

**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  
2 certain adults.

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

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  
9 633B.102.

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

11 e. A public guardian as that term is defined in chapter  
12 231E.

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

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

17 b. A hospital.

18 c. A medical clinic.

19 d. A nursing facility.

20 e. A rehabilitation facility as that term is defined in  
21 section 135C.1.

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

24 3. "*Department*" means the department of health and human  
25 services.

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

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

32 a. The patient's spouse.

33 b. An adult child or stepchild of the patient, or, if  
34 the patient has more than one adult child or stepchild, the  
35 decision agreed to by a majority of the adult children and

1 stepchildren reasonably available for consultation with the  
2 patient's physician.

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

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

11     6. "*Placement*" means the admission, discharge, or transfer  
12 of a patient.

13     7. "*Public assistance program*" means a state or federally  
14 funded program including but not limited to:

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

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

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

21     8. "*Unable to consent*" means a patient is unable to do any  
22 of the following:

23     *a.* Make rational and competent decisions regarding care  
24 facility placement, and options for health insurance coverage  
25 for recommended care.

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

29     Sec. 2. NEW SECTION. 144H.2 Inability to consent —  
30 certification.

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

35     1. The patient is unable to consent.

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

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

6 Sec. 3. NEW SECTION. 144H.3 Person authorized to consent —  
7 powers and duties.

8 1. Upon a physician's certification pursuant to section  
9 144H.2, a person authorized to consent is authorized to do any  
10 of the following:

11 a. Make decisions regarding the patient's care facility  
12 placement.

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

17 c. Take any other action expressly authorized by the  
18 patient.

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

21 a. The best interests of the patient.

22 b. The patient's rights.

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

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

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

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

34 Sec. 4. NEW SECTION. 144H.4 Care facility — duties.

35 A social worker, discharge planner, or other qualified

1 employee as designated by a patient's current care facility  
2 shall do all of the following with respect to a person  
3 authorized to consent:

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

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

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

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

18 2. The petition made must include the following  
19 information:

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

22 b. The name, address, and county of residence of the  
23 petitioner.

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

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

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

28 f. An affidavit from the patient's attending physician, that  
29 upon an examination of the patient, all of the following are  
30 true:

31 (1) The patient is unable to consent.

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

35 (3) The receiving care facility placement recommended by

1 the attending physician is in the patient's best interests.

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

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

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

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

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

18 *h.* An affidavit from a social worker, intake coordinator,  
19 or other qualified employee of the receiving care facility  
20 recommended by the patient's attending physician attesting to  
21 all of the following:

22 (1) The receiving care facility is the most appropriate  
23 facility available for the patient.

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

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

28 *i.* The name and address of the receiving care facility  
29 recommended by the attending physician.

30 3. The court shall grant the petition if the court finds all  
31 of the following:

32 *a.* The patient is unable to consent.

33 *b.* Despite good-faith efforts by the attending physician  
34 and the patient's current care facility, an authorized  
35 representative or person authorized to consent has not been

1 located.

2 *c.* Placement in the receiving care facility recommended  
3 by the patient's attending physician is in the patient's best  
4 interest.

5 *d.* Placement in the receiving care facility recommended  
6 by the patient's attending physician will provide the least  
7 restrictive and most appropriate level of care for the patient.

8 *e.* A social worker, intake coordinator, or other qualified  
9 employee of the receiving care facility recommended by the  
10 patient's attending physician has consented to the admission  
11 of the patient.

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

16 5. An order authorizing placement pursuant to this section  
17 shall remain in effect until the earliest of any of the  
18 following:

19 *a.* A date specified by the court not to exceed thirty  
20 calendar days from the date of issuance of the order.

21 *b.* The date the patient's placement in the receiving care  
22 facility as ordered by the court is completed.

23 *c.* The date an attending physician certifies that the  
24 patient is able to consent to the patient's placement in the  
25 receiving care facility.

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

30 *a.* A date specified by the court.

31 *b.* Notice of approval or denial of an application for health  
32 insurance coverage through a private insurer, or for a public  
33 assistance program is received by a qualified employee of the  
34 receiving facility.

35 *c.* The date that an attending physician certifies that the

1 patient is able to consent to the application for a public  
2 assistance program.

3 Sec. 6. NEW SECTION. 144H.6 Immunity — liability and  
4 professional discipline.

5 1. A person acting in good faith pursuant to this chapter  
6 shall not be subject to civil or criminal liability.

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

10 Sec. 7. NEW SECTION. 144H.7 Construction.

11 This chapter shall not be construed to do any of the  
12 following:

13 1. Require a care facility to accept the transfer or  
14 admission of a patient, unless otherwise ordered by a court of  
15 competent jurisdiction.

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

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

22 Sec. 8. NEW SECTION. 144H.8 Rules.

23 The department shall promulgate rules pursuant to chapter  
24 17A as necessary to administer this chapter.

25 EXPLANATION

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

28 This bill relates to care facility placement decisions for  
29 certain adults.

30 The bill defines "authorized representative" as an agent,  
31 attorney in fact, conservator, or guardian. "Person authorized  
32 to consent" (authorized person) is defined as a member of  
33 any of the following groups of individuals, in order of  
34 priority, that is willing and able to consent, refuse to  
35 consent, or withdraw consent on a patient's behalf: the

1 patient's spouse, the adult children or stepchildren, the  
2 parent or parents of a patient, or the adult siblings or  
3 stepsiblings of the patient. "Care facility" is defined  
4 as a facility that provides a patient with health-related  
5 and personal care services, including a facility providing  
6 home and community-based services, hospital, medical clinic,  
7 nursing facility, rehabilitation facility, or residential care  
8 facility. "Placement" is defined as the admission, discharge,  
9 or transfer of a patient.

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

19 The bill provides that an authorized person shall act in  
20 good faith and in the best interests of the patient, consistent  
21 with the patient's rights and wishes. The bill authorizes  
22 the authorized person, upon the physician's certification, to  
23 make care facility placement decisions and assist the patient  
24 in applying for health insurance coverage through private  
25 insurance, or for a public assistance program, as necessary to  
26 facilitate placement.

27 The bill provides that the authority of an authorized person  
28 expires when the placement decided by the authorized person is  
29 completed and notice of approval or denial of an application  
30 for health insurance coverage through a private insurer, or  
31 for a public assistance program, if applicable, is received by  
32 a qualified employee of the receiving care facility, or when  
33 an authorized representative or authorized person of higher  
34 priority is located.

35 The bill requires a social worker, discharge planner, or

1 other qualified employee as designated by the current care  
2 facility of the patient to inform an authorized person of  
3 the person's powers and duties and to assist the person with  
4 identifying a receiving care facility for the patient that will  
5 provide the least restrictive and appropriate level of care for  
6 the patient as recommended by the certifying physician.

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

33 The bill provides that the court's order shall be effective  
34 until a date specified by the court not to exceed 30 calendar  
35 days from the date of the issuance of the order, the completion

1 of any placement of the patient in the receiving care facility  
2 as ordered, or the date that a physician certifies that the  
3 patient is able to consent to the patient's placement in a care  
4 facility.

5 The bill provides that a court order authorizing a qualified  
6 employee of a receiving facility to apply for a public  
7 assistance program on a patient's behalf shall be effective  
8 until a date specified by the court, the date notice of  
9 approval or denial of an application for health insurance  
10 coverage through a private insurer, or for a public assistance  
11 program is received by a qualified employee of the receiving  
12 facility, or the date that an attending physician certifies  
13 that the patient is able to consent to the application for a  
14 public assistance program.

15 The bill provides immunity from civil or criminal liability  
16 to a person acting in good faith according to the provisions of  
17 the bill. Immunity from licensee discipline is also provided  
18 for licensees acting in good faith.

19 The bill is not to be construed to require a health care  
20 facility to accept the transfer or admission of a patient  
21 unless otherwise ordered by a court of competent jurisdiction;  
22 to repeal, abrogate, or impair the operation of any other  
23 federal or state laws governing the transfer, admission, or  
24 discharge of a patient to or from a care facility unless  
25 ordered by a court of competent jurisdiction; or to infringe  
26 upon the rights of patients under federal or state law relating  
27 to the involuntary transfer, admission, or discharge to or from  
28 a care facility.

29 The bill requires the department of health and human  
30 services to adopt rules to administer the bill.