

CHAPTER 156**INSPECTION AND ASSESSMENT OF HEALTH CARE
FACILITIES AND ASSISTED LIVING PROGRAMS**

S.F. 433

AN ACT relating to the classification and assessment of violations in health care facilities and assisted living programs and providing penalties.

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

Section 1. NEW SECTION. 135C.16A INSPECTORS — CONFLICTS OF INTEREST.

1. Any of the following circumstances disqualifies an inspector from inspecting a particular health care facility under this chapter:

a. The inspector currently works or, within the past two years, has worked as an employee or employment agency staff at the health care facility, or as an officer, consultant, or agent for the health care facility to be inspected.

b. The inspector has any financial interest or any ownership interest in the facility. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute financial or ownership interest.

c. The inspector has an immediate family member who has a relationship with the facility as described in paragraph “a” or “b”.

d. The inspector has an immediate family member who currently resides in the facility.

2. For purposes of this section, “immediate family member” means the same as set forth in 42 C.F.R. § 488.301, and includes a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

Sec. 2. NEW SECTION. 135C.35 TRAINING OF INSPECTORS.

1. Subject to the availability of funding, all nursing facility inspectors shall receive twelve hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects.

2. An inspector shall not be personally liable for financing the training required under subsection 1.

3. The department shall consult with the collective bargaining representative of the inspector in regard to the training required under this section.

Sec. 3. Section 135C.36, subsection 2, Code 2009, is amended to read as follows:

2. A Class II violation is one which has a direct or immediate relationship to the health, safety or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect and full recognition of the resident’s dignity and individuality, in violation of a specific rule adopted by the department, may constitute a Class II violation. A violation of section 135C.14, subsection 8, or section 135C.31 and rules adopted under those sections shall be at least a Class II violation and may be a Class I violation. A Class II violation shall be corrected within a stated period of time determined by the department and specified in the citation issued under section 135C.40. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown. A licensee is subject to a penalty of not less than one hundred nor more than five hundred dollars for each Class II violation for which the licensee’s facility is cited, however the director may, upon written request of the facility, waive the penalty if the violation is corrected within the time specified in the citation. The department shall adopt rules in accordance with chapter 17A establishing criteria for the granting or denial of a waiver request.

Sec. 4. Section 135C.36, Code 2009, is amended by adding the following new subsections:
NEW SUBSECTION. 4. Any state penalty, including a fine or citation, issued as a result of the federal survey and certification process shall be dismissed if the corresponding federal deficiency or citation is dismissed or removed.

NEW SUBSECTION. 5. If a facility self-identifies a deficient practice prior to the on-site visit inspection, there has been no complaint filed with the department related to that specific deficient practice, and the facility corrects such practice prior to an inspection, no citation shall be issued or fine assessed pursuant to subsection 2 or 3 except for those penalties arising pursuant to section 135C.33; 481 IAC § 57.12(2)(d), 57.12(3), 57.15(5), 57.25(1), 57.39, 58.11(3), 58.14(5), 58.19(2)(a), 58.19(2)(h), 58.28(1)(a), 58.43, 62.9(5), 62.15(1)(a), 62.19(2)(c), 62.19(7), 62.23(23) – (25), 63.11(2)(d), 63.11(3), 63.23(1)(a), 63.37, 64.4(9), 64.33, 64.34, 65.9(5), 65.15, or 65.25(3) – (5), or the successor to any of such rules; or 42 C.F.R. § 483.420(d), 483.460(c)(4), or 483.470(j), or the successor to any of such federal regulations.

Sec. 5. Section 135C.40, subsection 1, Code 2009, is amended to read as follows:

1. If the director determines, based on the findings of an inspection or investigation of a health care facility, that the facility is in violation of this chapter or rules adopted under this chapter, the director within five working days after making the determination, may issue a written citation to the facility. The citation shall be served upon the facility personally, by electronic mail, or by certified mail, except that a citation for a Class III violation may be sent by ordinary mail. Each citation shall specifically describe the nature of the violation, identifying the Code section or subsection or the rule or standard violated, and the classification of the violation under section 135C.36. Where appropriate, the citation shall also state the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible. Failure to correct a violation within the time specified, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of fifty dollars for each day that the violation continues after the time specified for correction.

a. If a facility licensed under this chapter is subject to or will be subject to denial of payment including payment for Medicare or medical assistance under chapter 249A, or denial of payment for all new admissions pursuant to 42 C.F.R. § 488.417, and submits a plan of correction relating to a statement of deficiencies or a response to a citation issued under rules adopted by the department and the department elects to conduct an on-site revisit inspection, the department shall commence the revisit inspection within the shortest time feasible of the date that the plan of correction is received, or the date specified within the plan of correction alleging compliance, whichever is later.

b. If the department recommends the issuance of federal remedies pursuant to 42 C.F.R. § 488.406(a)(2) or (a)(3), relating to an inspection conducted by the department, the department shall issue the statement of deficiencies within twenty-four hours of the date that the centers for Medicare and Medicaid services of the United States department of health and human services was notified of the recommendation for the imposition of remedies.

c. The facility shall be provided an exit interview at the conclusion of an inspection and the facility representative shall be informed of all issues and areas of concern related to the deficient practices. The department may conduct the exit interview either in person or by telephone, and a second exit interview shall be provided if any additional issues or areas of concern are identified. The facility shall be provided two working days from the date of the exit interview to submit additional or rebuttal information to the department.

Sec. 6. NEW SECTION. 135C.40A ISSUANCE OF FINAL FINDINGS.

The department shall issue the final findings of an inspection or investigation of a health care facility within ten working days after completion of the on-site inspection or investigation. The final findings shall be served upon the facility personally, by electronic mail, or by certified mail.

Sec. 7. Section 135C.41, subsection 2, Code 2009, is amended to read as follows:

2. Notify the director that the facility desires to contest the citation and, in the case of citations for Class I, Class II, or Class III violations, request an informal conference with a representative of the department.

Sec. 8. Section 135C.43, subsection 1, Code 2009, is amended to read as follows:

1. A facility which desires to ~~contest a citation for a Class I violation, or to further contest an affirmed or modified citation for a~~ Class I, Class II, or Class III violation, may do so in the manner provided by chapter 17A for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days ~~after service of a citation for a Class I violation, or within five days~~ after the informal conference or after receipt of the written explanation of the representative delegated to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation for a Class I, Class II, or Class III violation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

Sec. 9. NEW SECTION. 135C.43A REDUCTION OF PENALTY AMOUNT.

If a facility has been assessed a penalty, does not request a formal hearing pursuant to section 135C.43 or withdraws its request for a formal hearing within thirty days of the date that the penalty was assessed, and the penalty is paid within thirty days of the receipt of notice or service, the amount of the penalty shall be reduced by thirty-five percent. The citation which includes the civil penalty shall include a statement to this effect.

Sec. 10. NEW SECTION. 135C.44A DOUBLE FINES FOR INTENTIONAL VIOLATIONS.

The penalties authorized by section 135C.36 shall be doubled for each Class I violation when the violation is due to an intentional act by the facility in violation of a provision of this chapter or a rule of the department.

Sec. 11. Section 231C.2, Code 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 10A. "Significant change" means a major decline or improvement in the tenant's status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant's mental, physical, or functional health status.

NEW SUBSECTION. 10B. "Substantial compliance" means a level of compliance with this chapter and rules adopted pursuant to this chapter such that any identified insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm. "Substantial compliance" constitutes compliance with the rules of this chapter.

Sec. 12. Section 231C.3, subsection 1, paragraph c, Code 2009, is amended to read as follows:

c. Standards for tenant evaluation or assessment, and service plans, which may vary in accordance with the nature of the services provided or the status of the tenant. When a tenant needs personal care or health-related care, the service plan shall be updated within thirty days of occupancy and as needed with significant change, but not less than annually.

Sec. 13. NEW SECTION. 231C.3A MONITORING — CONFLICTS OF INTEREST.

1. Any of the following circumstances disqualifies a monitor from inspecting a particular assisted living program under this chapter:

a. The monitor currently works or, within the past two years, has worked as an employee or employment agency staff at the program, or as an officer, consultant, or agent for the program to be monitored.

b. The monitor has any financial interest or any ownership interest in the program. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute financial or ownership interest.

c. The monitor has an immediate family member who has a relationship with the program as described in paragraph "a" or "b".

d. The monitor has an immediate family member who currently resides in the program.

2. For purposes of this section, "immediate family member" means a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

Sec. 14. Section 231C.10, subsection 1, paragraph f, Code 2009, is amended by striking the paragraph and inserting in lieu thereof the following:

f. Failure to protect tenants from dependent adult abuse as defined in section 235E.1.

Sec. 15. Section 231C.10, subsection 2, Code 2009, is amended to read as follows:

2. The department may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the assisted living program of reasonable conditions within a reasonable period of time as set by the department so as to permit the program to commence or continue the operation of the program pending full substantial compliance with this chapter or the rules adopted pursuant to this chapter. If the assisted living program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An assisted living program shall not be operated on a conditional certificate for more than one year.

Sec. 16. Section 231C.12, Code 2009, is amended to read as follows:

231C.12 DEPARTMENT NOTIFIED OF CASUALTIES.

The department shall be notified ~~within twenty-four hours~~ no later than the next working day, by the most expeditious means available, of any accident causing substantial major injury or death, and any substantial fire or natural or other disaster occurring at or near an assisted living program.

Sec. 17. Section 231C.14, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 4. If a program assessed a penalty does not request a formal hearing pursuant to chapter 17A or withdraws its request for a formal hearing within thirty days of the date the penalty was assessed, the penalty shall be reduced by thirty-five percent, if the penalty is paid within thirty days of the issuance of a demand letter issued by the department. The demand letter, which includes the civil penalty, shall include a statement to this effect.

Sec. 18. NEW SECTION. 231C.20 LIMITATION ON PENALTIES.

The department shall not impose duplicate civil penalties for the same set of facts and circumstances. All monitoring revisits by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

Approved May 26, 2009