

Senate Study Bill 3134 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT ON
AGING BILL)

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.

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

2 adding the following new subsections:

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

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

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

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

15 Sec. 5. Section 231.23A, subsection 7, Code Supplement
16 2009, is amended to read as follows:

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

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

22 **231.41 Purpose.**

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

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

34 **231.42 Office of long-term care resident's advocate — duties**
35 **— penalties for violations.**

1 1. *Office established.* The office of long-term care

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

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

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

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

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

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

29 e. Cooperate with persons and public or private agencies
30 with regard to, and participate in, inquiries, meetings,
31 or studies that may lead to improvements in the health,
32 safety, welfare, and rights of residents and tenants and the
33 functioning of long-term care facilities, assisted living
34 programs, and elder group homes.

35 f. Recruit, train, educate, support, and monitor volunteers
1 associated with the office.

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

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

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

16 c. Make referrals to appropriate licensing and enforcement
17 agencies to assure appropriate investigation of abuse
18 complaints and corrective actions.

19 d. Assist in the recruitment, training, education, support,
20 and monitoring of volunteers associated with the office of the
21 long-term care resident's advocate.

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

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

27 a. If abuse, neglect, or exploitation of a resident or
28 tenant of a long-term care facility, assisted living program,
29 or elder group home is suspected, the state or a local
30 long-term care resident's advocate shall, with the permission
31 of the resident or tenant as applicable under federal law,
32 make an immediate referral to the department of inspections
33 and appeals or the department of human services as applicable,
34 and to the appropriate law enforcement agency. The state or
35 a local long-term care resident's advocate shall cooperate,
1 if requested, with the department of inspections and appeals,

2 department of human services, or any law enforcement agency
3 pursuant to any investigation of such abuse, neglect, or
4 exploitation.

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

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

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

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

25 *c.* Communicate privately and without restriction with any
26 resident or tenant who consents to communication.

27 *d.* Review the clinical or other records of a resident or
28 tenant.

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

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

33 *a.* The state or a local long-term care resident's advocate
34 shall have access to the medical and personal records of an
35 individual who is a resident or tenant of a long-term care
1 facility, assisted living program, or elder group home retained

2 by the facility, program, or home.

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

5 *c.* Upon request of the state or a local long-term care
6 resident's advocate, a long-term care facility, assisted living
7 program, or elder group home shall provide the name, address,
8 and telephone number of the guardian, conservator, attorney in
9 fact, legal representative, or next of kin of any resident or
10 tenant.

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

16 *7. Interference prohibited — penalties.*

17 *a.* A person who intentionally prevents, interferes with, or
18 attempts to impede the work of the state or a local long-term
19 care resident's advocate is subject to a penalty imposed by the
20 director of not more than one thousand five hundred dollars
21 for each violation. Any moneys collected pursuant to this
22 subsection shall be deposited in the general fund of the state.

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

26 *c.* The director, in consultation with the office of the
27 long-term care resident's advocate, shall notify the county
28 attorney of the county in which the long-term care facility,
29 assisted living program, or elder group home is located, or the
30 attorney general, of any violation of this subsection.

31 *8. Retaliation prohibited — penalties.* An officer,
32 director, or employee of a long-term care facility, assisted
33 living program, or elder group home shall not retaliate against
34 any person for having filed a complaint with, or provided
35 information to, the state or a local long-term care resident's
1 advocate. A person who retaliates or discriminates in

2 violation of this subsection is guilty of a simple misdemeanor.

3 9. *Change in operations.* A long-term care facility,
4 assisted living program, or elder group home shall inform the
5 office of the long-term care resident's advocate in writing at
6 least thirty days prior to any change in operations, programs,
7 services, licensure, or certification that affects residents or
8 tenants, including but not limited to any emergency situation,
9 evacuation, facility closure, program decertification, or
10 change of ownership.

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

17 11. *Confidentiality.* Information relating to any complaint
18 made to or investigation by the state or a local long-term
19 care resident's advocate that discloses the identity of a
20 complainant, resident, or tenant, or information related to
21 a resident's or tenant's personal or medical records, shall
22 remain confidential except as follows:

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

25 b. If disclosure is authorized in writing by the complainant
26 and the resident, tenant, or the individual's guardian or legal
27 representative.

28 c. If disclosure is necessary for the provision of services
29 to a resident or tenant, or the resident or tenant is unable to
30 express written or oral consent.

31 d. If ordered by a court.

32 12. *Posting of state long-term care resident's advocate*
33 *information.* Every long-term care facility, assisted living
34 program, and elder group home shall post information in
35 a prominent location that includes the name, address, and
1 telephone number, and a brief description of the services

2 provided by the office of the long-term care resident's
3 advocate. The information posted shall be approved or provided
4 by the office of the long-term care resident's advocate.

5 Sec. 8. Section 231.44, subsections 1 and 3, Code Supplement
6 2009, are amended to read as follows:

7 1. The resident advocate committee volunteer program is
8 administered by the office of the long-term care resident's
9 advocate program. The state and any local long-term care
10 resident's advocate shall provide information, assistance,
11 and support to resident advocate committee program volunteers
12 to the extent possible. If funding becomes insufficient to
13 process applications and new appointments to resident advocate
14 committees can no longer be made, the director shall notify
15 the director of the department of inspections and appeals. A
16 health care facility shall not be found in violation of section
17 135C.25 for not having a resident advocate committee if new
18 appointments cannot be made as documented in accordance with
19 this subsection.

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

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

28 (10) The state or a local long-term care resident's
29 advocate if the victim resides in a long-term care facility
30 or the alleged perpetrator is an employee of a long-term care
31 facility.

32 Sec. 10. REPEAL. Section 231.43, Code Supplement 2009, is
33 repealed.

34

EXPLANATION

35 This bill provides for the establishment of the office of
1 long-term care resident's advocate which consists of the state

2 long-term care resident's advocate and any local long-term care
3 resident's advocates. The bill provides that the director
4 of the department on aging is to appoint the state long-term
5 care resident's advocate and specifies the duties of the state
6 and local long-term care resident's advocates. In addition to
7 residents of long-term care facilities, the duties of the state
8 and local long-term care resident's advocates under the bill
9 also extend to tenants of elder group homes and assisted living
10 programs.

11 The bill also provides for referrals of reports of
12 suspected abuse, neglect, or exploitation of a resident
13 or tenant by the state or local long-term care resident's
14 advocate to the department of inspections and appeals or the
15 department of human services, as applicable, and to local
16 law enforcement; provides for access to certain areas of
17 a facility, assisted living program, or elder group home
18 under certain circumstances; provides for access to medical
19 and personal records of residents and tenants and provides
20 protection of confidentiality for information relating to a
21 complaint; establishes penalties for interference with the work
22 of the state or a local long-term care resident's advocate
23 and for retaliation against a person who assists a resident's
24 advocate; requires the reporting by a facility, assisted living
25 program, or elder group home to the office of the long-term
26 care resident's advocate at least 30 days prior to any change
27 in operations, programs, services, licensure, or certification
28 that affects residents or tenants; provides immunity and
29 confidentiality provisions relating to the duties of the
30 resident's advocates; provides for the posting of information
31 about the state long-term care resident's advocate at each
32 facility, program, or home; and makes other conforming changes.