

House File 570 - Introduced

HOUSE FILE 570
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO HSB 96)

A BILL FOR

1 An Act relating to informal conferences on contested citations
2 or regulatory insufficiencies in health care facilities
3 or assisted living programs and including applicability
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135C.41, subsection 2, Code 2013, is
2 amended to read as follows:

3 2. Notify the director that the facility desires to
4 contest the citation and request an informal conference with
5 ~~a representative of the department~~ an independent reviewer
6 pursuant to section 135C.42.

7 Sec. 2. Section 135C.42, Code 2013, is amended to read as
8 follows:

9 **135C.42 Informal conference on contested citation.**

10 1. The director shall ~~assign a representative of the~~
11 ~~department, other than the inspector upon whose inspection the~~
12 ~~contested citation is based,~~ provide an independent reviewer
13 to hold an informal conference with the facility within ten
14 working days after receipt of a request made under section
15 135C.41, subsection 2. At the conclusion of the conference the
16 ~~representative~~ independent reviewer may affirm or may modify or
17 dismiss the citation. ~~In the latter case, the representative~~
18 The independent reviewer shall state in writing the specific
19 reasons for the affirmation, modification, or dismissal and
20 immediately transmit copies of the statement to the director,
21 and to the facility. If the facility does not desire to
22 further contest an affirmed or modified citation, it shall
23 within five working days after the informal conference, or
24 after receipt of the written explanation of the ~~representative~~
25 independent reviewer, as the case may be, comply with section
26 135C.41, subsection 1.

27 2. An independent reviewer shall be licensed as an attorney
28 in the state of Iowa and shall not be employed or have been
29 employed by the department in the past eight years or have
30 appeared in front of the department on behalf of a health care
31 facility in the past eight years. Preference shall be given to
32 an attorney with background knowledge, experience, or training
33 in long-term care. The department may issue a request for
34 proposals to enter into a contract for the purpose of providing
35 one or more independent reviewers for informal conferences.

1 3. The department shall hold the informal conference,
2 as required in this section, concurrently with any informal
3 dispute resolution held pursuant to 42 C.F.R. § 488.331 for
4 those health care facilities certified under Medicare or the
5 medical assistance program.

6 Sec. 3. Section 135C.43, subsection 1, Code 2013, is amended
7 to read as follows:

8 1. A facility ~~which~~ that desires to further contest an
9 affirmed or modified citation for a Class I, Class II, or Class
10 III violation, may do so in the manner provided by chapter 17A
11 for contested cases. Notice of intent to formally contest a
12 citation shall be given the department in writing within five
13 days after the informal conference or after receipt of the
14 written explanation of the ~~representative-delegated~~ independent
15 reviewer provided to hold the informal conference, whichever is
16 applicable, in the case of an affirmed or modified citation.
17 A facility which has exhausted all adequate administrative
18 remedies and is aggrieved by the final action of the department
19 may petition for judicial review in the manner provided by
20 chapter 17A.

21 Sec. 4. Section 231C.8, Code 2013, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **231C.8 Exit interview — issuance of findings.**

24 1. The department shall provide an assisted living program
25 an exit interview at the conclusion of a monitoring evaluation
26 or complaint investigation, and the department shall inform the
27 program's representative of all issues and areas of concern
28 related to the insufficient practices. The department may
29 conduct the exit interview in person or by telephone, and
30 the department shall provide a second exit interview if any
31 additional issues or areas of concern are identified. The
32 program shall have two working days from the date of the exit
33 interview to submit additional or rebuttal information to the
34 department.

35 2. The department shall issue the final findings of a

1 monitoring evaluation or complaint investigation within
2 ten working days after completion of the on-site monitoring
3 evaluation or complaint investigation. The final findings
4 shall be served upon the program personally, by electronic
5 mail, or by certified mail.

6 Sec. 5. Section 231C.9, Code 2013, is amended to read as
7 follows:

8 **231C.9 Public disclosure of findings.**

9 Upon completion of a monitoring evaluation or complaint
10 investigation of an assisted living program by the department
11 pursuant to this chapter, ~~including the conclusion of informal~~
12 ~~review,~~ the department's final findings with respect to
13 compliance by the assisted living program with requirements
14 for certification shall be made available to the public
15 in a readily available form and place. Other information
16 relating to an assisted living program that is obtained by
17 the department which does not constitute the department's
18 final findings from a monitoring evaluation or complaint
19 investigation of the assisted living program shall not be made
20 available to the public except in proceedings involving the
21 denial, suspension, or revocation of a certificate under this
22 chapter.

23 Sec. 6. NEW SECTION. **231C.9A Informal conference — formal**
24 **contest — judicial review.**

25 1. Within twenty business days after issuance of the final
26 findings, the assisted living program shall notify the director
27 if the program desires to contest the findings and request an
28 informal conference.

29 2. The department shall provide an independent reviewer to
30 hold an informal conference with an assisted living program
31 within ten working days after receiving a request from the
32 program pursuant to subsection 1. At the conclusion of the
33 informal conference, the independent reviewer may affirm,
34 modify, or dismiss a contested regulatory insufficiency. The
35 independent reviewer shall state in writing the specific

1 reasons for the affirmation, modification, or dismissal and
2 immediately transmit copies of the statement to the department
3 and to the program.

4 3. An independent reviewer shall be licensed as an attorney
5 in the state of Iowa and shall not be employed or have been
6 employed by the department in the past eight years or have
7 appeared in front of the department on behalf of an assisted
8 living program in the past eight years. Preference shall be
9 given to an attorney with background knowledge, experience,
10 or training in long-term care. The department may issue a
11 request for proposals to enter into a contract for the purpose
12 of providing one or more independent reviewers for informal
13 conferences.

14 4. An assisted living program that desires to further
15 contest an affirmed or modified regulatory insufficiency may do
16 so in the manner provided by chapter 17A for contested cases.
17 The program shall give notice of intent to formally contest
18 a regulatory insufficiency, in writing, to the department
19 within five days after receipt of the written decision of the
20 independent reviewer. The formal hearing shall be conducted
21 in accordance with chapter 17A and rules adopted by the
22 department.

23 5. An assisted living program that has exhausted all
24 adequate administrative remedies and is aggrieved by the final
25 action of the department may petition for judicial review in
26 the manner provided by chapter 17A.

27 Sec. 7. APPLICABILITY.

28 1. The sections of this Act amending sections 135C.41,
29 135C.42, and 135C.43 apply to an informal conference requested
30 under chapter 135C on or after January 1, 2014.

31 2. The sections of this Act amending sections 231C.8 and
32 231C.9, and adding section 231C.9A, apply to assisted living
33 programs desiring to request an informal conference on or after
34 January 1, 2014.

35

EXPLANATION

1 This bill relates to informal conferences on contested
2 citations in health care facilities or assisted living
3 programs. Currently, the director of the department of
4 inspections and appeals (DIA) assigns a representative of the
5 department who was not involved in the contested citation
6 to hold an informal conference with a health care facility
7 within 10 working days after receipt of a request made by the
8 facility to contest a citation. The bill would require that an
9 independent reviewer hold the informal conference concurrently
10 with any informal dispute resolution required by federal
11 regulations rather than a representative of DIA. The bill
12 provides that the independent reviewer must be an Iowa-licensed
13 attorney that has not appeared in front of DIA on behalf of a
14 health care facility in the past eight years and has not been
15 employed by DIA in the last eight years. Preference for the
16 position of independent reviewer is given to persons who have
17 experience or training in geriatric long-term care.

18 The bill also changes the process for assisted living
19 programs that receive a regulatory insufficiency and wish to
20 contest that finding. Current law allows assisted living
21 programs to request an informal review of contested regulatory
22 insufficiencies, but does not provide for an exit interview or
23 an informal conference. The bill removes the current informal
24 review process and replaces it with an exit interview and
25 informal conference in a manner similar to that provided for
26 health care facilities, as amended in the bill.

27 At the completion of the informal conference, the
28 independent reviewer may affirm, modify, or dismiss the
29 regulatory insufficiency. The reviewer must provide written
30 specific reasons for the decision and immediately transmit
31 copies of the written statement to DIA and to the program. If,
32 after receiving the reviewer's statement, the program no longer
33 wishes to contest the decision, the program shall comply with
34 the payment of any civil penalty.

35 If an assisted living program wants to further contest the

1 independent reviewer's affirmation or modification of the
2 regulatory insufficiency, the program may do so pursuant to
3 chapter 17A for contested cases. The program must provide
4 DIA with written notice of the intent to formally contest a
5 regulatory insufficiency within five days of receiving the
6 independent reviewer's written decision. A formal hearing will
7 be conducted pursuant to Code chapter 17A and rules adopted by
8 DIA. After exhausting administrative remedies, a program may
9 petition for judicial review pursuant to Code chapter 17A.

10 The bill applies to an informal conference requested by
11 a health care facility under Code chapter 135C on or after
12 January 1, 2014, and to assisted living programs desiring to
13 request an informal conference under Code chapter 231C on or
14 after January 1, 2014.