

Senate Study Bill 3096 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON HEALTH
AND HUMAN SERVICES BILL BY
CHAIRPERSON WARME)

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

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

6 b. An attorney in fact as that term is defined in section
7 144B.1.

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

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

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

11 2. "*Care facility*" means a facility that provides a patient
12 with health-related and personal care services, including any of
13 the following:

14 a. A facility providing home and community-based services.

15 b. A hospital.

16 c. A medical clinic.

17 d. A nursing facility.

18 e. A rehabilitation facility as that term is defined in
19 section 135C.1.

20 f. A residential care facility as that term is defined in
21 section 135C.1.

22 3. "*Department*" means the department of health and human
23 services.

24 4. "*Patient*" means an adult who is receiving health-related
25 or personal care services from a care facility.

26 5. "*Person authorized to consent*" means a member of any of
27 the following groups of individuals, in order of priority, who
28 is willing and able to consent, refuse to consent, or withdraw
29 consent on a patient's behalf:

30 a. The patient's spouse.

31 b. An adult child or stepchild of the patient, or, if
32 the patient has more than one adult child or stepchild, the
33 decision agreed to by a majority of the adult children and
34 stepchildren reasonably available for consultation with the
35 patient's physician.

1 c. A parent or parents of a patient, if one or both parents
2 are reasonably available for consultation with the patient's
3 physician.

4 d. An adult sibling or stepsibling of the patient or, if
5 the patient has more than one adult sibling or stepsibling,
6 the decision agreed to by a majority of the adult siblings and
7 stepsiblings who are reasonably available for consultation with
8 the patient's physician.

9 6. "Placement" means the admission, discharge, or transfer of
10 a patient.

11 7. "Public assistance program" means a state or federally
12 funded program including but not limited to:

13 a. The Medicaid program as that term is defined in section
14 249A.2.

15 b. Medicare pursuant to the federal government health
16 insurance program established under Tit. XVIII of the Social
17 Security Act.

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

19 8. "Unable to consent" means a patient is unable to do any of
20 the following:

21 a. Make rational and competent decisions regarding care
22 facility placement, and options for health insurance coverage for
23 recommended care.

24 b. Communicate, by any means, decisions regarding care
25 facility placement, and options for health insurance coverage for
26 recommended care.

27 Sec. 2. NEW SECTION. **144H.2 Inability to consent —**
28 **certification.**

29 Upon examination of a patient, a physician licensed under
30 chapter 148 may certify in the patient's medical records that in
31 the professional opinion of the physician all of the following
32 are true:

33 1. The patient is unable to consent.

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

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

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

6 1. Upon a physician's certification pursuant to section
7 144H.2, a person authorized to consent is authorized to do any
8 of the following:

9 a. Make decisions regarding the patient's care facility
10 placement.

11 b. Assist the patient in applying for health insurance
12 coverage through a private insurer, or applying for a public
13 assistance program, as necessary to facilitate the patient's care
14 facility placement.

15 c. Take any other action expressly authorized by the patient.

16 2. A person authorized to consent shall act in good faith and
17 must consider all of the following:

18 a. The best interests of the patient.

19 b. The patient's rights.

20 c. The patient's wishes, if known.

21 3. The authority of a person authorized to consent shall
22 expire upon the earliest of any of the following:

23 a. The date that the patient's care facility placement as
24 decided by the person authorized to consent is completed, and
25 notice of approval or denial of an application for health
26 insurance coverage through a private insurer, or for a public
27 assistance program, if applicable, is received by a qualified
28 employee of the receiving care facility.

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

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

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

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

3 2. Assist the person with identifying a receiving care
4 facility for the patient that can provide the least restrictive
5 and appropriate level of care, as recommended by the physician
6 under section 144H.2, for the patient and consented to by a
7 social worker, intake coordinator, or other qualified employee of
8 the receiving care facility.

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

10 1. After good-faith efforts to locate an authorized
11 representative for the patient or a person authorized to consent,
12 a care facility or attending physician may petition a court
13 of competent jurisdiction to order the patient's care facility
14 placement.

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

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

18 b. The name, address, and county of residence of the
19 petitioner.

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

21 d. The address where the patient can be found, if different
22 from the patient's residential address.

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

24 f. An affidavit from the patient's attending physician, that
25 upon an examination of the patient, all of the following are
26 true:

27 (1) The patient is unable to consent.

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

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

33 (4) The receiving care facility placement recommended by the
34 attending physician will provide the least restrictive and most
35 appropriate level of care for the patient, and is within a

1 reasonable proximity to the patient's residence, if applicable.

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

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

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

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

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

18 (1) The receiving care facility is the most appropriate
19 facility available for the patient.

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

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

24 i. The name and address of the receiving care facility
25 recommended by the attending physician.

26 3. The court shall grant the petition if the court finds all
27 of the following:

28 a. The patient is unable to consent.

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

32 c. Placement in the receiving care facility recommended by
33 the patient's attending physician is in the patient's best
34 interest.

35 d. Placement in the receiving care facility recommended

1 by the patient's attending physician will provide the least
2 restrictive and most appropriate level of care for the patient.

3 e. A social worker, intake coordinator, or other qualified
4 employee of the receiving care facility recommended by the
5 patient's attending physician has consented to the admission of
6 the patient.

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

11 5. An order authorizing placement pursuant to this section
12 shall remain in effect until the earliest of any of the
13 following:

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

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

18 c. The date an attending physician certifies that the patient
19 is able to consent to the patient's placement in the receiving
20 care facility.

21 6. An order authorizing a qualified employee of a receiving
22 facility to apply for a public assistance program on a patient's
23 behalf pursuant to this section shall remain in effect until the
24 earliest of any of the following:

25 a. A date specified by the court.

26 b. Notice of approval or denial of an application for health
27 insurance coverage through a private insurer, or for a public
28 assistance program is received by a qualified employee of the
29 receiving facility.

30 c. The date that an attending physician certifies that the
31 patient is able to consent to the application for a public
32 assistance program.

33 Sec. 6. NEW SECTION. **144H.6 Immunity — liability and**
34 **professional discipline.**

35 1. A person acting in good faith pursuant to this chapter

1 shall not be subject to civil or criminal liability.

2 2. A licensee under chapter 148 acting in good faith pursuant
3 to this chapter shall not be subject to licensee discipline.

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

5 This chapter shall not be construed to do any of the
6 following:

7 1. Require a care facility to accept the transfer or
8 admission of a patient, unless otherwise ordered by a court of
9 competent jurisdiction.

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

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

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

17 The department shall promulgate rules pursuant to chapter 17A
18 as necessary to administer this chapter.

19 EXPLANATION

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

22 This bill relates to care facility placement decisions for
23 certain adults.

24 The bill defines "authorized representative" as an agent,
25 attorney in fact, conservator, or guardian. "Person authorized
26 to consent" (authorized person) is defined as a member of any
27 of the following groups of individuals, in order of priority,
28 that is willing and able to consent, refuse to consent, or
29 withdraw consent on a patient's behalf: the patient's spouse,
30 the adult children or stepchildren, the parent or parents of a
31 patient, or the adult siblings or stepsiblings of the patient.
32 "Care facility" is defined as a facility that provides a patient
33 with health-related and personal care services, including a
34 facility providing home and community-based services, hospital,
35 medical clinic, nursing facility, rehabilitation facility, or

1 residential care facility. "Placement" is defined as the
2 admission, discharge, or transfer of a patient.

3 The bill provides that a physician licensed under the laws of
4 this state may certify in a patient's record that the patient is
5 unable to consent, an authorized representative for the patient
6 has not been located by the physician despite good-faith efforts,
7 and that it is in the patient's best interests to be discharged
8 from the patient's current care facility and transferred or
9 admitted to a care facility recommended by the physician.
10 "Patient" and "unable to consent" are defined in the bill.

11 The bill provides that an authorized person shall act in
12 good faith and in the best interests of the patient, consistent
13 with the patient's rights and wishes. The bill authorizes the
14 authorized person, upon the physician's certification, to make
15 care facility placement decisions and assist the patient in
16 applying for health insurance coverage through private insurance,
17 or for a public assistance program, as necessary to facilitate
18 placement.

19 The bill provides that the authority of an authorized person
20 expires when the placement decided by the authorized person is
21 completed and notice of approval or denial of an application
22 for health insurance coverage through a private insurer, or for
23 a public assistance program, if applicable, is received by a
24 qualified employee of the receiving care facility, or when an
25 authorized representative or authorized person of higher priority
26 is located.

27 The bill requires a social worker, discharge planner, or other
28 qualified employee as designated by the current care facility
29 of the patient to inform an authorized person of the person's
30 powers and duties and to assist the person with identifying a
31 receiving care facility for the patient that will provide the
32 least restrictive and appropriate level of care for the patient
33 as recommended by the certifying physician.

34 After a good-faith effort to locate an authorized
35 representative or authorized person, the bill allows an attending

1 physician or a care facility to petition a court of competent
2 jurisdiction to order placement. The petition must include
3 certain information about the patient, the petitioner, the
4 current care facility, and the proposed receiving care facility,
5 and be supported by affidavits from an attending physician, a
6 social worker, discharge planner, or other qualified employee
7 from both the current and the proposed receiving care facility.
8 The bill requires the court to grant the petition if it
9 finds that the patient is unable to consent, no authorized
10 representative for the patient or authorized person has been
11 located by the attending physician and the patient's current care
12 facility despite good-faith efforts, placement in the receiving
13 care facility recommended to the court by the patient's attending
14 physician is in the best interests of the patient, and will
15 provide the least restrictive and most appropriate level of care
16 for the patient. A social worker, intake coordinator, or other
17 qualified employee of the proposed receiving care facility must
18 consent to the admission of the patient. If a court order
19 authorizes a patient's transfer to the receiving care facility,
20 the authority, if necessary, to apply for a public assistance
21 program on the patient's behalf shall transfer pursuant to court
22 order to a qualified employee of the receiving care facility.

23 The bill provides that the court's order shall be effective
24 until a date specified by the court not to exceed 30 calendar
25 days from the date of the issuance of the order, the completion
26 of any placement of the patient in the receiving care facility as
27 ordered, or the date that a physician certifies that the patient
28 is able to consent to the patient's placement in a care facility.

29 The bill provides that a court order authorizing a qualified
30 employee of a receiving facility to apply for a public assistance
31 program on a patient's behalf shall be effective until a date
32 specified by the court, the date notice of approval or denial of
33 an application for health insurance coverage through a private
34 insurer, or for a public assistance program is received by a
35 qualified employee of the receiving facility, or the date that an

1 attending physician certifies that the patient is able to consent
2 to the application for a public assistance program.

3 The bill provides immunity from civil or criminal liability
4 to a person acting in good faith according to the provisions of
5 the bill. Immunity from licensee discipline is also provided for
6 licensees acting in good faith.

7 The bill is not to be construed to require a health care
8 facility to accept the transfer or admission of a patient unless
9 otherwise ordered by a court of competent jurisdiction; to
10 repeal, abrogate, or impair the operation of any other federal
11 or state laws governing the transfer, admission, or discharge of
12 a patient to or from a care facility unless ordered by a court
13 of competent jurisdiction; or to infringe upon the rights of
14 patients under federal or state law relating to the involuntary
15 transfer, admission, or discharge to or from a care facility.

16 The bill requires the department of health and human services
17 to adopt rules to administer the bill.