, and  
9 21 elder affairs.

9 22 The uniform instrument and process does not apply to  
9 23 facilities and programs for which the department of  
9 24 inspections and appeals performs the evaluations under Code  
9 25 chapter 235E. The design of the instrument and process is  
9 26 required to incorporate various elements, including an  
9 27 evaluation of conformity with federal law and regulation by  
9 28 those employing, housing, or providing services to the  
9 29 individual and a formal assessment of the existence of risk to  
9 30 the health or safety of the individual or the degree of the  
9 31 individual's impairment in ability to protect the person's own  
9 32 interests or to adequately perform or obtain services to meet  
9 33 essential human needs, as a result of a physical or mental  
9 34 condition which requires assistance from another.

9 35 If a risk exists, development of a safety plan, including  
10 1 protective services, is required. Under current law in Code  
10 2 section 235B.17, if an individual consents to receipt of  
10 3 protective services but the individual's caretaker refuses,  
10 4 the department may petition the court to enjoin the caretaker  
10 5 from interfering with the protective services. Under Code  
10 6 sections 235B.18 and 235B.19, if the individual lacks capacity  
10 7 to consent to receipt of protective services or there is an  
10 8 immediate danger, the department may petition the court to  
10 9 authorize provision of the protective services. The bill  
10 10 provides that if these existing law options are not utilized,  
10 11 the process for the department of human services to follow  
10 12 should include maintaining periodic contact with the  
10 13 individual. The purpose of the contact is to monitor the  
10 14 individual's goals, feelings, and concerns so that the  
10 15 department can intervene as necessary or offer other services  
10 16 and other support to maintain or sustain the individual's  
10 17 safety and independence when the individual is ready to agree  
10 18 to a safety plan or accept services.

10 19 The department of human services and other agencies  
10 20 involved with assessing a dependent adult's degree of  
10 21 dependency and whether dependent adult abuse has occurred are  
10 22 required to adopt rules and take other steps necessary to  
10 23 implement the uniform assessment instrument and process on or  
10 24 before July 1, 2010.

10 25 New Code section 235B.16A also requires the department of  
10 26 human services to cooperate with the departments of elder  
10 27 affairs, inspections and appeals, public health, public  
10 28 safety, and workforce development, the civil rights  
10 29 commission, and other state and local agencies performing  
10 30 inspections or otherwise visiting residential settings where  
10 31 dependent adults live, to regularly provide training to the  
10 32 appropriate staff in the agencies concerning each agency's  
10 33 procedures involving dependent adults, and to build awareness  
10 34 concerning dependent adults and reporting of dependent adult  
10 35 abuse.

11 1 Code section 249A.7, relating to investigations and audits  
11 2 under the medical assistance (Medicaid) program, is amended to  
11 3 create a Medicaid fraud account under the authority of the  
11 4 department of inspections and appeals. The account receives  
11 5 moneys relating to prosecutions involving the department's  
11 6 investigations and audits involving the Medicaid program that  
11 7 are not credited to the Medicaid program. The first 5 percent  
11 8 of the moneys credited to the account is reserved for the  
11 9 department's Medicaid investigations and audits. The  
11 10 remaining moneys in the account are appropriated to the  
11 11 department for the department's and other agencies' costs  
11 12 associated with new Code chapter 1350. The agencies receiving  
11 13 moneys are required to submit a joint annual report to the  
11 14 governor and general assembly concerning expenditures from the  
11 15 account and associated activities.

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