

**House Study Bill 612 - Introduced**

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL BY  
CHAIRPERSON SMITH)

**A BILL FOR**

1 An Act relating to health care facilities and programs,  
2 including hospital inspector requirements, the hospital  
3 licensing board, and dependent adult abuse.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135B.9, Code 2009, is amended to read as  
2 follows:

3 **135B.9 Inspections and qualifications for hospital**  
4 **inspectors — protection and advocacy agency investigations.**

5 1. The department shall make or cause to be made inspections  
6 as it deems necessary in order to determine compliance with  
7 applicable rules. Hospital inspectors shall meet the following  
8 qualifications:

9 a. Upon hire, have been employed in a hospital within  
10 the last two years and have current knowledge of hospital  
11 operations.

12 b. Be free of conflicts of interest. A hospital  
13 inspector shall not participate in an inspection or complaint  
14 investigation of a hospital in which the inspector or a member  
15 of the inspector's immediate family works or has worked within  
16 the last five years. For purposes of this paragraph, "immediate  
17 family member" means a spouse; natural or adoptive parent,  
18 child, or sibling; or stepparent, stepchild, or stepsibling.

19 c. Complete a yearly conflict of interest disclosure  
20 statement. The department shall submit an annual conflict of  
21 interest disclosure report compiling such conflict of interest  
22 information to the hospital licensing board.

23 d. Annually, complete a minimum of ten hours of continuing  
24 education pertaining to hospital operations including but not  
25 limited to quality and process improvement standards, trauma  
26 system standards, and regulatory requirements.

27 2. In the state resource centers and state mental health  
28 institutes operated by the department of human services, the  
29 designated protection and advocacy agency as provided in  
30 section 135C.2, subsection 4, shall have the authority to  
31 investigate all complaints of abuse and neglect of persons  
32 with developmental disabilities or mental illnesses if the  
33 complaints are reported to the protection and advocacy agency  
34 or if there is probable cause to believe that the abuse has  
35 occurred. Such authority shall include the examination of all

1 records pertaining to the care provided to the residents and  
2 contact or interview with any resident, employee, or any other  
3 person who might have knowledge about the operation of the  
4 institution.

5 Sec. 2. Section 135B.11, Code Supplement 2009, is amended  
6 to read as follows:

7 **135B.11 Functions of hospital licensing board —**  
8 **compensation.**

9 1. The hospital licensing board shall have the following  
10 responsibilities and duties:

11 a. To consult with and advise the department in matters of  
12 policy affecting ~~administration of this chapter~~ the licensure  
13 of hospitals in this state, and in the development of rules  
14 and standards provided for under this chapter. This advisory  
15 function shall be construed broadly and shall not be limited to  
16 licensure issues pursuant to this chapter.

17 b. To review and approve rules and standards authorized  
18 under this chapter prior to their approval by the state board  
19 of health and adoption by the department.

20 c. To make recommendations on practice issues and policy.

21 d. To review and approve proposed educational programs  
22 provided with licensure fee funds. The educational programs  
23 provided may cover any subject matter relating to the licensure  
24 and operation of hospitals and is not limited to licensure  
25 issues pursuant to this chapter.

26 2. Each member of the board may also be eligible to receive  
27 compensation as provided in section 7E.6.

28 Sec. 3. Section 235E.1, subsection 5, paragraph b, Code  
29 2009, is amended by adding the following new subparagraphs:

30 NEW SUBPARAGRAPH. (4) Circumstances in which a caretaker  
31 makes an error in professional judgment or medical care in the  
32 care of a dependent adult regardless of the outcome.

33 NEW SUBPARAGRAPH. (5) Circumstances in which a caretaker  
34 who is providing security at a facility who, in the process of  
35 providing protection to the patients and staff at the facility,

1 injures a dependent adult.

2 NEW SUBPARAGRAPH. (6) Circumstances in which a caretaker  
3 responds to another caretaker's request for assistance in an  
4 emergency situation and a dependent adult is injured as a  
5 result of the emergency response.

6 Sec. 4. Section 235E.1, Code 2009, is amended by adding the  
7 following new subsections:

8 NEW SUBSECTION. 6A. "*Gross negligence*" means an act or  
9 omission by a caretaker where the caretaker does all of the  
10 following:

11 a. Has knowledge of the peril to be apprehended.

12 b. Has knowledge that injury is a probable, as opposed to a  
13 possible, result of the peril.

14 c. Consciously fails to avoid the peril.

15 NEW SUBSECTION. 12. "*Willful misconduct*" means an  
16 intentional act committed with disregard for a known or obvious  
17 risk with the expectation that harm will follow.

18 Sec. 5. Section 235E.2, subsection 2, Code Supplement 2009,  
19 is amended to read as follows:

20 2. a. A staff member or employee of a facility or program  
21 who, in the course of employment, directly examines, attends,  
22 counsels, or treats a dependent adult in a facility or program  
23 and reasonably believes the dependent adult has suffered  
24 dependent adult abuse, shall report the suspected dependent  
25 adult abuse to the department.

26 b. A staff member or employee of a facility or program  
27 who, in the course of employment, provides indirect treatment  
28 or services to a dependent adult in a facility or program  
29 and who reasonably believes the dependent adult has suffered  
30 dependent adult abuse may report the dependent adult abuse  
31 to the department. For purposes of this paragraph, "indirect  
32 treatment or services" includes treatment or services provided  
33 without person-to-person contact such as those provided  
34 by administrative, dietary, housekeeping, and maintenance  
35 employees. A staff member or employee of a facility or program

1 who provides indirect treatment or services shall, during an  
2 orientation program, receive training regarding the prevention,  
3 intervention, and detection of dependent adult abuse and  
4 neglect and related reporting requirements.

5 c. Persons with de minimus contact with dependent adults  
6 in a facility or program shall not be considered staff members  
7 or employees for purposes of this section. Persons with de  
8 minimus contact include those persons present in a facility  
9 or program for a limited purpose, those persons who are not  
10 present in a facility or program on a regular basis, and those  
11 persons who do not provide any treatment or services to the  
12 dependent adults in the facility or program. Such persons  
13 include but are not limited to part-time volunteers, building  
14 contractors, and repair workers.

15 Sec. 6. Section 235E.2, Code Supplement 2009, is amended by  
16 adding the following new subsection:

17 NEW SUBSECTION. 14. When a caretaker in a facility or  
18 program is accused of dependent adult abuse, the department has  
19 reason to believe that dependent adult abuse has occurred, and  
20 the caretaker wishes to appeal this determination, all of the  
21 following shall occur before the caretaker's name is listed on  
22 the dependent adult abuse registry:

23 a. The caretaker shall have the right to an emergency  
24 adjudicative proceeding pursuant to section 17A.18A before  
25 an administrative law judge to determine whether the  
26 caretaker shall be allowed to continue employment in the  
27 facility or program or whether the caretaker may be placed  
28 on administrative leave while waiting for a contested case  
29 hearing pursuant to section 17A.12. The emergency adjudicative  
30 proceeding shall take place within five business days of the  
31 department's allegation that dependent adult abuse occurred.

32 b. The administrative law judge shall determine if  
33 the caretaker shall be allowed to continue employment  
34 in the facility or program and in what capacity. If the  
35 administrative law judge determines that the caretaker shall

1 not continue employment, the caretaker may be placed on  
2 administrative leave.

3 c. A contested case hearing on whether dependent adult  
4 abuse occurred shall take place within forty-five days of the  
5 informal hearing in the manner provided by section 17A.12.

6 EXPLANATION

7 This bill provides for certain requirements for health  
8 care facilities and programs including hospitals. The bill  
9 establishes explicit qualifications for persons who inspect  
10 hospitals. Inspectors must have been employed in a hospital,  
11 be free of conflicts of interest, and obtain annual continuing  
12 education.

13 The bill also revises the role of the hospital licensing  
14 board by enumerating the specific duties of the board,  
15 including advising the department of inspections and appeals  
16 concerning hospital licensure, approving legislative proposals,  
17 making recommendations on practice issues and policy, and  
18 reviewing and approving educational programs provided through  
19 licensure fee funds.

20 The bill provides certain exclusions from the definition  
21 of dependent adult abuse in a facility or program under Code  
22 chapter 235E, including circumstances in which a caretaker  
23 makes an error in professional judgment or medical care in  
24 the care of a dependent adult regardless of the outcome,  
25 circumstances in which a caretaker who is providing security at  
26 a facility who, in the process of providing protection to the  
27 patients and staff at the facility, injures a dependent adult,  
28 and circumstances in which a caretaker responds to another  
29 caretaker's request for assistance in an emergency situation  
30 and a dependent adult is injured as a result of the emergency  
31 response. Under Code chapter 235E, a facility is defined as  
32 a health care facility as defined in Code section 135C.1 or  
33 a hospital as defined in Code section 135B.1, and a program  
34 is defined as an elder group home as defined in Code section  
35 231B.1, an assisted living program certified under Code section

1 231C.3, or an adult day services program as defined in Code  
2 section 231D.1.

3 The bill defines "gross negligence" and "willful misconduct"  
4 for purposes of the definition of dependent adult abuse in  
5 Code chapter 235E. "Gross negligence" is defined as an act or  
6 omission by a caretaker where the caretaker has knowledge of  
7 the peril to be apprehended, has knowledge that injury is a  
8 probable, as opposed to a possible, result of the peril, and  
9 consciously fails to avoid the peril. "Willful misconduct"  
10 is defined as an intentional act committed with disregard for  
11 a known or obvious risk with the expectation that harm will  
12 follow.

13 The bill provides that a staff member or employee of  
14 a facility or program who, in the course of employment,  
15 provides indirect treatment or services to a dependent  
16 adult in a facility or program and who reasonably believes  
17 the dependent adult has suffered dependent adult abuse may  
18 report the dependent adult abuse to the department. Indirect  
19 treatment or services includes treatment or services provided  
20 without person-to-person contact such as those provided  
21 by administrative, dietary, housekeeping, and maintenance  
22 employees. The bill requires a staff member or employee of a  
23 facility or program who provides indirect treatment or services  
24 to receive training regarding the prevention, intervention,  
25 and detection of dependent adult abuse and neglect and related  
26 reporting requirements. Persons with de minimus patient  
27 contact shall not be considered staff members or employees for  
28 purposes of the bill.

29 The bill provides an administrative review process for a  
30 caretaker in a facility or program who is accused of dependent  
31 adult abuse. The caretaker shall have the right to an  
32 emergency adjudicative proceeding pursuant to Code section  
33 17A.18A before an administrative law judge to determine if  
34 the caretaker shall be allowed to continue employment in the  
35 facility or program or whether the caretaker may be placed on

1 administrative leave while waiting for a contested case hearing  
2 pursuant to Code section 17A.12 and an informal preliminary  
3 hearing shall take place within five business days of the  
4 department's allegation that dependent adult abuse occurred.  
5 An administrative law judge shall determine if the caretaker  
6 shall be allowed to continue employment in the facility or  
7 program and in what capacity and if not, whether the caretaker  
8 may be placed on administrative leave. A contested case  
9 hearing on whether dependent adult abuse occurred is required  
10 to be held within 45 days of the emergency adjudicative  
11 proceeding in the manner provided by Code section 17A.12.