

**House File 2562 - Introduced**

HOUSE FILE 2562  
BY COMMITTEE ON HEALTH AND HUMAN  
SERVICES

(SUCCESSOR TO HSB 653)

**A BILL FOR**

1 An Act relating to care facility placement decisions for certain  
2 adults.

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

unofficial

1 Section 1. NEW SECTION. **144H.1 Definitions.**

2 For purposes of this chapter, unless the context otherwise  
3 requires:

4 1. "*Able to consent*" means a patient is willing and able  
5 to communicate a decision independently or with appropriate  
6 services, technological assistance, support decision making, or  
7 other reasonable accommodation and is able to understand the  
8 nature and consequences of the decision, including the primary  
9 risks and benefits of a decision.

10 2. "*Authorized representative*" means any of the following:

11 a. An agent as that term is defined in section 633B.102.

12 b. An attorney in fact as that term is defined in section  
13 144B.1.

14 c. A conservator as that term is defined in section 633B.102.

15 d. A guardian as that term is defined in section 633B.102.

16 e. A public guardian as that term is defined in chapter 231E.

17 3. "*Care facility*" means a facility that provides a patient  
18 with health-related and personal care services, including any of  
19 the following:

20 a. A hospital.

21 b. A medical clinic.

22 c. A nursing facility.

23 d. A rehabilitation facility as that term is defined in  
24 section 135C.1.

25 e. A residential care facility as that term is defined in  
26 section 135C.1.

27 4. "*Department*" means the department of health and human  
28 services.

29 5. "*Patient*" means an adult who is receiving health-related  
30 or personal care services from a care facility.

31 6. "*Person authorized to consent*" means a member of any of  
32 the following groups of individuals, in order of priority, who  
33 is willing and able to consent, refuse to consent, or withdraw  
34 consent on a patient's behalf:

35 a. The patient's spouse.

1     b. An adult child of the patient or, if the patient has more  
2 than one adult child, the decision agreed to by half or more of  
3 the adult children reasonably available for consultation with the  
4 patient's physician.

5     c. A parent or parents of a patient, if one or both parents  
6 are reasonably available for consultation with the patient's  
7 physician.

8     d. An adult sibling of the patient or, if the patient has  
9 more than one adult sibling, the decision agreed to by half  
10 or more of the adult siblings who are reasonably available for  
11 consultation with the patient's physician.

12     7. "Placement" means the admission, discharge, or transfer of  
13 a patient.

14     8. "Public assistance program" means a state or federally  
15 funded program including but not limited to:

16     a. The Medicaid program as that term is defined in section  
17 249A.2.

18     b. Medicare pursuant to the federal government health  
19 insurance program established under Tit. XVIII of the Social  
20 Security Act.

21     c. A medical benefits package pursuant to 38 C.F.R. §17.38.

22     Sec. 2. NEW SECTION.   **144H.2 Inability to consent —**  
23 **certification.**

24     Upon examination of a patient, a physician licensed under  
25 chapter 148 may certify in the patient's medical records that in  
26 the professional opinion of the physician all of the following  
27 are true:

28     1. The patient is not able to consent.

29     2. Despite good-faith efforts, an authorized representative  
30 for the patient has not been located by the physician.

31     3. It is in the patient's best interests to be discharged  
32 from the patient's current care facility and to be transferred or  
33 admitted to a care facility recommended by the physician.

34     Sec. 3. NEW SECTION.   **144H.3 Person authorized to consent —**  
35 **powers and duties.**

- 1 1. Upon a physician's certification pursuant to section  
2 144H.2, a person authorized to consent is authorized to do any  
3 of the following:
  - 4 a. Make decisions regarding the patient's care facility  
5 placement.
  - 6 b. Assist the patient in applying for health insurance  
7 coverage through a private insurer, or applying for a public  
8 assistance program, as necessary to facilitate the patient's care  
9 facility placement.
  - 10 c. Take any other action expressly authorized by the patient.
- 11 2. A person authorized to consent shall act in good faith and  
12 must consider all of the following:
  - 13 a. The patient's wishes, if known.
  - 14 b. The patient's rights.
  - 15 c. The best interests of the patient.
- 16 3. A person authorized to consent may, as reasonably  
17 necessary to assist the patient in applying for health insurance  
18 coverage through a private insurer, or applying for a public  
19 assistance program, do any of the following:
  - 20 a. Access the patient's banking and other financial records  
21 as permitted by state and federal law. This paragraph shall  
22 not be construed to permit the person authorized to consent to  
23 own, manage, use, or dispose of any of the patient's financial  
24 resources without the patient's express consent.
  - 25 b. Disclose the patient's relevant health information to a  
26 third party. The person authorized to consent shall not disclose  
27 a patient's protected health information in violation of the  
28 federal Health Insurance Portability and Accountability Act of  
29 1996, Pub. L. No. 104-191.
- 30 4. The authority of a person authorized to consent shall  
31 expire upon the earliest of any of the following:
  - 32 a. The date that the patient's care facility placement as  
33 decided by the person authorized to consent is completed, and  
34 notice of approval or denial of an application for health  
35 insurance coverage through a private insurer, or for a public

1 assistance program, if applicable, is received by a qualified  
2 employee of the receiving care facility.

3 b. An authorized representative, or a person authorized to  
4 consent who has higher priority, has been located.

5 Sec. 4. NEW SECTION. **144H.4 Care facility — duties.**

6 A social worker, discharge planner, or other qualified  
7 employee as designated by a patient's current care facility shall  
8 do all of the following with respect to a person authorized to  
9 consent:

10 1. Inform the person of the person's powers and duties  
11 pursuant to this chapter.

12 2. Assist the person with identifying a receiving care  
13 facility for the patient that can provide the least restrictive  
14 and appropriate level of care, as recommended by the physician  
15 under section 144H.2, for the patient and consented to by a  
16 social worker, intake coordinator, or other qualified employee of  
17 the receiving care facility.

18 Sec. 5. NEW SECTION. **144H.5 Petition for court order.**

19 1. After good-faith efforts to locate an authorized  
20 representative for the patient or a person authorized to consent,  
21 a care facility or attending physician may petition a court of  
22 competent jurisdiction to order any of the following:

23 a. The patient's care facility placement.

24 b. The patient's attending physician or a social worker,  
25 intake worker, or other qualified employee of the receiving care  
26 facility to assist the patient to apply for health insurance  
27 coverage through a private insurer or apply for a public  
28 assistance program, if appropriate.

29 2. The petition made must include the following information:

30 a. The name, age, and address where the patient resides, if  
31 known to the petitioner.

32 b. The name, address, and county of residence of the  
33 petitioner.

34 c. The relationship of the petitioner to the patient.

35 d. The address where the patient can be found, if different

1 from the patient's residential address.

2 e. A physician's certification pursuant to section 144H.2.

3 f. An affidavit from the patient's attending physician, that  
4 upon an examination of the patient and consultation with another  
5 health care provider, all of the following are true:

6 (1) The patient is not able to consent.

7 (2) The patient has not identified, and despite good-faith  
8 efforts the attending physician has been unable to locate, an  
9 authorized representative or a person authorized to consent.

10 (3) The receiving care facility placement recommended by the  
11 attending physician is in the patient's best interests.

12 (4) The receiving care facility placement recommended by the  
13 attending physician will provide the least restrictive and most  
14 appropriate level of care for the patient, and is within a  
15 reasonable proximity to the patient's residence, if applicable.

16 g. An affidavit from a social worker, discharge planner, or  
17 other qualified employee as designated by the patient's current  
18 care facility attesting to all of the following:

19 (1) The patient has not identified, and despite good-faith  
20 efforts the current care facility has been unable to locate, an  
21 authorized representative or a person authorized to consent.

22 (2) The receiving care facility placement recommended by the  
23 attending physician will provide the least restrictive and most  
24 appropriate level of care for the patient.

25 (3) Other care facilities within a reasonable proximity  
26 to the patient's residence were considered for placement, if  
27 applicable.

28 h. An affidavit from a social worker, intake coordinator,  
29 or other qualified employee of the receiving care facility  
30 recommended by the patient's attending physician attesting to all  
31 of the following:

32 (1) The receiving care facility is the most appropriate  
33 facility available for the patient.

34 (2) The receiving care facility can provide the least  
35 restrictive and most appropriate level of care to the patient.

1 (3) The receiving care facility consents to the transfer or  
2 admission of the patient.

3 i. The name and address of the receiving care facility  
4 recommended by the attending physician.

5 3. The court may grant the petition if the court finds all of  
6 the following:

7 a. The patient is not able to consent.

8 b. Despite good-faith efforts by the attending physician and  
9 the patient's current care facility, an authorized representative  
10 or person authorized to consent has not been located.

11 c. Placement in the receiving care facility recommended by  
12 the patient's attending physician is in the patient's best  
13 interest.

14 d. Placement in the receiving care facility recommended  
15 by the patient's attending physician will provide the least  
16 restrictive and most appropriate level of care for the patient.

17 e. A social worker, intake coordinator, or other qualified  
18 employee of the receiving care facility recommended by the  
19 patient's attending physician has consented to the admission of  
20 the patient.

21 4. If the court grants the petition under subsection 3, the  
22 court shall also order, if necessary, that a qualified employee  
23 of the receiving care facility has the authority to apply for a  
24 public assistance program on the patient's behalf.

25 5. An order authorizing placement pursuant to this section  
26 shall remain in effect until the earliest of any of the  
27 following:

28 a. A date specified by the court not to exceed thirty  
29 calendar days from the date of issuance of the order.

30 b. The date the patient's placement in the receiving care  
31 facility as ordered by the court is completed.

32 c. The date an attending physician certifies that the patient  
33 is able to consent to the patient's placement in the receiving  
34 care facility.

35 6. An order authorizing a qualified employee of a receiving

1 facility to apply for a public assistance program on a patient's  
2 behalf pursuant to this section shall remain in effect until the  
3 earliest of any of the following:

4 a. A date specified by the court.

5 b. Notice of approval or denial of an application for health  
6 insurance coverage through a private insurer, or for a public  
7 assistance program is received by a qualified employee of the  
8 receiving facility.

9 c. The date that an attending physician certifies that the  
10 patient is able to consent to the application for a public  
11 assistance program.

12 Sec. 6. NEW SECTION. **144H.6 Immunity — liability and**  
13 **professional discipline.**

14 1. A person or care facility acting in good faith pursuant to  
15 this chapter shall not be subject to civil or criminal liability.

16 2. A licensee under chapter 148 acting reasonably and in good  
17 faith pursuant to this chapter shall not be subject to licensee  
18 discipline.

19 Sec. 7. NEW SECTION. **144H.7 Construction.**

20 This chapter shall not be construed to do any of the  
21 following:

22 1. Require a care facility to accept the transfer or  
23 admission of a patient.

24 2. Repeal, abrogate, or impair the operation of any other  
25 federal or state laws governing the transfer, admission, or  
26 discharge of a patient to or from a care facility.

27 3. Infringe upon the rights of a patient under federal or  
28 state law relating to the involuntary transfer, admission, or  
29 discharge to or from a care facility.

30 Sec. 8. NEW SECTION. **144H.8 Rules.**

31 The department may promulgate rules pursuant to chapter 17A as  
32 necessary to administer this chapter.

33 **EXPLANATION**

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

1 This bill relates to care facility placement decisions for  
2 certain adults.

3 The bill defines "authorized representative" as an agent,  
4 attorney in fact, conservator, or guardian. "Person authorized  
5 to consent" (authorized person) is defined as a member of any  
6 of the following groups of individuals, in order of priority,  
7 that is willing and able to consent, refuse to consent, or  
8 withdraw consent on a patient's behalf: the patient's spouse,  
9 the adult children, the parent or parents of a patient, or the  
10 adult siblings of the patient. "Care facility" is defined as a  
11 facility that provides a patient with health-related and personal  
12 care services, including a hospital, medical clinic, nursing  
13 facility, rehabilitation facility, or residential care facility.  
14 "Placement" is defined as the admission, discharge, or transfer  
15 of a patient.

16 The bill provides that a physician licensed under the laws of  
17 this state may certify in a patient's record that the patient  
18 is not able to consent, an authorized representative for the  
19 patient has not been located by the physician despite good-faith  
20 efforts, and that it is in the patient's best interests to  
21 be discharged from the patient's current care facility and  
22 transferred or admitted to a care facility recommended by the  
23 physician. "Patient" and "able to consent" are defined in the  
24 bill.

25 The bill provides that an authorized person shall act in  
26 good faith and consider the patient's rights, wishes, and best  
27 interests. The bill authorizes the authorized person, upon  
28 the physician's certification, to make care facility placement  
29 decisions and assist the patient in applying for health insurance  
30 coverage through private insurance, or for a public assistance  
31 program, as necessary to facilitate placement. The bill allows  
32 the authorized person, as reasonably necessary to assist the  
33 patient in applying for health insurance coverage through a  
34 private insurer or a public assistance program and as permitted  
35 under state and federal law, to access a patient's financial and

1 banking records as well as disclose relevant health information  
2 to a third party.

3 The bill provides that the authority of an authorized person  
4 expires when the placement decided by the authorized person is  
5 completed and notice of approval or denial of an application  
6 for health insurance coverage through a private insurer, or for  
7 a public assistance program, if applicable, is received by a  
8 qualified employee of the receiving care facility, or when an  
9 authorized representative or authorized person of higher priority  
10 is located.

11 The bill requires a social worker, discharge planner, or other  
12 qualified employee as designated by the current care facility  
13 of the patient to inform an authorized person of the person's  
14 powers and duties and to assist the person with identifying a  
15 receiving care facility for the patient that will provide the  
16 least restrictive and appropriate level of care for the patient  
17 as recommended by the certifying physician.

18 After a good-faith effort to locate an authorized  
19 representative or authorized person, the bill allows an attending  
20 physician or a care facility to petition a court of competent  
21 jurisdiction to order placement or that a patient's attending  
22 physician or a social worker, intake worker, or other qualified  
23 employee of the receiving care facility assist the patient in  
24 applying for health insurance coverage through a private insurer  
25 or a public assistance program. The petition must include  
26 certain information about the patient, the petitioner, the  
27 current care facility, and the proposed receiving care facility,  
28 and be supported by affidavits from an attending physician, a  
29 social worker, intake coordinator, discharge planner, or other  
30 qualified employee from both the current and the proposed  
31 receiving care facility. The bill allows the court to grant the  
32 petition if it finds that the patient is not able to consent,  
33 no authorized representative for the patient or authorized person  
34 has been located by the attending physician and the patient's  
35 current care facility despite good-faith efforts, placement

1 in the receiving care facility recommended to the court by  
2 the patient's attending physician is in the best interests of  
3 the patient, and will provide the least restrictive and most  
4 appropriate level of care for the patient. A social worker,  
5 intake coordinator, or other qualified employee of the proposed  
6 receiving care facility must consent to the admission of the  
7 patient. If a court order authorizes a patient's transfer to the  
8 receiving care facility, the authority, if necessary, to apply  
9 for a public assistance program on the patient's behalf shall  
10 transfer pursuant to court order to a qualified employee of the  
11 receiving care facility.

12 The bill provides that the court's order shall be effective  
13 until a date specified by the court not to exceed 30 calendar  
14 days from the date of the issuance of the order, the completion  
15 of any placement of the patient in the receiving care facility as  
16 ordered, or the date that a physician certifies that the patient  
17 is able to consent to the patient's placement in a care facility.

18 The bill provides that a court order authorizing a qualified  
19 employee of a receiving facility to apply for a public assistance  
20 program on a patient's behalf shall be effective until a date  
21 specified by the court, the date notice of approval or denial of  
22 an application for health insurance coverage through a private  
23 insurer, or for a public assistance program is received by a  
24 qualified employee of the receiving facility, or the date that an  
25 attending physician certifies that the patient is able to consent  
26 to the application for a public assistance program.

27 The bill provides immunity from civil or criminal liability to  
28 a person or care facility acting in good faith under the bill.  
29 Immunity from licensee discipline is also provided for licensees  
30 acting reasonably and in good faith.

31 The bill is not to be construed to require a health care  
32 facility to accept the transfer or admission of a patient; to  
33 repeal, abrogate, or impair the operation of any other federal  
34 or state laws governing the transfer, admission, or discharge of  
35 a patient to or from a care facility; or to infringe upon the

1 rights of patients under federal or state law relating to the  
2 involuntary transfer, admission, or discharge to or from a care  
3 facility.

4 The bill authorizes the department of health and human  
5 services to adopt rules to administer the bill.

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