

and the instrument or power of attorney sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead rights and inchoate dower rights surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

Sec. 2. Section 597.5, Code 1991, is amended to read as follows:
597.5 ATTORNEY IN FACT.

A husband or wife may constitute the other spouse as the husband's or wife's attorney in fact, to control and dispose of the husband's or wife's property, including the relinquishment of homestead rights and surviving spouse's statutory share in the homestead, as provided in section 561.13, for their mutual benefit, and may revoke the appointment, the same as other persons.

Approved May 6, 1991

CHAPTER 107

INSPECTIONS AND APPEALS DEPARTMENT — HEALTH CARE AND OTHER PROVISIONS

S.F. 412

AN ACT relating to the department of inspections and appeals by expanding its investigatory authority, providing that certain information regarding health care facilities be available to the public, relating to health care facilities under receivership, providing additional grounds for suspension and revocation of certain licenses issued by the department, increasing criminal penalties for wanton neglect of a resident of a health care facility, and providing an effective date and a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 10A.402, subsection 7, Code 1991, is amended to read as follows:

7. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food stamp program, and the aid to dependent children program and any other state or federal benefit assistance program.

Sec. 2. Section 135B.12, Code 1991, is amended to read as follows:
135B.12 CONFIDENTIALITY.

The department's final findings or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association with respect to compliance by a hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation

of a license under this chapter. The name of a person who files a complaint with the department shall remain confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or agents involved in the investigation of the complaint.

Sec. 3. Section 135C.30, subsection 4, paragraph d, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Expenses incurred by the facility in the ordinary course of business, such as employees' salaries and accounts receivable payable.

Sec. 4. Section 135C.37, unnumbered paragraph 2, Code 1991, is amended by striking the paragraph.

Sec. 5. Section 135C.38, subsection 1, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

1. a. Upon receipt of a complaint made in accordance with section 135C.37, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint.

b. The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, "a preponderance of the evidence standard" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. "A preponderance of the evidence standard" does not require that the investigator personally witnessed the alleged violation.

c. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

Sec. 6. Section 135C.38, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. a. The complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the long-term care resident's advocate, established pursuant to section

249D.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

Sec. 7. Section 137A.9, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

137A.9 SUSPENSION OR REVOCATION OF LICENSES.

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

Sec. 8. NEW SECTION. **137B.11 SUSPENSION OR REVOCATION OF LICENSES.**

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's food service establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the food service establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

Sec. 9. Section 137C.10, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

137C.10 SUSPENSION OR REVOCATION OF LICENSES.

A regulatory authority may suspend or revoke a license issued to a person under the Iowa hotel sanitation code if any of the following occurs:

1. The person's hotel does not conform to a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.
2. The person violates a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the hotel and is convicted of a serious misdemeanor or a more serious offense as a result.

Sec. 10. NEW SECTION. **137D.8 SUSPENSION OR REVOCATION OF LICENSES.**

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's home food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the home food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

Sec. 11. Section 249A.2, Code 1991, is amended by adding the following new subsection: NEW SUBSECTION. 7A. "Provider" means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to recipients under this chapter.

Sec. 12. NEW SECTION. **249A.8 FRAUDULENT PRACTICE.**

A person who knowingly makes or causes to be made false statements or misrepresentations of material facts in application for payment of services or merchandise rendered or purportedly rendered by a provider participating in the medical assistance program under this chapter is guilty of a fraudulent practice.

Sec. 13. Section 726.7, Code 1991, is amended to read as follows:

726.7 WANTON NEGLECT OF A RESIDENT OF A HEALTH CARE FACILITY.

1. A person commits wanton neglect of a resident of a health care facility when the person knowingly acts in a manner likely to be injurious to the physical, or mental or moral welfare of a resident of a health care facility as defined in section 135C.1. Wanton neglect of a resident of a health care facility is a serious misdemeanor.

2. A person who commits wanton neglect resulting in serious injury to a resident of a health care facility is guilty of a class "C" felony.

3. A person who commits wanton neglect not resulting in serious injury to a resident of a health care facility is guilty of an aggravated misdemeanor.

Sec. 14. Sections 1 and 2 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 6, 1991

CHAPTER 108**CIVIL COMMITMENT PROCEEDINGS***S.F. 453*

AN ACT relating to judicial officers having jurisdiction over civil commitment proceedings and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 125.77, Code 1991, is amended to read as follows:
125.77 SERVICE OF NOTICE.

Upon the filing of an application for involuntary commitment, the clerk shall docket the case and immediately notify a district court judge, a district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. The clerk shall send copies of the application and supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 125.81, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 2. Section 125.81, unnumbered paragraph 1, and subsection 1, Code 1991, are amended to read as follows:

If a person filing an application requests that a respondent be taken into immediate custody, and the judge court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a chronic substance abuser who is likely to injure the person or other persons if allowed to remain at liberty, the judge court may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The judge court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, in accordance with subsection 1 if possible, and if not, then in accordance with subsection 2 or, only if neither of these alternatives is available in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the judge