

House File 2422 - Reprinted

HOUSE FILE 2422
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO HSB 551)

(As Amended and Passed by the House March 14, 2012)

A BILL FOR

1 An Act relating to sex offender notification in a nursing
2 facility, residential care facility, or assisted living
3 program, providing penalties, and including effective date
4 provisions.

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

1 Section 1. Section 135C.3, subsection 1, Code 2011, is
2 amended to read as follows:

3 1. a. A licensed nursing facility shall provide an
4 organized twenty-four-hour program of services commensurate
5 with the needs of its residents and under the immediate
6 direction of a licensed nurse. Medical and nursing services
7 must be provided under the direction of either a house
8 physician or an individually selected physician. Surgery or
9 obstetrical care shall not be provided within the facility.
10 An admission to the nursing facility must be based on a
11 physician's written order certifying that the individual being
12 admitted requires no greater degree of nursing care than the
13 facility to which the admission is made is licensed to provide
14 and is capable of providing.

15 b. A nursing facility is not required to admit an individual
16 through court order, referral, or other means without the
17 express prior approval of the administrator or owner of the
18 nursing facility.

19 Sec. 2. Section 135C.4, Code 2011, is amended to read as
20 follows:

21 **135C.4 Residential care facilities.**

22 1. Each facility licensed as a residential care facility
23 shall provide an organized continuous twenty-four-hour program
24 of care commensurate with the needs of the residents of the
25 home and under the immediate direction of a person approved
26 and certified by the department whose combined training
27 and supervised experience is such as to ensure adequate and
28 competent care.

29 2. All admissions to residential care facilities shall be
30 based on an order written by a physician certifying that the
31 individual being admitted does not require nursing services or
32 that the individual's need for nursing services can be avoided
33 if home and community-based services, other than nursing care,
34 as defined by this chapter and departmental rule, are provided.

35 3. For the purposes of this section, the home and

1 community-based services to be provided shall be limited to the
2 type included under the medical assistance program provided
3 pursuant to chapter 249A, shall be subject to cost limitations
4 established by the department of human services under the
5 medical assistance program, and except as otherwise provided by
6 the department of inspections and appeals with the concurrence
7 of the department of human services, shall be limited in
8 capacity to the number of licensed residential care facilities
9 and the number of licensed residential care facility beds in
10 the state as of December 1, 2003.

11 4. A residential care facility is not required to admit
12 an individual through court order, referral, or other means
13 without the express prior approval of the administrator or
14 owner of the residential care facility.

15 Sec. 3. NEW SECTION. 135C.23A Sex offender notification.

16 1. Upon commitment of a person required to register as
17 a sex offender as provided in section 692A.103 to a nursing
18 facility, residential care facility, or assisted living program
19 as defined in section 231C.2, the clerk of the committing court
20 shall notify the department of inspections and appeals and the
21 admitting facility or program.

22 2. Prior to admission of a resident or tenant to a nursing
23 facility, residential care facility, or assisted living
24 program, the facility or program shall access and search the
25 sex offender registry established in chapter 692A to determine
26 whether the resident or tenant is a person required to register
27 as a sex offender, as provided in section 692A.103.

28 3. Upon the admission of a person required to register as a
29 sex offender, a nursing facility, residential care facility, or
30 assisted living program shall provide notice of the admission,
31 in accordance with the federal Health Insurance Portability and
32 Accountability Act of 1996, Pub. L. No. 104-191, other state
33 and federal regulations, and rules adopted by the department,
34 to all of the following persons:

35 a. Residents or tenants of the facility or program.

1 *b.* The emergency contact person or next of kin for residents
2 or tenants of the facility or program.

3 *c.* Operators, owners, managers, or employees of the facility
4 or program.

5 *d.* Visitors to the facility or program.

6 *e.* The sheriff for the county in which the facility or
7 program is located. The sheriff shall notify local law
8 enforcement agencies.

9 4. Upon the admission of a person required to register as a
10 sex offender, a nursing facility, residential care facility, or
11 assisted living program shall develop and implement a written
12 safety plan for each such person in accordance with rules
13 adopted by the department.

14 5. The department shall establish by rule, all of the
15 following:

16 *a.* The requirements of the notice required under this
17 section. The rules shall include but are not limited to
18 provisions for the method of notice and time of notice to each
19 of the persons enumerated in subsection 3.

20 *b.* The requirements of a safety plan for persons required
21 to register as a sex offender who are admitted by a nursing
22 facility, residential care facility, or assisted living
23 program. The rules shall include but are not limited to all of
24 the following:

25 (1) A plan for the safety of residents, tenants, and staff
26 of the facility or program.

27 (2) A plan for the safety of others when community functions
28 are held at a facility or program and when a person required to
29 register as a sex offender is not on the premises of a facility
30 or program but the person remains within the care, custody, and
31 control of the facility or program.

32 (3) A provision to establish the responsibilities of a
33 nursing facility, residential care facility, and assisted
34 living program and the operators, owners, managers, and
35 employees of facilities and programs in implementing a safety

1 plan.

2 (4) A provision for the timely development and
3 implementation of a safety plan.

4 6. The department shall work with interested stakeholders
5 in developing the proposed rules under this section.

6 7. A violation of this section is subject to the imposition
7 of a civil penalty in accordance with rules adopted by the
8 department pursuant to this section.

9 Sec. 4. Section 231C.3, subsection 9, Code 2011, is amended
10 to read as follows:

11 9. An assisted living program shall comply with ~~section~~
12 sections 135C.23A and 135C.33.

13 Sec. 5. Section 231C.5A, Code 2011, is amended to read as
14 follows:

15 **231C.5A Assessment of tenants — program eligibility.**

16 1. An assisted living program receiving reimbursement
17 through the medical assistance program under chapter 249A shall
18 assist the department of veterans affairs in identifying, upon
19 admission of a tenant, the tenant's eligibility for benefits
20 through the United States department of veterans affairs. The
21 assisted living program shall also assist the commission of
22 veterans affairs in determining such eligibility for tenants
23 residing in the program on July 1, 2009. The department of
24 inspections and appeals, in cooperation with the department of
25 human services, shall adopt rules to administer this section,
26 including a provision that ensures that if a tenant is eligible
27 for benefits through the United States department of veterans
28 affairs or other third-party payor, the payor of last resort
29 for reimbursement to the assisted living program is the medical
30 assistance program. The rules shall also require the assisted
31 living program to request information from a tenant or tenant's
32 personal representative regarding the tenant's veteran status
33 and to report to the department of veterans affairs only the
34 names of tenants identified as potential veterans along with
35 the names of their spouses and any dependents. Information

1 reported by the assisted living program shall be verified by
2 the department of veterans affairs.

3 2. An assisted living program is not required to enter
4 into a lease or occupancy agreement with an individual through
5 court order, referral, or other means without the express
6 prior approval of the manager or owner of the assisted living
7 program.

8 Sec. 6. Section 231C.14, subsection 1, Code 2011, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. d. Noncompliance with section 135C.23A.

11 Sec. 7. Section 602.8102, Code 2011, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 152. Notify the department of inspections
14 and appeals and the admitting entity upon commitment of a
15 person required to register as a sex offender as provided in
16 section 692A.103 to a nursing facility or residential care
17 facility as defined in section 135C.1, or assisted living
18 program as defined in section 231C.2.

19 Sec. 8. PLACEMENT OF PERSONS REQUIRED TO REGISTER.

20 1. For purposes of this section, "adequate placement" means
21 a placement that will provide the level of care necessary for
22 a person including the level of care provided by a nursing
23 facility or residential care facility.

24 2. For the period beginning July 1, 2012, through June
25 30, 2013, the department of human services, in compliance
26 with federal and state law, shall secure adequate placements
27 for persons required to register as a sex offender pursuant
28 to chapter 692A who are being released from the custody of
29 the department of corrections and require the type of medical
30 and personal care provided by a nursing facility, residential
31 care facility, or assisted living program; who are being
32 discharged or transferred from nursing facilities, residential
33 care facilities, or assisted living programs pursuant to a
34 provision of this Act; or who require the type of medical and
35 personal care provided by nursing facilities, residential care

1 facilities, or assisted living programs when the persons are
2 unable to gain access to a facility or program because the
3 persons are required to register on the sex offender registry.

4 3. The department of human services may use a state facility
5 to provide care for such persons or may conduct a request for
6 proposal process to contract with a private facility to care
7 for such persons. A request for proposals shall identify the
8 reimbursement rate and the necessary training for staff in the
9 facility or program.

10 4. The department of human services shall secure an adequate
11 placement for such a person within ten business days of being
12 notified by the department of corrections, the department of
13 inspections and appeals, or a nursing facility, residential
14 care facility, or assisted living program that placement is
15 needed for such person, provided that such period shall not
16 commence until the department of public safety receives and
17 approves registration data and makes such data available on
18 the sex offender registry internet site pursuant to section
19 692A.121, subsection 12.

20 Sec. 9. WORKFORCE DEVELOPMENT WORKGROUP.

21 1. If a workgroup to address issues connected with workforce
22 development related to mental health and disability services
23 is established by or as a result of legislation enacted by the
24 2012 regular session of the Eighty-fourth General Assembly, the
25 workgroup shall also address issues connected with ensuring
26 that an adequate workforce is available in the state to provide
27 services to persons who have a history of committing sexual
28 offenses and have been determined to be likely to reoffend.

29 2. a. If a workgroup to address issues connected with
30 workforce development for mental health and disability services
31 is not established by or as a result of legislation enacted by
32 the 2012 regular session of the Eighty-fourth General Assembly,
33 the department of human services shall convene and provide
34 support to a health and mental health services for sexual
35 offender workforce development workgroup to address issues

1 connected with ensuring that an adequate workforce is available
2 in the state to provide health and mental health services to
3 persons who have a history of committing sexual offenses and
4 have been determined to be likely to reoffend. The workgroup
5 shall report at least annually to the governor and general
6 assembly providing findings, recommendations, and financing
7 information concerning the findings and recommendations.

8 b. The membership of the workgroup shall include all of the
9 following:

10 (1) The director of the department of aging or the
11 director's designee.

12 (2) The director of the department of corrections or the
13 director's designee.

14 (3) The director of the department of education or the
15 director's designee.

16 (4) The director of human services or the director's
17 designee.

18 (5) The director of the department of public health or the
19 director's designee.

20 (6) The director of the department of workforce development
21 or the director's designee.

22 (7) At least three individuals who have a history of
23 committing sexual offenses and have been determined likely to
24 reoffend who are receiving mental health or health services or
25 involved relatives of such individuals.

26 (8) At least three providers of mental health or health
27 services for individuals who have a history of committing
28 sexual offenses and have been determined likely to reoffend.

29 (9) Other persons identified by the workgroup.

30 c. In addition to the members identified in paragraph
31 "b", the membership of the workgroup shall include four
32 members of the general assembly serving in a ex officio,
33 nonvoting capacity. One member shall be designated by each
34 of the following: the majority leader of the senate, the
35 minority leader of the senate, the speaker of the house of

1 representatives, and the minority leader of the house of
2 representatives. A legislative member serves for a term as
3 provided in section 69.16B.

4 d. Except as provided in paragraph "c" for legislative
5 appointments, the workgroup shall determine its own rules of
6 procedure, membership terms, and operating provisions.

7 Sec. 10. FACILITY FOR SEXUAL OFFENDERS COMMITTEE AND
8 REPORT.

9 1. The department of inspections and appeals shall
10 establish and facilitate the activities of a committee of
11 stakeholders to examine options for designating a facility
12 to provide care for persons in this state who have a history
13 of committing sexual offenses and have been determined to be
14 likely to reoffend.

15 2. The membership of the committee shall include but is not
16 limited to the following:

17 a. Representatives of the departments of inspections
18 and appeals, human services, public health, corrections, and
19 aging, the office of the state public defender, the office of
20 the citizens' aide, the office of the state long-term care
21 ombudsman, and the judicial branch.

22 b. Consumers of services provided by health care facilities
23 and family members of consumers.

24 c. Representatives of the health care industry and industry
25 associations.

26 d. Direct care workers employed by health care facilities.

27 e. Representatives from the Iowa legal aid.

28 f. Representatives from AARP Iowa.

29 g. Representatives from the Iowa civil liberties union.

30 h. Other stakeholders as the department of inspections and
31 appeals deems necessary.

32 i. Four ex officio, nonvoting members from the general
33 assembly with not more than one member from each chamber being
34 from the same political party. The two senators shall be
35 appointed, one each, by the majority leader of the senate and

1 the minority leader of the senate. The two representatives
2 shall be appointed, one each, by the speaker of the house
3 of representatives and the minority leader of the house of
4 representatives.

5 3. The committee shall discuss and make recommendations on
6 all of the following:

7 a. Options to create a new facility or assist an existing
8 facility to expand services to provide care for elderly persons
9 who are no longer under judicial control, but have a history
10 of committing sexual offenses and have been determined to
11 be likely to reoffend. The committee shall identify the
12 characteristics of a client for such a facility, the need for
13 such a facility, options for creating a new facility to house
14 such persons, options for the expansion of an existing facility
15 to house such persons, options for using any alternative
16 facilities for such purposes, options for a public-private
17 partnership for such a facility, options for using part of
18 a mental health institute to house such persons, options to
19 qualify a facility for Medicaid reimbursement, cost projections
20 for any recommendations, regulatory challenges, and other
21 information deemed relevant by the department of inspections
22 and appeals.

23 b. The responsibility of the court, the clerk of the
24 district court, the department of corrections, or any other
25 entity, department, or person to inform a nursing facility,
26 residential care facility, or an assisted living program of the
27 admission of a person who has a history of committing sexual
28 offenses.

29 c. The responsibility of the court, clerk of the district
30 court, department of corrections, a facility, or any other
31 entity, department, or person to notify persons of the
32 discharge of a person who has a history of committing sexual
33 offenses from a nursing facility, residential care facility, or
34 assisted living program.

35 d. The requirements of a treatment safety plan for a person

1 admitted to a nursing facility, residential care facility,
2 or assisted living program who has a history of committing
3 sexual offenses. The treatment safety plan shall address the
4 procedure for notifying other residents of the residency of a
5 person required to register as a sex offender.

6 e. The establishment of a formal process for the department
7 of inspections and appeals to follow when completing facility
8 or assisted living program inspections or surveys.

9 f. The establishment of a system for the judicial branch to
10 identify facilities with the capacity to provide an appropriate
11 placement for a person requiring commitment when the person
12 also has a history of committing sexual offenses.

13 4. The committee shall provide a report detailing its
14 findings and recommendations to the governor and the general
15 assembly by December 14, 2012.

16 Sec. 11. RULES. The department of inspections and appeals
17 shall adopt rules to administer the provisions of this Act.

18 Sec. 12. CURRENT RESIDENTS AND TENANTS — ACCESS AND SEARCH
19 OF SEX OFFENDER REGISTRY AND NOTIFICATION. A nursing facility,
20 residential care facility, or assisted living program, within
21 three months of the adoption of the rules by the department of
22 inspections and appeals regarding notification of the admission
23 of persons required to register as a sex offender to a facility
24 or program and development and implementation of safety plans
25 relating to such admitted persons, shall access and search the
26 sex offender registry established in chapter 692A for persons
27 who were residents or tenants of a facility or program prior to
28 the adoption of the rules and who remain residents or tenants
29 of the facility or program after the adoption of the rules.
30 Upon determining that a resident or tenant is a person required
31 to register as a sex offender, the facility or program shall,
32 within three months of the adoption of the rules, work with
33 the department of inspections and appeals and the department
34 of human services to transfer a sex offender living in the
35 facility or program to a state facility, based on the sex

1 offender status as an endangerment to the safety of individuals
2 in the facility or program, or notify persons as required by
3 section 135C.23A and the rules adopted pursuant to that section
4 and develop and implement a safety plan as required by section
5 135C.23A and the rules adopted pursuant to that section. The
6 rules shall provide that, for purposes of this section, a
7 nursing facility, residential care facility, or assisted living
8 program has the right to discharge a current resident or tenant
9 based solely on the person's status as a sex offender as an
10 endangerment to the safety of individuals in the facility or
11 program.

12 Sec. 13. EFFECTIVE UPON ENACTMENT. This Act, being deemed
13 of immediate importance, takes effect upon enactment.