

Senate Study Bill 3011 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
BILL)

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 135C.10, subsection 9, Code 2014, is amended
8 to read as follows:

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

16 Sec. 3. Section 135C.10, Code 2014, is amended by adding the
17 following new subsection:

18 NEW SUBSECTION. 11. Impeding the department's ability to
19 ensure the facility's compliance with this chapter or with
20 rules adopted pursuant to this chapter.

21 Sec. 4. Section 135C.11, subsection 2, Code 2014, is amended
22 to read as follows:

23 2. The procedure governing hearings authorized by this
24 section shall be in accordance with the rules promulgated by
25 the department. A full and complete record shall be kept
26 of all proceedings, and all testimony shall be reported but
27 need not be transcribed unless judicial review is sought
28 pursuant to section 135C.13. Copies of the transcript may be
29 obtained by an interested party upon payment of the cost of
30 preparing the copies. Witnesses may be subpoenaed by either
31 party and shall be allowed fees at a rate prescribed by the
32 department's rules. The director may, after advising ~~the~~
33 ~~certified volunteer long-term care ombudsman~~ a representative
34 of the office of long-term care ombudsman, either proceed in
35 accordance with section 135C.30, or remove all residents and

1 suspend the license or licenses of any health care facility,
2 prior to a hearing, when the director finds that the health
3 or safety of residents of the health care facility requires
4 such action on an emergency basis. ~~The fact that a certified
5 volunteer long-term care ombudsman has not been appointed for a
6 particular facility shall not bar the director from exercising
7 the emergency powers granted by this subsection with respect
8 to that facility.~~

9 Sec. 5. Section 135C.13, Code 2014, is amended to read as
10 follows:

11 **135C.13 Judicial review.**

12 Judicial review of any action of the director may be sought
13 in accordance with the terms of the Iowa administrative
14 procedure Act, chapter 17A. Notwithstanding the terms of
15 chapter 17A, petitions for judicial review may be filed in the
16 district court of the county where the facility or proposed
17 facility is located, and pending final disposition of the
18 matter the status quo of the applicant or licensee shall be
19 preserved except when the director, ~~with the advice and consent
20 after advising a representative of the certified volunteer
21 office of long-term care ombudsman,~~ determines that the health,
22 safety, or welfare of the residents of the facility is in
23 immediate danger, in which case the director may order the
24 immediate removal of such residents. ~~The fact that a certified
25 volunteer long-term care ombudsman has not been appointed for a
26 particular facility shall not bar the director from exercising
27 the emergency powers granted by this section with respect to
28 that facility.~~

29 Sec. 6. Section 135C.14, subsection 8, paragraph d, Code
30 2014, is amended to read as follows:

31 *d.* The notification of ~~certified volunteer~~ the office
32 of long-term care ombudsmen ombudsman by the department of
33 all complaints relating to health care facilities and the
34 involvement of the ~~certified volunteer~~ office of long-term care
35 ~~ombudsmen~~ ombudsman in resolution of the complaints.

1 Sec. 7. Section 135C.16, subsection 3, Code 2014, is amended
2 to read as follows:

3 3. An ~~inspector~~ authorized representative of the department
4 may enter any licensed health care facility without a
5 warrant, and may examine all records pertaining to the care
6 provided residents of the facility. An ~~inspector~~ authorized
7 representative of the department may contact or interview
8 any resident, employee, or any other person who might have
9 knowledge about the operation of a health care facility.
10 An ~~inspector~~ authorized representative of the department
11 of human services shall have the same right with respect
12 to any facility where one or more residents are cared for
13 entirely or partially at public expense, and an ~~investigator~~
14 authorized representative of the designated protection and
15 advocacy agency shall have the same right with respect to
16 any facility where one or more residents have developmental
17 disabilities or mental illnesses, and the state fire marshal
18 or a deputy appointed pursuant to section 135C.9, subsection
19 1, paragraph "b", shall have the same right of entry into any
20 facility and the right to inspect any records pertinent to
21 fire safety practices and conditions within that facility, and
22 an authorized representative of the office of long-term care
23 ombudsman shall have the same right with respect to any nursing
24 facility or residential care facility. If any such ~~inspector~~
25 authorized representative has probable cause to believe that
26 any institution, building, or agency not licensed as a health
27 care facility is in fact a health care facility as defined
28 by this chapter, and upon producing identification that the
29 individual is an ~~inspector~~ authorized representative is denied
30 entry thereto for the purpose of making an inspection, the
31 ~~inspector~~ authorized representative may, with the assistance
32 of the county attorney of the county in which the purported
33 health care facility is located, apply to the district court
34 for an order requiring the owner or occupant to permit entry
35 and inspection of the premises to determine whether there have

1 been any violations of this chapter.

2 Sec. 8. Section 135C.17, Code 2014, is amended to read as
3 follows:

4 **135C.17 Duties of other departments.**

5 It shall be the duty of the department of human services,
6 state fire marshal, office of long-term care ombudsman, and
7 the officers and agents of other state and local governmental
8 units, and the designated protection and advocacy agency to
9 assist the department in carrying out the provisions of this
10 chapter, insofar as the functions of these respective offices
11 and departments are concerned with the health, welfare, and
12 safety of any resident of any health care facility. It shall
13 be the duty of the department to cooperate with the protection
14 and advocacy agency and the office of long-term care ombudsman
15 by responding to all reasonable requests for assistance and
16 information as required by federal law and this chapter.

17 Sec. 9. Section 135C.19, subsection 2, paragraph b, Code
18 2014, is amended to read as follows:

19 *b.* A copy of each citation required to be posted by this
20 subsection shall be sent by the department to the department
21 of human services and, to the designated protection and
22 advocacy agency if the facility has one or more residents
23 with developmental disabilities or mental illness, and to the
24 office of long-term care ombudsman if the facility is a nursing
25 facility or residential care facility.

26 Sec. 10. Section 135C.33, subsection 2, paragraph b,
27 subparagraph (2), Code 2014, is amended to read as follows:

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

32 Sec. 11. Section 135C.33, subsection 8, paragraph d,
33 subparagraph (2), Code 2014, is amended to read as follows:

34 (2) Subparagraph (1) applies to a crime that is a simple
35 misdemeanor offense under section 123.47 ~~or chapter 321~~, and

1 to a crime that is a first offense of operating a motor vehicle
2 while intoxicated under section 321J.2, subsection 1.

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

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

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

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

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

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

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

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

34 (b) Within twenty working days for a complaint determined by
35 the department ~~or certified volunteer long-term care ombudsman~~

1 to be an alleged high-level, nonimmediate jeopardy situation.

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

6 c. The department may refer to ~~the certified volunteer a~~
7 representative of the office of long-term care ombudsman of a
8 facility any complaint received by the department regarding
9 ~~that a~~ facility, for initial evaluation and appropriate action
10 by the ~~certified volunteer~~ office of long-term care ombudsman.

11 Sec. 13. Section 135C.38, subsection 2, paragraph a, Code
12 2014, is amended to read as follows:

13 a. The complainant shall be promptly informed of the result
14 of any action taken by the department or ~~certified volunteer~~
15 the office of long-term care ombudsman in the matter. The
16 complainant shall also be notified of the name, address, and
17 telephone number of the designated protection and advocacy
18 agency if the alleged violation involves a facility with one
19 or more residents with developmental disabilities or mental
20 illness.

21 Sec. 14. Section 135C.38, subsection 3, Code 2014, is
22 amended to read as follows:

23 3. An inspection made pursuant to a complaint filed under
24 section 135C.37 need not be limited to the matter or matters
25 included in the complaint. However, the inspection shall
26 not be a general inspection unless the complaint inspection
27 coincides with a scheduled general inspection or unless in the
28 course of the complaint investigation a violation is evident to
29 the inspector. Upon arrival at the facility to be inspected,
30 the inspector shall show identification to the person in
31 charge of the facility and state that an inspection is to be
32 made, before beginning the inspection. Upon request of either
33 the complainant or the department or ~~certified volunteer a~~
34 representative of the office of long-term care ombudsman, the
35 complainant or the complainant's representative or both may

1 be allowed the privilege of accompanying the inspector during
2 any on-site inspection made pursuant to this section. The
3 inspector may cancel the privilege at any time if the inspector
4 determines that the privacy of any resident of the facility to
5 be inspected would otherwise be violated. The protection and
6 dignity of the resident shall be given first priority by the
7 inspector and others.

8 Sec. 15. Section 135C.38, subsection 4, Code 2014, is
9 amended by striking the subsection.

10 Sec. 16. Section 231B.8, Code 2014, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **231B.8 Exit interview — issuance of findings.**

13 1. The department shall provide an elder group home an
14 exit interview at the conclusion of a monitoring evaluation
15 or complaint investigation, and the department shall inform
16 the home's representative of all issues and areas of concern
17 related to the insufficient practices. The department may
18 conduct the exit interview in person or by telephone, and
19 the department shall provide a second exit interview if any
20 additional issues or areas of concern are identified. The home
21 shall have two working days from the date of the exit interview
22 to submit additional or rebuttal information to the department.

23 2. The department shall issue the final findings of a
24 monitoring evaluation or complaint investigation within
25 ten working days after completion of the on-site monitoring
26 evaluation or complaint investigation. The final findings
27 shall be served upon the home personally, by electronic mail,
28 or by certified mail.

29 Sec. 17. Section 231B.9, Code 2014, is amended to read as
30 follows:

31 **231B.9 Public disclosure of findings.**

32 Upon completion of a monitoring evaluation or complaint
33 investigation of an elder group home by the department pursuant
34 to this chapter, ~~including the conclusion of informal review,~~
35 the department's final findings with respect to compliance by

1 the elder group home with requirements for certification shall
2 be made available to the public in a readily available form
3 and place. Other information relating to an elder group home
4 that is obtained by the department which does not constitute
5 the department's final findings from a monitoring evaluation or
6 complaint investigation of the elder group home shall not be
7 made available to the public except in proceedings involving
8 the denial, suspension, or revocation of a certificate under
9 this chapter.

10 Sec. 18. NEW SECTION. 231B.9A Informal conference — formal
11 contest — judicial review.

12 1. Within twenty business days after issuance of the final
13 findings, the elder group home shall notify the director if the
14 home desires to contest the findings and request an informal
15 conference.

16 2. The department shall provide an independent reviewer to
17 hold an informal conference with an elder group home within
18 ten working days after receiving a request from the home
19 pursuant to subsection 1. At the conclusion of the informal
20 conference, the independent reviewer may affirm, modify, or
21 dismiss a contested regulatory insufficiency. The independent
22 reviewer shall state in writing the specific reasons for
23 the affirmation, modification, or dismissal and immediately
24 transmit copies of the statement to the department and to the
25 home.

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

35 4. An elder group home that desires to further contest an

1 affirmed or modified regulatory insufficiency may do so in the
2 manner provided by chapter 17A for contested cases. The home
3 shall give notice of intent to formally contest a regulatory
4 insufficiency, in writing, to the department within five days
5 after receipt of the written decision of the independent
6 reviewer. The formal hearing shall be conducted in accordance
7 with chapter 17A and rules adopted by the department.

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

12 Sec. 19. Section 231B.10, subsection 1, Code 2014, is
13 amended by adding the following new paragraphs:

14 NEW PARAGRAPH. *0i.* In the case of an application by an
15 existing certificate holder for a new or newly acquired elder
16 group home, continuing or repeated failure of the certificate
17 holder to operate any previously certified elder group home
18 or homes in compliance with the provisions of this chapter,
19 the rules adopted pursuant to this chapter, or equivalent
20 provisions that the elder group home is subject to in this
21 state or any other state.

22 NEW PARAGRAPH. *00i.* Impeding the department's ability to
23 ensure the home's compliance with this chapter or with the
24 rules adopted pursuant to this chapter.

25 Sec. 20. Section 231C.10, subsection 1, Code 2014, is
26 amended by adding the following new paragraphs:

27 NEW PARAGRAPH. *0i.* In the case of an application by
28 an existing certificate holder for a new or newly acquired
29 assisted living program, continuing or repeated failure of the
30 certificate holder to operate any previously certified assisted
31 living program or programs in compliance with the provisions
32 of this chapter, the rules adopted pursuant to this chapter,
33 or equivalent provisions that the assisted living program is
34 subject to in this state or any other state.

35 NEW PARAGRAPH. *00i.* Impeding the department's ability to

1 ensure the program's compliance with this chapter or with the
2 rules adopted pursuant to this chapter.

3 Sec. 21. Section 231D.5, subsection 1, Code 2014, is amended
4 by adding the following new paragraphs:

5 NEW PARAGRAPH. *Ok.* In the case of an application by
6 an existing certificate holder for a new or newly acquired
7 adult day services program, continuing or repeated failure of
8 the certificate holder to operate any previously certified
9 adult day services program or programs in compliance with the
10 provisions of this chapter, the rules adopted pursuant to this
11 chapter, or equivalent provisions that the adult day services
12 program is subject to in this state or any other state.

13 NEW PARAGRAPH. *Ok.* Impeding the department's ability to
14 ensure the program's compliance with this chapter or with the
15 rules adopted pursuant to this chapter.

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

18 **231D.9A Exit interview — issuance of findings.**

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

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

1 Sec. 23. Section 231D.10, Code 2014, is amended to read as
2 follows:

3 **231D.10 Public disclosure of findings.**

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

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

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

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

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 adult day
3 services program in the past eight years. Preference shall be
4 given to an attorney with background knowledge, experience,
5 or training in long-term care. The department may issue a
6 request for proposals to enter into a contract for the purpose
7 of providing one or more independent reviewers for informal
8 conferences.

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

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

22 Sec. 25. APPLICABILITY.

23 1. The sections of this Act amending sections 231B.8 and
24 231B.9 and adding section 231B.9A apply to an elder group home
25 desiring to request an informal conference under chapter 231B
26 on or after January 1, 2015.

27 2. The sections of this Act amending sections 231D.9A and
28 231D.10 and adding section 231D.10A apply to an adult day
29 services program desiring to request an informal conference
30 under chapter 231D on or after January 1, 2015.

31

EXPLANATION

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

34 This bill makes changes to employment background checks,
35 disciplinary procedures, and procedures for contesting

1 regulatory insufficiencies for certain entities regulated by
2 the department of inspections and appeals (DIA).

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

14 The bill provides that the DIA has the authority to deny,
15 suspend, or revoke the license of a health care facility, elder
16 group home, assisted living program, or adult day services
17 program for the failure to comply with any provisions that the
18 entity is subject to that are equivalent to those provisions in
19 Code chapter 135C, 231B, 231C, or 231D, respectively, and for
20 impeding the DIA's ability to ensure the facility complies with
21 applicable provisions.

22 The bill replaces references to a certified volunteer
23 long-term care ombudsman with a representative of the office
24 of long-term care ombudsman in certain circumstances including
25 inspecting a facility upon a complaint of alleged violations.

26 The bill also replaces certain references to inspectors and
27 investigators for inspections of health care facilities with
28 references to authorized representatives of DIA, the department
29 of human services, or the office of long-term care ombudsman,
30 as applicable. The bill also provides that the office of
31 long-term care ombudsman is required to assist DIA in carrying
32 out the provisions of the health care facilities Code chapter.

33 The bill replaces the informal review process for contesting
34 regulatory insufficiencies identified through monitoring
35 evaluations or complaint investigations of elder group homes

1 and adult day services programs with an exit interview,
2 informal conference, formal contest, and judicial review in a
3 process similar to that available for health care facilities
4 and assisted living programs. The informal conference is
5 conducted by an independent reviewer who may affirm, modify,
6 or dismiss the regulatory insufficiency. The reviewer must
7 provide specific written reasons for the decision and transmit
8 copies of that statement to DIA and the elder group home or
9 adult day services program. An elder group home or adult day
10 services program that wants to further contest the independent
11 reviewer's affirmed or modified regulatory insufficiency may do
12 so pursuant to the provisions in Code chapter 17A for contested
13 cases. After exhausting the administrative remedies, an elder
14 group home or adult day services program may petition for
15 judicial review pursuant to Code chapter 17A. The changes to
16 the informal review process apply to elder group homes and
17 adult day services programs wishing to request an informal
18 conference on or after January 1, 2015.