

Senate File 2167 - Introduced

SENATE FILE 2167
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 3011)

A BILL FOR

1 An Act relating to employment, disciplinary, and other
2 procedures for entities regulated by the department of
3 inspections and appeals, and including applicability
4 provisions.

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

1 Section 1. Section 135B.34, subsection 2, paragraph b,
2 subparagraph (2), Code 2014, is amended to read as follows:

3 (2) Subparagraph (1) applies to a crime that is a simple
4 misdemeanor offense under section 123.47 ~~or chapter 321~~, and
5 to a crime that is a first offense of operating a motor vehicle
6 while intoxicated under section 321J.2, subsection 1.

7 Sec. 2. Section 135B.34, subsection 5, paragraphs a and b,
8 Code 2014, are amended to read as follows:

9 a. If a person employed by a hospital that is subject
10 to this section is convicted of a crime or has a record of
11 founded child or dependent adult abuse entered in the abuse
12 registry after the person's employment application date, the
13 person shall inform the hospital of such information within
14 forty-eight hours of the criminal conviction or entry of the
15 record of founded child or dependent adult abuse. The hospital
16 shall act to verify the information within ~~forty-eight hours~~
17 seven calendar days of notification. If the information
18 is verified, the requirements of subsections 2, 3, and 4
19 regarding employability and evaluations shall be applied by the
20 hospital to determine whether or not the person's employment
21 is continued. The hospital may continue to employ the person
22 pending the performance of an evaluation by the department of
23 human services to determine whether prohibition of the person's
24 employment is warranted. A person who is required by this
25 subsection to inform the person's employer of a conviction or
26 entry of an abuse record and fails to do so within the required
27 period commits a serious misdemeanor.

28 b. If a hospital receives credible information, as
29 determined by the hospital, that a person employed by the
30 hospital has been convicted of a crime or a record of founded
31 child or dependent adult abuse has been entered in the
32 abuse registry after employment from a person other than the
33 employee and the employee has not informed the hospital of
34 such information within the period required under paragraph
35 "a", the hospital shall act to verify the credible information

1 within ~~forty-eight hours~~ seven calendar days of receipt of the
2 credible information. If the information is verified, the
3 requirements of subsections 2, 3, and 4 regarding employability
4 and evaluations shall be applied by the hospital to determine
5 whether or not the person's employment is continued.

6 Sec. 3. Section 135C.10, subsection 9, Code 2014, is amended
7 to read as follows:

8 9. In the case of an application by an existing licensee
9 for a new or newly acquired facility, continuing or repeated
10 failure of the licensee to operate any previously licensed
11 facility or facilities in compliance with the provisions of
12 this chapter ~~or of~~, the rules adopted pursuant to it this
13 chapter, or equivalent provisions that the facility is subject
14 to in this state or any other state.

15 Sec. 4. Section 135C.10, Code 2014, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 11. Preventing or interfering with or
18 attempting to prevent or interfere with the performance by any
19 duly authorized representative of the department of the lawful
20 enforcement of this chapter or of the rules adopted pursuant to
21 this chapter. As used in this subsection, "*lawful enforcement*"
22 includes but is not limited to the following:

23 a. Contacting or interviewing any resident of a health care
24 facility in private at any reasonable hour and without advance
25 notice.

26 b. Examining any relevant books or records of a health
27 care facility unless otherwise protected from disclosure by
28 operation of law.

29 c. Preserving evidence of any violation of this chapter or
30 of the rules adopted pursuant to this chapter.

31 Sec. 5. Section 135C.11, subsection 2, Code 2014, is amended
32 to read as follows:

33 2. The procedure governing hearings authorized by this
34 section shall be in accordance with the rules promulgated by
35 the department. A full and complete record shall be kept

1 of all proceedings, and all testimony shall be reported but
2 need not be transcribed unless judicial review is sought
3 pursuant to section 135C.13. Copies of the transcript may be
4 obtained by an interested party upon payment of the cost of
5 preparing the copies. Witnesses may be subpoenaed by either
6 party and shall be allowed fees at a rate prescribed by the
7 department's rules. The director may, after advising the
8 ~~certified volunteer long-term care ombudsman~~ a representative
9 of the office of long-term care ombudsman, either proceed in
10 accordance with section 135C.30, or remove all residents and
11 suspend the license or licenses of any health care facility,
12 prior to a hearing, when the director finds that the health
13 or safety of residents of the health care facility requires
14 such action on an emergency basis. ~~The fact that a certified~~
15 ~~volunteer long-term care ombudsman has not been appointed for a~~
16 ~~particular facility shall not bar the director from exercising~~
17 ~~the emergency powers granted by this subsection with respect~~
18 ~~to that facility.~~

19 Sec. 6. Section 135C.13, Code 2014, is amended to read as
20 follows:

21 **135C.13 Judicial review.**

22 Judicial review of any action of the director may be sought
23 in accordance with the terms of the Iowa administrative
24 procedure Act, chapter 17A. Notwithstanding the terms of
25 chapter 17A, petitions for judicial review may be filed in the
26 district court of the county where the facility or proposed
27 facility is located, and pending final disposition of the
28 matter the status quo of the applicant or licensee shall be
29 preserved except when the director, ~~with the advice and consent~~
30 after advising a representative of the ~~certified volunteer~~
31 office of long-term care ombudsman, determines that the health,
32 safety, or welfare of the residents of the facility is in
33 immediate danger, in which case the director may order the
34 immediate removal of such residents. ~~The fact that a certified~~
35 ~~volunteer long-term care ombudsman has not been appointed for a~~

1 ~~particular facility shall not bar the director from exercising~~
2 ~~the emergency powers granted by this section with respect to~~
3 ~~that facility.~~

4 Sec. 7. Section 135C.14, subsection 8, paragraph d, Code
5 2014, is amended to read as follows:

6 ~~d.~~ The notification of ~~certified volunteer~~ the office
7 of long-term care ombudsmen ombudsman by the department of
8 all complaints relating to health care facilities and the
9 involvement of the ~~certified volunteer~~ office of long-term care
10 ombudsmen ombudsman in resolution of the complaints.

11 Sec. 8. Section 135C.16, subsection 3, Code 2014, is amended
12 to read as follows:

13 3. An ~~inspector~~ authorized representative of the department
14 may enter any licensed health care facility without a
15 warrant, and may examine all records pertaining to the care
16 provided residents of the facility. An ~~inspector~~ authorized
17 representative of the department may contact or interview
18 any resident, employee, or any other person who might have
19 knowledge about the operation of a health care facility.
20 An ~~inspector~~ authorized representative of the department
21 of human services shall have the same right with respect
22 to any facility where one or more residents are cared for
23 entirely or partially at public expense, and an ~~investigator~~
24 authorized representative of the designated protection and
25 advocacy agency shall have the same right with respect to
26 any facility where one or more residents have developmental
27 disabilities or mental illnesses, and the state fire marshal
28 or a deputy appointed pursuant to section 135C.9, subsection
29 1, paragraph "b", shall have the same right of entry into any
30 facility and the right to inspect any records pertinent to
31 fire safety practices and conditions within that facility, and
32 an authorized representative of the office of long-term care
33 ombudsman shall have the same right with respect to any nursing
34 facility or residential care facility. If any such ~~inspector~~
35 authorized representative has probable cause to believe that

1 any institution, building, or agency not licensed as a health
2 care facility is in fact a health care facility as defined
3 by this chapter, and upon producing identification that the
4 individual is an ~~inspector~~ authorized representative is denied
5 entry thereto for the purpose of making an inspection, the
6 ~~inspector~~ authorized representative may, with the assistance
7 of the county attorney of the county in which the purported
8 health care facility is located, apply to the district court
9 for an order requiring the owner or occupant to permit entry
10 and inspection of the premises to determine whether there have
11 been any violations of this chapter.

12 Sec. 9. Section 135C.17, Code 2014, is amended to read as
13 follows:

14 **135C.17 Duties of other departments.**

15 It shall be the duty of the department of human services,
16 state fire marshal, office of long-term care ombudsman, and
17 the officers and agents of other state and local governmental
18 units, and the designated protection and advocacy agency to
19 assist the department in carrying out the provisions of this
20 chapter, insofar as the functions of these respective offices
21 and departments are concerned with the health, welfare, and
22 safety of any resident of any health care facility. It shall
23 be the duty of the department to cooperate with the protection
24 and advocacy agency and the office of long-term care ombudsman
25 by responding to all reasonable requests for assistance and
26 information as required by federal law and this chapter.

27 Sec. 10. Section 135C.19, subsection 2, paragraph b, Code
28 2014, is amended to read as follows:

29 *b.* A copy of each citation required to be posted by this
30 subsection shall be sent by the department to the department
31 of human services and, to the designated protection and
32 advocacy agency if the facility has one or more residents
33 with developmental disabilities or mental illness, and to the
34 office of long-term care ombudsman if the facility is a nursing
35 facility or residential care facility.

1 Sec. 11. Section 135C.33, subsection 2, paragraph b,
2 subparagraph (2), Code 2014, is amended to read as follows:

3 (2) Subparagraph (1) applies to a crime that is a simple
4 misdemeanor offense under section 123.47 ~~or chapter 321~~, and
5 to a crime that is a first offense of operating a motor vehicle
6 while intoxicated under section 321J.2, subsection 1.

7 Sec. 12. Section 135C.33, subsection 7, paragraphs a and b,
8 Code 2014, are amended to read as follows:

9 a. If a person employed by a facility, service, or program
10 employer that is subject to this section is convicted of a
11 crime or has a record of founded child or dependent adult abuse
12 entered in the abuse registry after the person's employment
13 application date, the person shall inform the employer of such
14 information within forty-eight hours of the criminal conviction
15 or entry of the record of founded child or dependent adult
16 abuse. The employer shall act to verify the information within
17 ~~forty-eight hours~~ seven calendar days of notification. If the
18 information is verified, the requirements of subsections 2, 3,
19 and 4 regarding employability and evaluations shall be applied
20 by the employer to determine whether or not the person's
21 employment is continued. The employer may continue to employ
22 the person pending the performance of an evaluation by the
23 department of human services to determine whether prohibition
24 of the person's employment is warranted. A person who is
25 required by this subsection to inform the person's employer of
26 a conviction or entry of an abuse record and fails to do so
27 within the required period commits a serious misdemeanor.

28 b. If a facility, service, or program employer receives
29 credible information, as determined by the employer, that a
30 person employed by the employer has been convicted of a crime
31 or a record of founded child or dependent adult abuse has been
32 entered in the abuse registry after employment from a person
33 other than the employee and the employee has not informed the
34 employer of such information within the period required under
35 paragraph "a", the employer shall act to verify the credible

1 information within ~~forty-eight hours~~ seven calendar days of
2 receipt of the credible information. If the information is
3 verified, the requirements of subsections 2, 3, and 4 regarding
4 employability and evaluations shall be applied to determine
5 whether or not the person's employment is continued.

6 Sec. 13. Section 135C.33, subsection 8, paragraph d,
7 subparagraph (2), Code 2014, is amended to read as follows:

8 (2) Subparagraph (1) applies to a crime that is a simple
9 misdemeanor offense under section 123.47 ~~or chapter 321~~, and
10 to a crime that is a first offense of operating a motor vehicle
11 while intoxicated under section 321J.2, subsection 1.

12 Sec. 14. Section 135C.33, subsection 8, paragraph e,
13 subparagraphs (1) and (2), Code 2014, are amended to read as
14 follows:

15 (1) If a student is convicted of a crime or has a record
16 of founded child or dependent adult abuse entered in the abuse
17 registry after the record checks and any evaluation have
18 been performed, the student shall inform the certified nurse
19 aide training program of such information within forty-eight
20 hours of the criminal conviction or entry of the record of
21 founded child or dependent adult abuse. The program shall
22 act to verify the information within ~~forty-eight hours~~ seven
23 calendar days of notification. If the information is verified,
24 the requirements of paragraph "c" shall be applied by the
25 program to determine whether or not the student's involvement
26 in a clinical education component may continue. The program
27 may allow the student involvement to continue pending the
28 performance of an evaluation by the department of human
29 services. A student who is required by this subparagraph to
30 inform the program of a conviction or entry of an abuse record
31 and fails to do so within the required period commits a serious
32 misdemeanor.

33 (2) If a program receives credible information, as
34 determined by the program, that a student has been convicted
35 of a crime or a record of founded child or dependent adult

1 abuse has been entered in the abuse registry after the record
2 checks and any evaluation have been performed, from a person
3 other than the student and the student has not informed the
4 program of such information within the period required under
5 subparagraph (1), the program shall act to verify the credible
6 information within ~~forty-eight hours~~ seven calendar days of
7 receipt of the credible information. If the information is
8 verified, the requirements of paragraph "c" shall be applied
9 to determine whether or not the student's involvement in a
10 clinical education component may continue.

11 Sec. 15. Section 135C.38, subsection 1, paragraphs a and c,
12 Code 2014, are amended to read as follows:

13 a. Upon receipt of a complaint made in accordance with
14 section 135C.37, the department ~~or certified volunteer~~
15 ~~long-term care ombudsman~~ shall make a preliminary review of
16 the complaint. Unless the department ~~or certified volunteer~~
17 ~~long-term care ombudsman~~ concludes that the complaint is
18 intended to harass a facility or a licensee or is without
19 reasonable basis, the department ~~or certified volunteer~~
20 ~~long-term care ombudsman~~ shall make or cause to be made an
21 on-site inspection of the health care facility which is the
22 subject of the complaint within the time period determined
23 pursuant to the following guidelines, which period shall
24 commence on the date of receipt of the complaint:

25 (1) For nursing facilities, an on-site inspection shall be
26 initiated as follows:

27 (a) Within two working days for a complaint determined by
28 the department ~~or certified volunteer long-term care ombudsman~~
29 to be an alleged immediate jeopardy situation.

30 (b) Within ten working days for a complaint determined by
31 the department ~~or certified volunteer long-term care ombudsman~~
32 to be an alleged high-level, nonimmediate jeopardy situation.

33 (c) Within forty-five calendar days for a complaint
34 determined by the department ~~or certified volunteer long-term~~
35 ~~care ombudsman~~ to be an alleged nonimmediate jeopardy

1 situation, other than a high-level situation.

2 (2) For all other types of health care facilities, an
3 on-site inspection shall be initiated as follows:

4 (a) Within two working days for a complaint determined by
5 the department ~~or certified volunteer long-term care ombudsman~~
6 to be an alleged immediate jeopardy situation.

7 (b) Within twenty working days for a complaint determined by
8 the department ~~or certified volunteer long-term care ombudsman~~
9 to be an alleged high-level, nonimmediate jeopardy situation.

10 (c) Within forty-five calendar days for a complaint
11 determined by the department ~~or certified volunteer long-term~~
12 ~~care ombudsman~~ to be an alleged nonimmediate jeopardy
13 situation, other than a high-level situation.

14 c. The department may refer to ~~the certified volunteer a~~
15 representative of the office of long-term care ombudsman ~~of a~~
16 ~~facility~~ any complaint received by the department regarding
17 ~~that a~~ facility, for initial evaluation and appropriate action
18 by the ~~certified volunteer~~ office of long-term care ombudsman.

19 Sec. 16. Section 135C.38, subsection 2, paragraph a, Code
20 2014, is amended to read as follows:

21 a. The complainant shall be promptly informed of the result
22 of any action taken by the department or ~~certified volunteer~~
23 the office of long-term care ombudsman in the matter. The
24 complainant shall also be notified of the name, address, and
25 telephone number of the designated protection and advocacy
26 agency if the alleged violation involves a facility with one
27 or more residents with developmental disabilities or mental
28 illness.

29 Sec. 17. Section 135C.38, subsection 3, Code 2014, is
30 amended to read as follows:

31 3. An inspection made pursuant to a complaint filed under
32 section 135C.37 need not be limited to the matter or matters
33 included in the complaint. However, the inspection shall
34 not be a general inspection unless the complaint inspection
35 coincides with a scheduled general inspection or unless in the

1 course of the complaint investigation a violation is evident to
2 the inspector. Upon arrival at the facility to be inspected,
3 the inspector shall show identification to the person in
4 charge of the facility and state that an inspection is to be
5 made, before beginning the inspection. Upon request of either
6 the complainant or the department or ~~certified volunteer~~ a
7 representative of the office of long-term care ombudsman, the
8 complainant or the complainant's representative or both may
9 be allowed the privilege of accompanying the inspector during
10 any on-site inspection made pursuant to this section. The
11 inspector may cancel the privilege at any time if the inspector
12 determines that the privacy of any resident of the facility to
13 be inspected would otherwise be violated. The protection and
14 dignity of the resident shall be given first priority by the
15 inspector and others.

16 Sec. 18. Section 135C.38, subsection 4, Code 2014, is
17 amended by striking the subsection.

18 Sec. 19. Section 231B.8, Code 2014, is amended by striking
19 the section and inserting in lieu thereof the following:

20 **231B.8 Exit interview — issuance of findings.**

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

31 2. The department shall issue the final findings of a
32 monitoring evaluation or complaint investigation within
33 ten working days after completion of the on-site monitoring
34 evaluation or complaint investigation. The final findings
35 shall be served upon the home personally, by electronic mail,

1 or by certified mail.

2 Sec. 20. Section 231B.9, Code 2014, is amended to read as
3 follows:

4 **231B.9 Public disclosure of findings.**

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

18 Sec. 21. NEW SECTION. **231B.9A Informal conference — formal**
19 **contest — judicial review.**

20 1. Within twenty business days after issuance of the final
21 findings, the elder group home shall notify the director if the
22 home desires to contest the findings and request an informal
23 conference.

24 2. The department shall provide an independent reviewer to
25 hold an informal conference with an elder group home within
26 ten working days after receiving a request from the home
27 pursuant to subsection 1. At the conclusion of the informal
28 conference, the independent reviewer may affirm, modify, or
29 dismiss a contested regulatory insufficiency. The independent
30 reviewer shall state in writing the specific reasons for
31 the affirmation, modification, or dismissal and immediately
32 transmit copies of the statement to the department and to the
33 home.

34 3. An independent reviewer shall be licensed as an attorney
35 in the state of Iowa and shall not be employed or have been

1 employed by the department in the past eight years or have
2 appeared in front of the department on behalf of an elder group
3 home in the past eight years. Preference shall be given to an
4 attorney with background knowledge, experience, or training
5 in long-term care. The department may issue a request for
6 proposals to enter into a contract for the purpose of providing
7 one or more independent reviewers for informal conferences.

8 4. An elder group home that desires to further contest an
9 affirmed or modified regulatory insufficiency may do so in the
10 manner provided by chapter 17A for contested cases. The home
11 shall give notice of intent to formally contest a regulatory
12 insufficiency, in writing, to the department within five days
13 after receipt of the written decision of the independent
14 reviewer. The formal hearing shall be conducted in accordance
15 with chapter 17A and rules adopted by the department.

16 5. An elder group home that has exhausted all adequate
17 administrative remedies and is aggrieved by the final action of
18 the department may petition for judicial review in the manner
19 provided by chapter 17A.

20 Sec. 22. Section 231B.10, subsection 1, Code 2014, is
21 amended by adding the following new paragraphs:

22 NEW PARAGRAPH. *0i.* In the case of an application by an
23 existing certificate holder for a new or newly acquired elder
24 group home, continuing or repeated failure of the certificate
25 holder to operate any previously certified elder group home
26 or homes in compliance with the provisions of this chapter,
27 the rules adopted pursuant to this chapter, or equivalent
28 provisions that the elder group home is subject to in this
29 state or any other state.

30 NEW PARAGRAPH. *00i.* Preventing or interfering with or
31 attempting to prevent or interfere with the performance by any
32 duly authorized representative of the department of the lawful
33 enforcement of this chapter or of the rules adopted pursuant to
34 this chapter. As used in this paragraph, "*lawful enforcement*"
35 includes but is not limited to the following:

1 (1) Contacting or interviewing any tenant of an elder group
2 home in private at any reasonable hour and without advance
3 notice.

4 (2) Examining any relevant books or records of an elder
5 group home unless otherwise protected from disclosure by
6 operation of law.

7 (3) Preserving evidence of any violation of this chapter or
8 of the rules adopted pursuant to this chapter.

9 Sec. 23. Section 231C.10, subsection 1, Code 2014, is
10 amended by adding the following new paragraphs:

11 NEW PARAGRAPH. *0i.* In the case of an application by
12 an existing certificate holder for a new or newly acquired
13 assisted living program, continuing or repeated failure of the
14 certificate holder to operate any previously certified assisted
15 living program or programs in compliance with the provisions
16 of this chapter, the rules adopted pursuant to this chapter,
17 or equivalent provisions that the assisted living program is
18 subject to in this state or any other state.

19 NEW PARAGRAPH. *00i.* Preventing or interfering with or
20 attempting to prevent or interfere with the performance by any
21 duly authorized representative of the department of the lawful
22 enforcement of this chapter or of the rules adopted pursuant to
23 this chapter. As used in this paragraph, "*lawful enforcement*"
24 includes but is not limited to the following:

25 (1) Contacting or interviewing any tenant of an assisted
26 living program in private at any reasonable hour and without
27 advance notice.

28 (2) Examining any relevant books or records of an assisted
29 living program unless otherwise protected from disclosure by
30 operation of law.

31 (3) Preserving evidence of any violation of this chapter or
32 of the rules adopted pursuant to this chapter.

33 Sec. 24. Section 231D.5, subsection 1, Code 2014, is amended
34 by adding the following new paragraphs:

35 NEW PARAGRAPH. *0k.* In the case of an application by

1 an existing certificate holder for a new or newly acquired
2 adult day services program, continuing or repeated failure of
3 the certificate holder to operate any previously certified
4 adult day services program or programs in compliance with the
5 provisions of this chapter, the rules adopted pursuant to this
6 chapter, or equivalent provisions that the adult day services
7 program is subject to in this state or any other state.

8 NEW PARAGRAPH. *00k.* Preventing or interfering with or
9 attempting to prevent or interfere with the performance by any
10 duly authorized representative of the department of the lawful
11 enforcement of this chapter or of the rules adopted pursuant to
12 this chapter. As used in this paragraph, "*lawful enforcement*"
13 includes but is not limited to the following:

14 (1) Contacting or interviewing any participant of an adult
15 day services program in private at any reasonable hour and
16 without advance notice.

17 (2) Examining any relevant books or records of an adult day
18 services program unless otherwise protected from disclosure by
19 operation of law.

20 (3) Preserving evidence of any violation of this chapter or
21 of the rules adopted pursuant to this chapter.

22 Sec. 25. Section 231D.9A, Code 2014, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **231D.9A Exit interview — issuance of findings.**

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

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

7 Sec. 26. Section 231D.10, Code 2014, is amended to read as
8 follows:

9 **231D.10 Public disclosure of findings.**

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

24 Sec. 27. NEW SECTION. 231D.10A **Informal conference —**
25 **formal contest — judicial review.**

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

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

1 independent reviewer shall state in writing the specific
2 reasons for the affirmation, modification, or dismissal and
3 immediately transmit copies of the statement to the department
4 and to the program.

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

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

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

28 Sec. 28. APPLICABILITY.

29 1. The sections of this Act amending sections 231B.8 and
30 231B.9 and adding section 231B.9A apply to an elder group home
31 desiring to request an informal conference under chapter 231B
32 on or after January 1, 2015.

33 2. The sections of this Act amending sections 231D.9A and
34 231D.10 and adding section 231D.10A apply to an adult day
35 services program desiring to request an informal conference

1 under chapter 231D on or after January 1, 2015.

2

EXPLANATION

3

The inclusion of this explanation does not constitute agreement with
4 the explanation's substance by the members of the general assembly.

4

5 This bill makes changes to employment background checks,
6 disciplinary procedures, and procedures for contesting
7 regulatory insufficiencies for certain entities regulated by
8 the department of inspections and appeals (DIA).

9 The bill changes the crimes for which a hospital can
10 temporarily employ a person who committed the crime pending
11 completion of a department of human services evaluation
12 to determine whether the crime warrants prohibition of
13 employment at the hospital or health care facility. The bill
14 disallows such continued employment for simple misdemeanors
15 under the motor vehicles and law of the road chapter. The
16 bill eliminates duplicative language regarding crimes for
17 which a health care facility can temporarily employ a person
18 who committed a crime and crimes for which a student can
19 temporarily continue with a clinical education component.

20 The bill also provides that if a hospital or health care
21 facility subject to background checks for employees is informed
22 after the applicant or employee's application date that the
23 applicant or employee is convicted of a crime or has a record
24 of founded child or dependent adult abuse entered in the abuse
25 registry, the hospital or health care facility shall act
26 within seven calendar days rather than 48 hours to verify that
27 information. The bill also amends the equivalent verification
28 time period for students in a certified nurse aide training
29 program from 48 hours to seven days.

30 The bill provides that the DIA has the authority to deny,
31 suspend, or revoke the license of a health care facility, elder
32 group home, assisted living program, or adult day services
33 program for the failure to comply with any provisions that the
34 entity is subject to that are equivalent to those provisions
35 in Code chapter 135C, 231B, 231C, or 231D, respectively, and

1 for preventing or interfering with or attempting to prevent
2 or interfere with the performance by any duly authorized
3 representative of DIA or the lawful enforcement of the laws or
4 rules of the respective Code chapters.

5 The bill replaces references to a certified volunteer
6 long-term care ombudsman with a representative of the office
7 of long-term care ombudsman in certain circumstances including
8 inspecting a facility upon a complaint of alleged violations.

9 The bill also replaces certain references to inspectors and
10 investigators for inspections of health care facilities with
11 references to authorized representatives of DIA, the department
12 of human services, or the office of long-term care ombudsman,
13 as applicable. The bill also provides that the office of
14 long-term care ombudsman is required to assist DIA in carrying
15 out the provisions of the health care facilities Code chapter.

16 The bill replaces the informal review process for contesting
17 regulatory insufficiencies identified through monitoring
18 evaluations or complaint investigations of elder group homes
19 and adult day services programs with an exit interview,
20 informal conference, formal contest, and judicial review in a
21 process similar to that available for health care facilities
22 and assisted living programs. The informal conference is
23 conducted by an independent reviewer who may affirm, modify,
24 or dismiss the regulatory insufficiency. The reviewer must
25 provide specific written reasons for the decision and transmit
26 copies of that statement to DIA and the elder group home or
27 adult day services program. An elder group home or adult day
28 services program that wants to further contest the independent
29 reviewer's affirmed or modified regulatory insufficiency may do
30 so pursuant to the provisions in Code chapter 17A for contested
31 cases. After exhausting the administrative remedies, an elder
32 group home or adult day services program may petition for
33 judicial review pursuant to Code chapter 17A. The changes to
34 the informal review process apply to elder group homes and
35 adult day services programs wishing to request an informal

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1 conference on or after January 1, 2015.