

House Study Bill 648 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON KAUFMANN)

A BILL FOR

1 An Act relating to standards for and certification and
2 inspection of children's residential facilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 237C.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Administrator*" means the administrator of that division
5 of the department designated by the director of human services
6 to administer this chapter or the administrator's designee.

7 2. "*Child*" or "*children*" means an individual or individuals
8 under eighteen years of age.

9 3. "*Children's residential facility*" means a private
10 facility designed to serve children who have been voluntarily
11 placed for reasons other than an exclusively recreational
12 activity outside of their home by a parent or legal guardian
13 and who are not under the custody or authority of the
14 department of human services, juvenile court, or another
15 governmental agency, that provides twenty-four hour care,
16 including food, lodging, supervision, education, or other care
17 on a full-time basis by a person other than a relative or
18 guardian of the child, but does not include an entity providing
19 any of the following:

20 a. Care furnished by an individual who receives the child of
21 a personal friend as an occasional and personal guest in the
22 individual's home, free of charge and not as a business.

23 b. Care furnished by an individual with whom a child has
24 been placed for lawful adoption, unless that adoption is not
25 completed within two years after placement.

26 c. Child care furnished by a child care facility as defined
27 in section 237A.1.

28 d. Care furnished in a hospital licensed under chapter
29 135B or care furnished in a health care facility as defined in
30 section 135C.1.

31 e. Care furnished by a juvenile detention home or juvenile
32 shelter care home approved under section 232.142.

33 f. Care furnished by a child foster care facility licensed
34 under chapter 237.

35 g. Care furnished by an institution listed in section 218.1.

1 *h.* Care furnished by a facility licensed under chapter 125.

2 *i.* Care furnished by a psychiatric medical institution for
3 children licensed under chapter 135H.

4 *j.* Care furnished by a bona fide religious institution.

5 4. "*Department*" means the department of human services.

6 Sec. 2. NEW SECTION. **237C.2 Purpose.**

7 It is the policy of this state to provide appropriate
8 protection for children who are separated from the direct
9 personal care of their parents, relatives, or guardians and,
10 therefore, the purpose of this chapter is to provide for the
11 development, establishment, and enforcement of standards
12 relating to the certification of children's residential
13 facilities.

14 Sec. 3. NEW SECTION. **237C.3 Certification standards —**
15 **consultation with other agencies.**

16 1. The department of human services shall consult with
17 the department of education, the department of inspections
18 and appeals, the department of public health, the state fire
19 marshal, and other agencies as determined by the department
20 of human services to establish certification standards for
21 children's residential facilities in accordance with this
22 chapter.

23 2. Standards established by the department under this
24 chapter shall at a minimum address the basic health and
25 educational needs of children; protection of children from
26 mistreatment, abuse, and neglect; background and records checks
27 of persons providing care to children in facilities certified
28 under this chapter; the use of seclusion, restraint, or other
29 restrictive interventions; health; safety; emergency; and the
30 physical premises on which care is provided by a children's
31 residential facility. The background check requirements shall
32 be substantially equivalent to those applied under chapter 237
33 for a child foster care facility provider.

34 Sec. 4. NEW SECTION. **237C.4 Rules.**

35 1. Except as otherwise provided in this section, the

1 department shall adopt rules pursuant to chapter 17A to
2 administer this chapter.

3 2. A children's residential facility shall be inspected by
4 the state fire marshal or the state fire marshal's designee
5 for compliance with rules relating to fire safety before the
6 department grants or renews a certificate of approval under
7 this chapter. Rules governing fire safety in children's
8 residential facilities shall be promulgated by the state
9 fire marshal pursuant to section 100.1, subsection 5, after
10 consultation with the administrator.

11 3. Rules governing sanitation, water, and waste disposal
12 standards for children's residential facilities shall be
13 adopted by the department of public health pursuant to
14 section 135.11, subsection 12, after consultation with the
15 administrator.

16 4. Rules governing educational programs and education
17 services provided by children's residential facilities shall
18 be adopted by the state board of education pursuant to section
19 282.34.

20 5. In the case of a conflict between rules adopted pursuant
21 to subsections 2 and 3 and local rules, the more stringent
22 requirement applies.

23 **Sec. 5. NEW SECTION. 237C.5 Certificate of approval —**
24 **certification required.**

25 A person shall not operate a children's residential facility
26 without a certificate of approval to operate issued by the
27 administrator under this chapter.

28 **Sec. 6. NEW SECTION. 237C.6 Certificate application and**
29 **issuance — denial, suspension, or revocation.**

30 1. A person shall apply for a certificate to operate a
31 children's residential facility by completing and submitting to
32 the administrator an application in a form and format approved
33 by the administrator. The administrator shall issue or reissue
34 a certificate of approval if the administrator determines that
35 the applicant is or upon commencing operation will provide

1 children's residential facility services in compliance with
2 this chapter. A certificate of approval is valid for up to one
3 year from the date of issuance for the period determined by the
4 administrator in accordance with administrative rules providing
5 criteria for making the determination.

6 2. The certificate of approval shall state on its face the
7 name of the holder of the certificate, the particular premises
8 for which the certificate is issued, and the number of children
9 who may be cared for by the children's residential facility on
10 the premises at one time under the certificate of occupancy
11 issued by the state fire marshal or the state fire marshal's
12 designee. The certificate of approval shall be posted in a
13 conspicuous place in the children's residential facility.

14 3. The administrator may deny an application for issuance or
15 reissuance of a certificate of approval or suspend or revoke
16 a certificate of approval if the applicant or certificate
17 holder, as applicable, fails to comply with this chapter
18 or the rules adopted pursuant to this chapter or knowingly
19 makes a false statement concerning a material fact or
20 conceals a material fact on the application for the issuance
21 or reissuance of a certificate of approval or in a report
22 regarding operation of the children's residential facility
23 submitted to the administrator. All operations of a children's
24 residential facility shall cease during a period of suspension
25 or revocation. The administrator shall suspend or revoke a
26 certificate of approval of a children's residential facility
27 that fails to comply with section 282.34.

28 Sec. 7. NEW SECTION. 237C.7 Restricted use of facility.

29 A children's residential facility shall operate only in
30 a building or on premises designated in the certificate of
31 approval.

32 Sec. 8. NEW SECTION. 237C.8 Reports and inspections.

33 The administrator may require submission of reports by a
34 certificate of approval holder and shall cause at least one
35 annual unannounced inspection of a children's residential

1 facility to assess compliance with applicable requirements
2 and standards. The inspections shall be conducted by the
3 department of inspections and appeals in addition to initial,
4 renewal, and other inspections that result from complaints
5 or self-reported incidents. The department of inspections
6 and appeals and the department of human services may examine
7 records of a children's residential facility and may inquire
8 into matters concerning the children's residential facility
9 and its employees, volunteers, and subcontractors relating
10 to requirements and standards for children's residential
11 facilities under this chapter.

12 Sec. 9. NEW SECTION. 237C.9 Injunctive relief — civil
13 action.

14 1. A person who establishes, conducts, manages, or operates
15 a children's residential facility without a certificate of
16 approval required pursuant to this chapter, or a children's
17 residential facility with a certificate of approval that is not
18 operating in compliance with rules adopted pursuant to this
19 chapter or section 282.34, may be restrained by temporary or
20 permanent injunction from providing children's residential
21 facility services or from other involvement with child care.
22 The action may be instituted by the state or a county attorney.

23 2. The parent or legal guardian of a child who is placed in
24 a children's residential facility, the state, the department
25 of education, or the school district in which the children's
26 residential facility is located, may bring a civil action
27 seeking relief from conduct constituting a violation of this
28 chapter or section 282.34 or to prevent, restrain, or remedy
29 such violation. A civil action brought by the department of
30 education shall be limited to seeking relief from conduct
31 constituting a violation of section 282.34. Multiple
32 petitioners may join in a single action under this subsection.

33 3. If successful in obtaining injunctive relief under this
34 section, the petitioner shall be awarded reasonable attorney
35 fees and court costs.

1 Sec. 10. NEW SECTION. **237C.10 Notice and hearings —**
2 **judicial review.**

3 The procedure governing notice and hearing to deny an
4 application or suspend or revoke a certificate of approval
5 shall be in accordance with rules adopted by the department.

6 Sec. 11. NEW SECTION. **282.34 Educational programs for**
7 **children's residential facilities.**

8 1. A children's residential facility operating under a
9 certificate of approval issued under chapter 237C shall do all
10 of the following:

11 *a.* Provide an educational program and appropriate education
12 services to children residing in the children's residential
13 facility by contracting with the school district in which
14 the children's residential facility is located, contracting
15 with an accredited nonpublic school, or becoming accredited
16 as a nonpublic school through the standards and accreditation
17 process described in section 256.11 and adopted by rule by the
18 state board of education.

19 *b.* Display prominently in all of its major publications
20 and on its internet site a notice accurately describing the
21 educational program and educational services provided by the
22 children's residential facility.

23 *c.* Include in any promotional, advertising, or marketing
24 materials regarding the children's residential facility,
25 available in print or via the internet, all fees charged by the
26 children's residential facility for the services offered or
27 provided by the children's residential facility and its refund
28 policy for the return of refundable portions of any fees.

29 2. The state board of education shall adopt by rule pursuant
30 to chapter 17A standards for the following:

31 *a.* Educational programs and appropriate educational services
32 provided under this section.

33 *b.* Contracts between children's residential facilities and
34 school districts or accredited nonpublic schools.

35 *c.* Notices displayed in accordance with subsection 1,

1 paragraph "b".

2 3. A contract that fails to comply with any of the
3 requirements of subsection 1, or with standards adopted by the
4 state board of education under subsection 2, is void.

5 Sec. 12. REPEAL. Chapter 237B, Code 2016, is repealed.

6 Sec. 13. REPORT REQUIREMENT. By January 1, 2017, the
7 department of human services, the department of education, the
8 department of public health, and the state fire marshal shall
9 each submit a report to the general assembly concerning their
10 progress in adopting rules as appropriate under sections 237C.4
11 and 282.34, as enacted by this Act.

12 EXPLANATION

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

15 This bill provides for standards for and certification and
16 inspection of children's residential facilities.

17 Currently, Code section 237B.1 allows the department of
18 human services (DHS) to establish broad facility standards
19 for the protection of children's safety for children served
20 by children's centers, but prohibits the department from
21 establishing program development or oversight standards. The
22 bill repeals and replaces Code chapter 237B with new Code
23 chapter 237C to provide the department with more oversight
24 authority.

25 DEFINITION. The bill defines "children's residential
26 facility" to mean a private facility designed to serve children
27 under the age of 18 who have been voluntarily placed for
28 reasons other than an exclusively recreational activity outside
29 of their home by a parent or legal guardian and who are not
30 under the custody or authority of the DHS, juvenile court,
31 or another governmental agency, and the facility provides
32 24-hour care, including food, lodging, supervision, education,
33 or other care. The bill excludes from the definition care
34 provided by certain individuals, such as personal friends or in
35 circumstances preceding adoption, care furnished by entities

1 otherwise regulated by a state agency, and care furnished by a
2 bona fide religious institution.

3 CERTIFICATION STANDARDS. DHS must at a minimum consult
4 with the departments of education, inspections and appeals,
5 and public health, and the state fire marshal to establish
6 certification standards for children's residential facilities.
7 The standards must at a minimum address the basic health and
8 educational needs of children; protection of children from
9 mistreatment, abuse, and neglect; background and records checks
10 of persons providing care to children in such facilities;
11 the use of seclusion, restraint, or other restrictive
12 interventions; health; safety; emergency; and the physical
13 premises on which care is provided by a children's residential
14 facility.

15 AGENCY RULES. DHS must adopt rules to administer the
16 new Code chapter. The state fire marshal must adopt rules
17 relating to safety in children's residential facilities after
18 consultation with the DHS administrator. Such facilities
19 must be inspected by the state fire marshal or the state
20 fire marshal's designee before the DHS grants or renews a
21 certificate of approval. The department of public health
22 (DPH) must adopt rules governing sanitation, water, and waste
23 disposal standards for children's residential facilities after
24 consultation with the DHS administrator. In the case of a
25 conflict between local rules and rules adopted by the state
26 fire marshal or DPH, the more stringent requirement applies.
27 The state board of education must adopt rules governing
28 educational programs and education services provided by
29 children's residential facilities.

30 CERTIFICATION REQUIREMENTS. A person shall not operate
31 a children's residential facility without a certificate of
32 approval issued by the DHS administrator. A person shall apply
33 for a certificate by completing and submitting to the DHS
34 administrator an application in a form and format approved by
35 the administrator. The administrator shall issue or reissue a

1 certificate of approval if the administrator determines that
2 the applicant is or upon commencing operation will provide
3 children's residential facility services in compliance with the
4 new Code chapter. A certificate of approval is valid for up to
5 one year from the date of issuance for the period determined
6 by the administrator in accordance with administrative rules
7 providing criteria for making the determination.

8 The certificate of approval must state the name of the holder
9 of the certificate, the particular premises for which the
10 certificate is issued, and the number of children who may be
11 cared for by the facility. The certificate of approval must be
12 posted in a conspicuous place in the facility. A children's
13 residential facility shall operate only in a building or on
14 premises designated in the certificate of approval.

15 The administrator may deny an application for issuance or
16 reissuance of a certificate or suspend or revoke a certificate
17 of approval if the applicant or certificate holder fails to
18 comply with the requirements or rules adopted under the new
19 Code chapter or knowingly makes a false statement concerning a
20 material fact or conceals a material fact on the application or
21 in a report submitted to the DHS administrator. All operations
22 of a facility must cease during a period of suspension or
23 revocation. The administrator must suspend or revoke a
24 certificate of approval of a facility that fails to comply
25 with statutory requirements for educational programs at such
26 facilities.

27 **REPORTS AND INSPECTIONS.** The DHS administrator may require
28 submission of reports by a certificate of approval holder
29 and shall cause at least one annual unannounced inspection
30 of a children's residential facility by the department of
31 inspections and appeals. The inspections shall be conducted in
32 addition to initial, renewal, and other inspections that result
33 from complaints or self-reported incidents. The department
34 of inspections and appeals and DHS may examine the facility's
35 records and may inquire into matters concerning the facility

1 and its employees, volunteers, and subcontractors.

2 INJUNCTIVE RELIEF. A person who establishes, conducts,
3 manages, or operates a children's residential facility without
4 a certificate of approval, or a facility with a certificate
5 that is not operating in compliance with the bill may be
6 restrained by temporary or permanent injunction from providing
7 services or from other involvement with child care. The action
8 may be instituted by the state or a county attorney.

9 The parent or legal guardian of a child who is placed in
10 such a facility, the state, the department of education, or the
11 school district in which the children's residential facility
12 is located may bring a civil action seeking relief from
13 conduct constituting a violation of the bill or to prevent,
14 restrain, or remedy such violation. However, the department of
15 education's civil action must be limited to seeking relief from
16 conduct constituting a violation of new Code section 282.34.

17 NOTICE AND HEARINGS — JUDICIAL REVIEW. The procedure
18 governing notice and hearing to deny an application or suspend
19 or revoke a certificate of approval shall be in accordance with
20 rules adopted by DHS.

21 EDUCATIONAL PROGRAMS. A children's residential facility
22 must provide an educational program and appropriate education
23 services to children residing in the facility by contracting
24 with the school district in which the facility is located, or
25 contracting with an accredited nonpublic school, or becoming
26 accredited as a nonpublic school. The facility must display
27 prominently in its major publications and on its internet site
28 a notice accurately describing its educational program and
29 educational services, and must include its fees and refund
30 policy in any promotional, advertising, or marketing materials
31 regarding the facility.

32 The state board of education must adopt by rule standards for
33 the educational programs and appropriate educational services
34 provided by such facilities, contracts between such facilities
35 and school districts or accredited nonpublic schools, and

1 notices displayed by a facility. A contract that fails
2 to comply with any of the educational program and services
3 requirements or with standards adopted by the state board of
4 education is void.

5 REPORT REQUIREMENT. By January 1, 2017, DHS, the department
6 of education, DPH, and the state fire marshal must each submit
7 a report to the general assembly concerning their progress in
8 adopting rules.