

House File 53 - Introduced

HOUSE FILE 53
BY FRY and HUNTER

A BILL FOR

1 An Act relating to notification of the placement of sex
2 offenders in nursing facilities, residential care
3 facilities, and assisted living programs, and the
4 prohibition of certain placements of sexually violent
5 predators in such facilities and programs, and providing
6 penalties, and including effective date provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135C.23A Sex offender notification.

2 1. Upon commitment of a person required to register as
3 a sex offender as provided in section 692A.103 to a nursing
4 facility, residential care facility, or assisted living program
5 as defined in section 231C.2, the clerk of the committing court
6 shall notify the department of inspections and appeals and the
7 admitting facility or program.

8 2. Prior to admission of a resident or tenant to a nursing
9 facility, residential care facility, or assisted living
10 program, the facility or program shall access and search the
11 sex offender registry established in chapter 692A to determine
12 whether the resident or tenant is a person required to register
13 as a sex offender, as provided in section 692A.103.

14 3. Upon the admission of a person required to register as a
15 sex offender, a nursing facility, residential care facility, or
16 assisted living program shall provide notice of the admission,
17 in accordance with the federal Health Insurance Portability and
18 Accountability Act of 1996, Pub. L. No. 104-191, other state
19 and federal regulations, and rules adopted by the department,
20 to all of the following persons:

- 21 a. Residents or tenants of the facility or program.
- 22 b. The emergency contact person or next of kin for residents
23 or tenants of the facility or program.
- 24 c. Operators, owners, managers, or employees of the facility
25 or program.
- 26 d. Visitors to the facility or program.
- 27 e. The sheriff for the county in which the facility or
28 program is located. The sheriff shall notify local law
29 enforcement agencies.

30 4. Upon the admission of a person required to register as a
31 sex offender, a nursing facility, residential care facility, or
32 assisted living program shall develop and implement a written
33 safety plan for each such person in accordance with rules
34 adopted by the department.

35 5. The department shall establish by rule, all of the

1 following:

2 *a.* The requirements of the notice required under this
3 section. The rules shall include but are not limited to
4 provisions for the method of notice and time of notice to each
5 of the persons enumerated in subsection 3.

6 *b.* The requirements of a safety plan for persons required
7 to register as a sex offender who are admitted by a nursing
8 facility, residential care facility, or assisted living
9 program. The rules shall include but are not limited to all of
10 the following:

11 (1) A plan for the safety of residents, tenants, and staff
12 of the facility or program.

13 (2) A plan for the safety of others when community functions
14 are held at a facility or program and when a person required to
15 register as a sex offender is not on the premises of a facility
16 or program but the person remains within the care, custody, and
17 control of the facility or program.

18 (3) A provision to establish the responsibilities of a
19 nursing facility, residential care facility, and assisted
20 living program and the operators, owners, managers, and
21 employees of facilities and programs in implementing a safety
22 plan.

23 (4) A provision for the timely development and
24 implementation of a safety plan.

25 6. The department shall work with interested stakeholders
26 in developing the proposed rules under this section.

27 7. A violation of this section is subject to the imposition
28 of a civil penalty in accordance with rules adopted by the
29 department pursuant to this section.

30 Sec. 2. Section 229A.8A, subsection 5, Code 2013, is amended
31 to read as follows:

32 5. ~~Committed~~ Except as provided in subsection 6A, committed
33 persons in the transitional release program are not necessarily
34 required to be segregated from other persons.

35 Sec. 3. Section 229A.8A, Code 2013, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 6A. Persons in the transitional release
3 program shall not be released to a health care facility as
4 defined in section 135C.1.

5 Sec. 4. Section 229A.9A, Code 2013, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 3A. If a release with or without
8 supervision is ordered, the committed person shall not be
9 released to a health care facility as defined in section
10 135C.1.

11 Sec. 5. Section 231C.3, subsection 9, Code 2013, is amended
12 to read as follows:

13 9. An assisted living program shall comply with ~~section~~
14 sections 135C.23A and 135C.33.

15 Sec. 6. Section 231C.5A, Code 2013, is amended to read as
16 follows:

17 **231C.5A Assessment Admission and assessment of tenants —**
18 **program eligibility.**

19 1. An assisted living program receiving reimbursement
20 through the medical assistance program under chapter 249A shall
21 assist the department of veterans affairs in identifying, upon
22 admission of a tenant, the tenant's eligibility for benefits
23 through the United States department of veterans affairs. The
24 assisted living program shall also assist the commission of
25 veterans affairs in determining such eligibility for tenants
26 residing in the program on July 1, 2009. The department of
27 inspections and appeals, in cooperation with the department of
28 human services, shall adopt rules to administer this section,
29 including a provision that ensures that if a tenant is eligible
30 for benefits through the United States department of veterans
31 affairs or other third-party payor, the payor of last resort
32 for reimbursement to the assisted living program is the medical
33 assistance program. The rules shall also require the assisted
34 living program to request information from a tenant or tenant's
35 personal representative regarding the tenant's veteran status

1 and to report to the department of veterans affairs only the
2 names of tenants identified as potential veterans along with
3 the names of their spouses and any dependents. Information
4 reported by the assisted living program shall be verified by
5 the department of veterans affairs.

6 2. An assisted living program is not required to enter
7 into a lease or occupancy agreement with an individual through
8 court order, referral, or other means without the express prior
9 approval of the manager of the assisted living program.

10 Sec. 7. Section 231C.14, subsection 1, Code 2013, is amended
11 by adding the following new paragraph:

12 NEW PARAGRAPH. d. Noncompliance with section 135C.23A.

13 Sec. 8. Section 602.8102, Code 2013, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 152. Notify the department of inspections
16 and appeals and the admitting entity upon commitment of a
17 person required to register as a sex offender as provided in
18 section 692A.103 to a nursing facility or residential care
19 facility as defined in section 135C.1, or an assisted living
20 program as defined in section 231C.2.

21 Sec. 9. PLACEMENT OF PERSONS REQUIRED TO REGISTER.

22 1. For purposes of this section, "adequate placement" means
23 a placement that will provide the level of care necessary for
24 a person including the level of care provided by a nursing
25 facility or residential care facility.

26 2. For the period beginning July 1, 2013, through June
27 30, 2014, the department of human services, in compliance
28 with federal and state law, shall secure adequate placements
29 for persons required to register as a sex offender pursuant
30 to chapter 692A who are being released from the custody of
31 the department of corrections and require the type of medical
32 and personal care provided by a nursing facility, residential
33 care facility, or assisted living program; who are being
34 discharged or transferred from nursing facilities, residential
35 care facilities, or assisted living programs pursuant to a

1 provision of this Act; or who require the type of medical and
2 personal care provided by nursing facilities, residential care
3 facilities, or assisted living programs when the persons are
4 unable to gain access to a facility or program because the
5 persons are required to register on the sex offender registry.

6 3. The department of human services may use a state facility
7 to provide care for such persons or may conduct a request for
8 proposal process to contract with a private facility to care
9 for such persons. A request for proposals shall identify the
10 reimbursement rate and the necessary training for staff in the
11 facility or program.

12 4. The department of human services shall secure an adequate
13 placement for such a person within ten business days of being
14 notified by the department of corrections, the department of
15 inspections and appeals, or a nursing facility, residential
16 care facility, or assisted living program that placement is
17 needed for such person, provided that such period shall not
18 commence until the department of public safety receives and
19 approves registration data and makes such data available on
20 the sex offender registry internet site pursuant to section
21 692A.121, subsection 12.

22 Sec. 10. WORKFORCE DEVELOPMENT WORKGROUP.

23 1. The department of human services shall convene and
24 provide support to a health and mental health services for
25 sexual offender workforce development workgroup to address
26 issues connected with ensuring that an adequate workforce is
27 available in the state to provide health and mental health
28 services to persons who have a history of committing sexual
29 offenses and have been determined to be likely to reoffend.
30 The workgroup shall report at least annually to the governor
31 and general assembly providing findings, recommendations,
32 and financing information concerning the findings and
33 recommendations.

34 2. The membership of the workgroup shall include all of the
35 following:

1 a. The director of the department of aging or the director's
2 designee.

3 b. The director of the department of corrections or the
4 director's designee.

5 c. The director of the department of education or the
6 director's designee.

7 d. The director of human services or the director's
8 designee.

9 e. The director of the department of public health or the
10 director's designee.

11 f. The director of the department of workforce development
12 or the director's designee.

13 g. At least three individuals who have a history of
14 committing sexual offenses and have been determined likely to
15 reoffend who are receiving mental health or health services or
16 involved relatives of such individuals.

17 h. At least three providers of mental health or health
18 services for individuals who have a history of committing
19 sexual offenses and have been determined likely to reoffend.

20 i. Other persons identified by the workgroup.

21 3. In addition to the members identified in subsection
22 2, the membership of the workgroup shall include four
23 members of the general assembly serving in a ex officio,
24 nonvoting capacity. One member shall be designated by each
25 of the following: the majority leader of the senate, the
26 minority leader of the senate, the speaker of the house of
27 representatives, and the minority leader of the house of
28 representatives. A legislative member serves for a term as
29 provided in section 69.16B.

30 4. Except as provided in subsection 3 for legislative
31 appointments, the workgroup shall determine its own rules of
32 procedure, membership terms, and operating provisions.

33 Sec. 11. FACILITY FOR SEXUAL OFFENDERS COMMITTEE AND
34 REPORT.

35 1. The department of inspections and appeals, in

1 conjunction with the department of human services, shall
2 establish and facilitate the activities of a committee of
3 stakeholders to examine options for designating a facility
4 to provide care for persons in this state who have a history
5 of committing sexual offenses and have been determined to be
6 likely to reoffend.

7 2. The membership of the committee shall include but is not
8 limited to the following:

9 a. Representatives of the departments of inspections
10 and appeals, human services, public health, corrections, and
11 aging, the office of the state public defender, the office of
12 the citizens' aide, the office of the state long-term care
13 resident's advocate, and the judicial branch.

14 b. Consumers of services provided by health care facilities
15 and family members of consumers.

16 c. Representatives of the health care industry and industry
17 associations.

18 d. Direct care workers employed by health care facilities.

19 e. Representatives from the Iowa legal aid.

20 f. Representatives from AARP Iowa.

21 g. Representatives from the Iowa civil liberties union.

22 h. Other stakeholders as the department of inspections and
23 appeals and the department of human services deem necessary.

24 i. Four ex officio, nonvoting members from the general
25 assembly with not more than one member from each chamber being
26 from the same political party. The two senators shall be
27 appointed, one each, by the majority leader of the senate and
28 the minority leader of the senate. The two representatives
29 shall be appointed, one each, by the speaker of the house
30 of representatives and the minority leader of the house of
31 representatives.

32 3. The committee shall discuss and make recommendations on
33 all of the following:

34 a. Options to create a new facility or assist an existing
35 facility to expand services to provide care for elderly persons

1 who are no longer under judicial control, but have a history
2 of committing sexual offenses and have been determined to
3 be likely to reoffend. The committee shall identify the
4 characteristics of a client for such a facility, the need for
5 such a facility, options for creating a new facility to house
6 such persons, options for the expansion of an existing facility
7 to house such persons, options for using any alternative
8 facilities for such purposes, options for a public-private
9 partnership for such a facility, options for using part of
10 a mental health institute to house such persons, options to
11 qualify a facility for Medicaid reimbursement, cost projections
12 for any recommendations, regulatory challenges, and other
13 information deemed relevant by the department of inspections
14 and appeals and the department of human services.

15 b. The responsibility of the court, the clerk of the
16 district court, the department of corrections, or any other
17 entity, department, or person to inform a nursing facility,
18 residential care facility, or an assisted living program of the
19 admission of a person who has a history of committing sexual
20 offenses.

21 c. The responsibility of the court, clerk of the district
22 court, department of corrections, a facility, or any other
23 entity, department, or person to notify persons of the
24 discharge of a person who has a history of committing sexual
25 offenses from a nursing facility, residential care facility, or
26 assisted living program.

27 d. The requirements of a treatment safety plan for a person
28 admitted to a nursing facility, residential care facility,
29 or assisted living program who has a history of committing
30 sexual offenses. The treatment safety plan shall address the
31 procedure for notifying other residents of the residency of a
32 person required to register as a sex offender.

33 e. The establishment of a formal process for the department
34 of inspections and appeals to follow when completing facility
35 or assisted living program inspections or surveys.

1 f. The establishment of a system for the judicial branch to
2 identify facilities with the capacity to provide an appropriate
3 placement for a person requiring commitment when the person
4 also has a history of committing sexual offenses.

5 4. The committee shall provide a report detailing its
6 findings and recommendations to the governor and the general
7 assembly by December 15, 2013.

8 Sec. 12. EMERGENCY RULES. If specifically authorized by
9 a provision of this Act, the department of inspections and
10 appeals may adopt administrative rules under section 17A.4,
11 subsection 3, and section 17A.5, subsection 2, paragraph
12 "b", to implement the provisions and the rules shall become
13 effective immediately upon filing or on a later effective date
14 specified in the rules, unless the effective date is delayed by
15 the administrative rules review committee. Any rules adopted
16 in accordance with this section shall not take effect before
17 the rules are reviewed by the administrative rules review
18 committee. The delay authority provided to the administrative
19 rules review committee under section 17A.4, subsection 7, and
20 section 17A.8, subsection 9, shall be applicable to a delay
21 imposed under this section, notwithstanding a provision in
22 those sections making them inapplicable to section 17A.5,
23 subsection 2, paragraph "b". Any rules adopted in accordance
24 with the provisions of this section shall also be published as
25 a notice of intended action as provided in section 17A.4.

26 Sec. 13. CURRENT RESIDENTS AND TENANTS — ACCESS AND SEARCH
27 OF SEX OFFENDER REGISTRY AND NOTIFICATION. A nursing facility,
28 residential care facility, or assisted living program, within
29 three months of the adoption of the rules by the department of
30 inspections and appeals regarding notification of the admission
31 of persons required to register as a sex offender to a facility
32 or program and development and implementation of safety plans
33 relating to such admitted persons, shall access and search the
34 sex offender registry established in chapter 692A for persons
35 who were residents or tenants of a facility or program prior to

1 the adoption of the rules and who remain residents or tenants
2 of the facility or program after the adoption of the rules.
3 Upon determining that a resident or tenant is a person required
4 to register as a sex offender, the facility or program shall,
5 within three months of the adoption of the rules, work with
6 the department of inspections and appeals and the department
7 of human services to transfer a sex offender living in the
8 facility or program to a state facility, based on the sex
9 offender status as an endangerment to the safety of individuals
10 in the facility or program, or notify persons as required by
11 section 135C.23A and the rules adopted pursuant to that section
12 and develop and implement a safety plan as required by section
13 135C.23A and the rules adopted pursuant to that section. The
14 rules shall provide that, for purposes of this section, a
15 nursing facility, residential care facility, or assisted living
16 program has the right to discharge a current resident or tenant
17 based solely on the person's status as a sex offender as an
18 endangerment to the safety of individuals in the facility or
19 program.

20 Sec. 14. EFFECTIVE UPON ENACTMENT. This Act, being deemed
21 of immediate importance, takes effect upon enactment.

22 EXPLANATION

23 This bill addresses the placement of elderly sex offenders
24 in certain health or group living facilities.

25 The bill requires the clerk of the committing court to notify
26 the department of inspections and appeals and the admitting
27 facility or program, upon commitment of a person required to
28 register as a sex offender to a nursing facility, residential
29 care facility, or assisted living program.

30 Before admitting a person required to register as a sex
31 offender, a nursing facility, residential care facility, or
32 assisted living program must access and search the sex offender
33 registry to determine whether that person is required to
34 register as a sex offender.

35 If admitting a person required to register as a sex

1 offender, a nursing facility, residential care facility, or
2 assisted living program must provide notice of the admission
3 to residents or tenants; the emergency contact person or next
4 of kin of residents or tenants; operators, owners, managers,
5 employees, and visitors of the facility or program; and
6 the sheriff for the county in which the facility or program
7 is located. The sheriff must provide notice to local law
8 enforcement agencies. The nursing facility, residential care
9 facility, or assisted living program must also develop and
10 implement a written safety plan, in accordance with rules
11 adopted by the department of inspections and appeals, for the
12 person required to register as a sex offender. A violation of
13 these requirements may subject the facility or program to a
14 civil penalty.

15 The department of inspections and appeals is required to
16 establish the requirements of the notice provided by the
17 facility or program and the requirements of the safety plan.
18 The notice requirements must include but are not limited to
19 provisions for the method of the notice and the time of the
20 notice. The requirements of the safety plan must include
21 but are not limited to a plan for the safety of residents,
22 tenants, and staff; a plan for the safety of others when
23 community functions are held at the facility or program or when
24 a person required to register as a sex offender is not on the
25 premises of the facility or program, but remains in the care
26 and custody of the facility or program; the responsibilities of
27 the facility or program and its operators, owners, managers,
28 and employees; and the timely development and implementation
29 of a safety plan.

30 The bill provides that persons committed as sexually violent
31 predators that are in the transitional release program governed
32 by Code chapter 229A shall not be released to a health care
33 facility as defined in Code section 135C.1. The bill further
34 provides that a person committed as a sexually violent predator
35 shall not be released to a health care facility when a release

1 with or without supervision is ordered. The bill makes
2 conforming amendments.

3 The bill provides that an assisted living program is
4 not required to enter into an occupancy agreement with an
5 individual through court order, referral, or other means
6 without the express prior approval of the manager of the
7 assisted living program.

8 The bill also address placement of persons required to
9 register as a sex offender pursuant to Code chapter 692A. The
10 bill requires that by July 1, 2013, through June 30, 2014, the
11 department of human services must secure adequate placement
12 for certain persons required to register as a sex offender.
13 The department of human services must secure placement for the
14 following: a sex offender being released from the custody of
15 the department of corrections when that person needs medical
16 and personal care provided by a nursing facility, residential
17 care facility, or assisted living program; a sex offender who
18 is being discharged or transferred from a nursing facility,
19 residential care facility, or assisted living program pursuant
20 to a provision of the bill; or a person who requires the type
21 of medical and personal care provided by a nursing facility,
22 residential care facility, or assisted living program who is
23 unable to gain access to a facility or program because the
24 person is required to register on the sex offender registry.
25 The bill allows the department of human services to use a
26 state facility or to conduct a request for proposal process
27 to provide care for such persons. The bill requires the
28 department of human services to secure adequate placement for
29 such a person as described above within 10 business days of
30 being notified that placement is needed.

31 The bill requires the department of human services to
32 establish a workforce development workgroup to address problems
33 in ensuring that an adequate workforce is available in the
34 state to provide health and mental health services to persons
35 who have a history of committing sexual offenses and have been

1 determined likely to reoffend. The group is required to report
2 its findings, recommendations, and financing information for
3 those findings and recommendations annually to the governor and
4 the general assembly.

5 The bill directs the department of inspections and appeals,
6 in conjunction with the department of human services, to
7 establish and facilitate a committee to examine options for a
8 facility for sexual offenders. The committee must consider
9 options for a facility which would provide care for persons
10 who have a history of committing sexual offenses and have been
11 determined likely to reoffend. The committee shall identify
12 the residents to be served by the facility; the need for such
13 a facility; options for creating a new facility, expanding an
14 existing facility, or using any alternative facility for the
15 purpose of housing identified persons; options to qualify a
16 facility for Medicaid reimbursement; cost projections for the
17 recommendations; and other information deemed relevant by the
18 department of inspections and appeals.

19 The committee must also address the responsibility of the
20 court or the clerk of court, the department of corrections,
21 or any other entity to inform a nursing facility, residential
22 care facility, or assisted living program of the admission
23 of a person who has a history of committing sexual offenses
24 and to notify persons of the discharge of a person who has a
25 history of committing sexual offenses from a nursing facility,
26 residential care facility, or assisted living program. The
27 committee must consider and make recommendations on the
28 requirements of a treatment safety plan for a person who has
29 a history of committing sexual offenses when that person is
30 admitted to a nursing facility, residential care facility,
31 or assisted living program. The committee must consider
32 the establishment of a formal process for the department of
33 inspections and appeals to follow when completing facility
34 or assisted living program inspections or surveys. The
35 committee must also consider the establishment of a system for

1 the judicial branch to identify facilities with the capacity
2 to provide an appropriate placement for a person requiring
3 commitment when the person also has a history of committing
4 sexual offenses.

5 The bill requires the committee to provide a report of its
6 findings and recommendations to the governor and the general
7 assembly by December 15, 2013.

8 The bill allows the department of inspections and appeals to
9 adopt emergency rules. These rules are not effective unless
10 reviewed by the administrative rules review committee.

11 Within three months after the adoption of rules by the
12 department of inspections and appeals, the bill requires a
13 nursing facility, residential care facility, or assisted living
14 program to access and search the sex offender registry for
15 persons who were residents or tenants of a facility or program
16 prior to the adoption of the rules and who remain residents of
17 the facility or program. If the facility or program determines
18 that a resident or tenant is required to register as a sex
19 offender, the facility or program either must work with the
20 department of inspections and appeals and the department of
21 human services to either transfer a sex offender living in
22 the facility or program to a state facility or must notify
23 persons as required by the bill and the rules adopted pursuant
24 to the bill and develop and implement a safety plan. The
25 bill requires that rules provide that a nursing facility,
26 residential care facility, or assisted living program has the
27 right to discharge a current resident or tenant based only on
28 that person's status as a sex offender as an endangerment to
29 the safety of individuals in the facility or program.

30 The bill is effective upon enactment.