

CHAPTER 1040

ENTITIES REGULATED BY THE DEPARTMENT OF INSPECTIONS AND APPEALS — MISCELLANEOUS PROVISIONS

H.F. 2365

AN ACT relating to employment, disciplinary, and other procedures for entities regulated by the department of inspections and appeals, and including applicability provisions.

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

Section 1. Section 135B.34, subsection 2, paragraph b, subparagraph (2), Code 2014, is amended to read as follows:

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 ~~or chapter 321~~, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 2. Section 135B.34, subsection 5, paragraphs a and b, Code 2014, are amended to read as follows:

a. If a person employed by a hospital that is subject to this section is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the hospital of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The hospital shall act to verify the information within ~~forty-eight hours~~ seven calendar days of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued. The hospital may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

b. If a hospital receives credible information, as determined by the hospital, that a person employed by the hospital has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the hospital of such information within the period required under paragraph "a", the hospital shall act to verify the credible information within ~~forty-eight hours~~ seven calendar days of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued.

Sec. 3. Section 135C.10, subsection 9, Code 2014, is amended to read as follows:

9. In the case of an application by an existing licensee for a new or newly acquired facility, continuing or repeated failure of the licensee to operate any previously licensed facility or facilities in compliance with the provisions of this chapter ~~or of~~, the rules adopted pursuant to ~~it~~ this chapter, or equivalent provisions that the facility is subject to in this state or any other state.

Sec. 4. Section 135C.10, Code 2014, is amended by adding the following new subsection:

NEW SUBSECTION. 11. Intentionally preventing or interfering with or attempting to prevent or interfere in any way with the performance by any duly authorized representative of the department of the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this subsection, "lawful enforcement" includes but is not limited to the following:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility unless otherwise protected from disclosure by operation of law.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 5. Section 135C.11, subsection 2, Code 2014, is amended to read as follows:

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. Copies of the transcript may be obtained by an interested party upon payment of the cost of preparing the copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the department's rules. The director may, after advising ~~the certified volunteer long-term care ombudsman~~ a representative of the office of long-term care ombudsman, either proceed in accordance with section 135C.30, or remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when the director finds that the health or safety of residents of the health care facility requires such action on an emergency basis. ~~The fact that a certified volunteer long-term care ombudsman has not been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.~~

Sec. 6. Section 135C.13, Code 2014, is amended to read as follows:

135C.13 Judicial review.

Judicial review of any action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be preserved except when the director, ~~with the advice and consent~~ after advising a representative of the certified volunteer office of long-term care ombudsman, determines that the health, safety, or welfare of the residents of the facility is in immediate danger, in which case the director may order the immediate removal of such residents. ~~The fact that a certified volunteer long-term care ombudsman has not been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this section with respect to that facility.~~

Sec. 7. Section 135C.14, subsection 8, paragraph d, Code 2014, is amended to read as follows:

d. The notification of ~~certified volunteer~~ the office of long-term care ombudsmen ~~ombudsman~~ by the department of all complaints relating to health care facilities and the involvement of the ~~certified volunteer~~ office of long-term care ombudsmen ~~ombudsman~~ in resolution of the complaints.

Sec. 8. Section 135C.16, subsection 3, Code 2014, is amended to read as follows:

3. An ~~inspector~~ authorized representative of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An ~~inspector~~ authorized representative of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An ~~inspector~~ authorized representative of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an ~~investigator~~ authorized representative of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph "b", shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility, and an authorized representative of the office of long-term care ombudsman shall have the same right with respect to any nursing facility or residential care facility. If any such ~~inspector~~ authorized representative has probable

cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an ~~inspector~~ authorized representative is denied entry thereto for the purpose of making an inspection, the ~~inspector~~ authorized representative may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

Sec. 9. Section 135C.17, Code 2014, is amended to read as follows:

135C.17 Duties of other departments.

It shall be the duty of the department of human services, state fire marshal, office of long-term care ombudsman, and the officers and agents of other state and local governmental units, and the designated protection and advocacy agency to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident of any health care facility. It shall be the duty of the department to cooperate with the protection and advocacy agency and the office of long-term care ombudsman by responding to all reasonable requests for assistance and information as required by federal law and this chapter.

Sec. 10. Section 135C.19, subsection 2, paragraph b, Code 2014, is amended to read as follows:

b. A copy of each citation required to be posted by this subsection shall be sent by the department to the department of human services ~~and~~, to the designated protection and advocacy agency if the facility has one or more residents with developmental disabilities or mental illness, and to the office of long-term care ombudsman if the facility is a nursing facility or residential care facility.

Sec. 11. Section 135C.33, subsection 2, paragraph b, subparagraph (2), Code 2014, is amended to read as follows:

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 ~~or chapter 321~~, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 12. Section 135C.33, subsection 7, paragraphs a and b, Code 2014, are amended to read as follows:

a. If a person employed by a facility, service, or program employer that is subject to this section is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The employer shall act to verify the information within ~~forty-eight hours~~ seven calendar days of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the employer to determine whether or not the person's employment is continued. The employer may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

b. If a facility, service, or program employer receives credible information, as determined by the employer, that a person employed by the employer has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the employer of such information within the period required under paragraph "a", the employer shall act to verify the credible information within ~~forty-eight hours~~ seven calendar days of receipt of the credible information. If the information is verified, the requirements of

subsections 2, 3, and 4 regarding employability and evaluations shall be applied to determine whether or not the person's employment is continued.

Sec. 13. Section 135C.33, subsection 8, paragraph d, subparagraph (2), Code 2014, is amended to read as follows:

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 ~~or chapter 321~~, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

Sec. 14. Section 135C.33, subsection 8, paragraph e, subparagraphs (1) and (2), Code 2014, are amended to read as follows:

(1) If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the student shall inform the certified nurse aide training program of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The program shall act to verify the information within ~~forty-eight hours~~ seven calendar days of notification. If the information is verified, the requirements of paragraph "c" shall be applied by the program to determine whether or not the student's involvement in a clinical education component may continue. The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services. A student who is required by this subparagraph to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

(2) If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student and the student has not informed the program of such information within the period required under subparagraph (1), the program shall act to verify the credible information within ~~forty-eight hours~~ seven calendar days of receipt of the credible information. If the information is verified, the requirements of paragraph "c" shall be applied to determine whether or not the student's involvement in a clinical education component may continue.

Sec. 15. Section 135C.38, subsection 1, paragraphs a and c, Code 2014, are amended to read as follows:

a. Upon receipt of a complaint made in accordance with section 135C.37, the department ~~or certified volunteer long-term care ombudsman~~ shall make a preliminary review of the complaint. Unless the department ~~or certified volunteer long-term care ombudsman~~ concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, the department ~~or certified volunteer long-term care ombudsman~~ shall make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint within the time period determined pursuant to the following guidelines, which period shall commence on the date of receipt of the complaint:

(1) For nursing facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department ~~or certified volunteer long-term care ombudsman~~ to be an alleged immediate jeopardy situation.

(b) Within ten working days for a complaint determined by the department ~~or certified volunteer long-term care ombudsman~~ to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department ~~or certified volunteer long-term care ombudsman~~ to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

(2) For all other types of health care facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department ~~or certified volunteer long-term care ombudsman~~ to be an alleged immediate jeopardy situation.

(b) Within twenty working days for a complaint determined by the department or ~~certified volunteer long-term care ombudsman~~ to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or ~~certified volunteer long-term care ombudsman~~ to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

c. The department may refer to ~~the certified volunteer~~ a representative of the office of long-term care ombudsman of a facility any complaint received by the department regarding that a facility, for initial evaluation and appropriate action by the ~~certified volunteer~~ office of long-term care ombudsman.

Sec. 16. Section 135C.38, subsection 2, paragraph a, Code 2014, is amended to read as follows:

a. The complainant shall be promptly informed of the result of any action taken by the department or ~~certified volunteer~~ the office of long-term care ombudsman 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.

Sec. 17. Section 135C.38, subsection 3, Code 2014, is amended to read as follows:

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters included in the complaint. However, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection or unless in the course of the complaint investigation a violation is evident to the inspector. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or ~~certified volunteer~~ a representative of the office of long-term care ombudsman, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The protection and dignity of the resident shall be given first priority by the inspector and others.

Sec. 18. Section 135C.38, subsection 4, Code 2014, is amended by striking the subsection.

Sec. 19. Section 231B.8, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

231B.8 Exit interview — issuance of findings.

1. The department shall provide an elder group home an exit interview at the conclusion of a monitoring evaluation or complaint investigation, and the department shall inform the home's representative of all issues and areas of concern related to the insufficient practices. The department may conduct the exit interview in person or by telephone, and the department shall provide a second exit interview if any additional issues or areas of concern are identified. The home shall have two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. The department shall issue the final findings of a monitoring evaluation or complaint investigation within ten working days after completion of the on-site monitoring evaluation or complaint investigation. The final findings shall be served upon the home personally, by electronic mail, or by certified mail.

Sec. 20. Section 231B.9, Code 2014, is amended to read as follows:

231B.9 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an elder group home by the department pursuant to this chapter, ~~including the conclusion of informal review~~, the department's final findings with respect to compliance by the elder group home with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an elder group home that is obtained by the

department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the elder group home shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 21. NEW SECTION. 231B.9A Informal conference — formal contest — judicial review.

1. Within twenty business days after issuance of the final findings, the elder group home shall notify the director if the home desires to contest the findings and request an informal conference.

2. The department shall provide an independent reviewer to hold an informal conference with an elder group home within ten working days after receiving a request from the home pursuant to subsection 1. At the conclusion of the informal conference, the independent reviewer may affirm, modify, or dismiss a contested regulatory insufficiency. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the department and to the home.

3. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of an elder group home in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

4. An elder group home that desires to further contest an affirmed or modified regulatory insufficiency may do so in the manner provided by chapter 17A for contested cases. The home shall give notice of intent to formally contest a regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

5. An elder group home that 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. 22. Section 231B.10, subsection 1, Code 2014, is amended by adding the following new paragraphs:

NEW PARAGRAPH. 0i. In the case of an application by an existing certificate holder for a new or newly acquired elder group home, continuing or repeated failure of the certificate holder to operate any previously certified elder group home or homes in compliance with the provisions of this chapter, the rules adopted pursuant to this chapter, or equivalent provisions that the elder group home is subject to in this state or any other state.

NEW PARAGRAPH. 00i. Intentionally preventing or interfering with or attempting to prevent or interfere in any way with the performance by any duly authorized representative of the department of the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "*lawful enforcement*" includes but is not limited to the following:

(1) Contacting or interviewing any tenant of an elder group home in private at any reasonable hour and without advance notice.

(2) Examining any relevant books or records of an elder group home unless otherwise protected from disclosure by operation of law.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 23. Section 231C.10, subsection 1, Code 2014, is amended by adding the following new paragraphs:

NEW PARAGRAPH. 0i. In the case of an application by an existing certificate holder for a new or newly acquired assisted living program, continuing or repeated failure of the certificate holder to operate any previously certified assisted living program or programs in

compliance with the provisions of this chapter, the rules adopted pursuant to this chapter, or equivalent provisions that the assisted living program is subject to in this state or any other state.

NEW PARAGRAPH. 00i. Intentionally preventing or interfering with or attempting to prevent or interfere in any way with the performance by any duly authorized representative of the department of the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, “*lawful enforcement*” includes but is not limited to the following:

(1) Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.

(2) Examining any relevant books or records of an assisted living program unless otherwise protected from disclosure by operation of law.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 24. Section 231D.5, subsection 1, Code 2014, is amended by adding the following new paragraphs:

NEW PARAGRAPH. 0k. In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, continuing or repeated failure of the certificate holder to operate any previously certified adult day services program or programs in compliance with the provisions of this chapter, the rules adopted pursuant to this chapter, or equivalent provisions that the adult day services program is subject to in this state or any other state.

NEW PARAGRAPH. 00k. Intentionally preventing or interfering with or attempting to prevent or interfere in any way with the performance by any duly authorized representative of the department of the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, “*lawful enforcement*” includes but is not limited to the following:

(1) Contacting or interviewing any participant of an adult day services program in private at any reasonable hour and without advance notice.

(2) Examining any relevant books or records of an adult day services program unless otherwise protected from disclosure by operation of law.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 25. Section 231D.9A, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

231D.9A Exit interview — issuance of findings.

1. The department shall provide an adult day services program an exit interview at the conclusion of a monitoring evaluation or a complaint investigation, and the department shall inform the program’s representative of all issues and areas of concern related to the insufficient practices. The department may conduct the exit interview in person or by telephone, and the department shall provide a second exit interview if any additional issues or areas of concern are identified. The program shall have two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. The department shall issue the final findings of a monitoring evaluation or complaint investigation within ten working days after completion of the on-site monitoring evaluation or complaint investigation. The final findings shall be served upon the program personally, by electronic mail, or by certified mail.

Sec. 26. Section 231D.10, Code 2014, is amended to read as follows:

231D.10 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department pursuant to this chapter, ~~including the conclusion of informal review,~~ the department’s final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services

program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 27. NEW SECTION. 231D.10A Informal conference — formal contest — judicial review.

1. Within twenty business days after issuance of the final findings, the adult day services program shall notify the director if the program desires to contest the findings and request an informal conference.

2. The department shall provide an independent reviewer to hold an informal conference with an adult day services program within ten working days after receiving a request from the program pursuant to subsection 1. At the conclusion of the informal conference, the independent reviewer may affirm, modify, or dismiss a contested regulatory insufficiency. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the department and to the program.

3. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of an adult day services program in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

4. An adult day services program that desires to further contest an affirmed or modified regulatory insufficiency may do so in the manner provided by chapter 17A for contested cases. The program shall give notice of intent to formally contest a regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

5. An adult day services program that 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. 28. APPLICABILITY.

1. The sections of this Act amending sections 231B.8 and 231B.9 and adding section 231B.9A apply to an elder group home desiring to request an informal conference under chapter 231B on or after January 1, 2015.

2. The sections of this Act amending sections 231D.9A and 231D.10 and adding section 231D.10A apply to an adult day services program desiring to request an informal conference under chapter 231D on or after January 1, 2015.

Approved March 26, 2014