

Broers, Ch,
Wilderdike
Witt

HSB 570
HUMAN RESOURCES

Sponsored By
SF 02247

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
ELDER AFFAIRS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of health care facilities and
2 the duties of resident advocate committees.

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 Section 1. Section 135C.11, subsection 2, Code 2001, is
2 amended to read as follows:

3 2. The procedure governing hearings authorized by this
4 section shall be in accordance with the rules promulgated by
5 the department. A full and complete record shall be kept of
6 all proceedings, and all testimony shall be reported but need
7 not be transcribed unless judicial review is sought pursuant
8 to section 135C.13. Copies of the transcript may be obtained
9 by an interested party upon payment of the cost of preparing
10 the copies. Witnesses may be subpoenaed by either party and
11 shall be allowed fees at a rate prescribed by the department's
12 rules. The director may~~7-after-advising-the-resident-advocate~~
13 ~~committee-established-pursuant-to-section-135C-25~~, either
14 proceed in accordance with section 135C.30, or remove all
15 residents and suspend the license or licenses of any health
16 care facility, prior to a hearing, when the director finds
17 that the health or safety of residents of the health care
18 facility requires such action on an emergency basis. ~~The fact~~
19 ~~that-no-resident-advocate-committee-has-been-appointed-for-a~~
20 ~~particular-facility-shall-not-bar-the-director-from-exercising~~
21 ~~the-emergency-powers-granted-by-this-subsection-with-respect~~
22 ~~to-that-facility~~

23 Sec. 2. Section 135C.13, Code 2001, is amended to read as
24 follows:

25 135C.13 JUDICIAL REVIEW.

26 Judicial review of any action of the director may be sought
27 in accordance with the terms of the Iowa administrative
28 procedure Act. Notwithstanding the terms of said Act,
29 petitions for judicial review may be filed in the district
30 court of the county where the facility or proposed facility is
31 located, and pending final disposition of the matter the
32 status quo of the applicant or licensee shall be preserved
33 except when the director~~7-with-the-advice-and-consent-of-the~~
34 ~~resident-advocate-committee-established-pursuant-to-section~~
35 ~~135C-25~~ determines that the health, safety or welfare of the

1 residents of the facility is in immediate danger, in which
2 case the director may order the immediate removal of such
3 residents. ~~The fact that no resident advocate committee has~~
4 ~~been appointed for a particular facility shall not bar the~~
5 ~~director from exercising the emergency powers granted by this~~
6 ~~subsection with respect to that facility.~~

7 Sec. 3. Section 135C.14, subsection 8, paragraph d, Code
8 Supplement 2001, is amended by striking the paragraph.

9 Sec. 4. Section 135C.20B, subsection 2, paragraph c, Code
10 2001, is amended to read as follows:

11 c. Any information submitted by care-review resident
12 advocate committee members or residents with regard to the
13 quality of care of the facility.

14 Sec. 5. Section 135C.25, subsections 1, 2, and 3, Code
15 2001, are amended to read as follows:

16 1. Each health nursing facility and residential care
17 facility excluding residential care facilities licensed to
18 serve only persons with mental illness or mental retardation
19 and county and private institutions regulated pursuant to
20 chapter 227 shall have a resident advocate committee whose
21 members shall be appointed by the director of the department
22 of elder affairs or the director's designee. A person shall
23 not be appointed a member of a resident advocate committee for
24 a health-care facility unless the person is a resident of the
25 service area where the facility is located. ~~The resident~~
26 ~~advocate committee for any facility caring primarily for~~
27 ~~persons with mental illness, mental retardation, or a~~
28 ~~developmental disability shall only be appointed after~~
29 ~~consultation with the administrator of the division of mental~~
30 ~~health and developmental disabilities of the department of~~
31 ~~human services on the proposed appointments.~~ Recommendations
32 to the director or the director's designee for membership on
33 resident advocate committees are encouraged from any agency,
34 organization, or individual. The administrator of the
35 facility shall not be appointed to the resident advocate

1 committee and shall not be present at committee meetings
2 except upon request of the committee.

3 2. Each resident advocate committee shall periodically
4 review the needs of each individual resident of the facility
5 and shall perform the functions pursuant to ~~sections 135E-38~~
6 and section 231.44.

7 3. A ~~health-care~~ facility shall disclose the names,
8 addresses, and phone numbers of a resident's family members,
9 if requested, to a resident advocate committee member, unless
10 permission for this disclosure is refused in writing by the
11 family member. The facility shall provide a form on which a
12 family member may indicate a refusal to grant this permission.

13 Sec. 6. Section 135C.37, Code 2001, is amended to read as
14 follows:

15 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

16 A person may request an inspection of a health care
17 facility by filing with the department, resident advocate
18 committee of the facility, or the long-term care resident's
19 advocate as defined in section 231.4, subsection 16, a
20 complaint of an alleged violation of applicable requirements
21 of this chapter or the rules adopted pursuant to this chapter.
22 A person alleging abuse or neglect of a resident with a
23 developmental disability or with mental illness may also file
24 a complaint with the protection and advocacy agency designated
25 pursuant to section 135B.9 or section 135C.2. A copy of a
26 complaint filed with the resident advocate committee or the
27 long-term care resident's advocate ~~shall~~ may be forwarded to
28 the department. The complaint shall state in a reasonably
29 specific manner the basis of the complaint, and a statement of
30 the nature of the complaint shall be delivered to the facility
31 involved at the time of the inspection. The name of the
32 person who files a complaint with the department, resident
33 advocate committee, or the long-term care resident's advocate
34 shall be kept confidential and shall not be subject to
35 discovery, subpoena, or other means of legal compulsion for

1 its release to a person other than department employees
2 involved in the investigation of the complaint.

3 Sec. 7. Section 135C.38, Code 2001, is amended to read as
4 follows:

5 135C.38 INSPECTIONS UPON COMPLAINTS.

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

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

1 c. The department may refer to the resident advocate
2 committee of a facility any complaint received by the
3 department regarding that facility, for initial evaluation and
4 appropriate action by the committee.

5 2. a. The complainant shall be promptly informed of the
6 result of any action taken by the department ~~or-committee~~ in
7 the matter. The complainant shall also be notified of the
8 name, address, and telephone number of the designated
9 protection and advocacy agency if the alleged violation
10 involves a facility with one or more residents with
11 developmental disabilities or mental illness.

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

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

24 d. A person who is dissatisfied with any aspect of the
25 department's handling of the complaint may contact the long-
26 term care resident's advocate, established pursuant to section
27 231.42, or may contact the protection and advocacy agency
28 designated pursuant to section 135C.2 if the complaint relates
29 to a resident with a developmental disability or a mental
30 illness.

31 3. An inspection made pursuant to a complaint filed under
32 section 135C.37 need not be limited to the matter or matters
33 included in the complaint. However, the inspection shall not
34 be a general inspection unless the complaint inspection
35 coincides with a scheduled general inspection or unless in the

1 course of the complaint investigation a violation is evident
 2 to the inspector. Upon arrival at the facility to be
 3 inspected, the inspector shall show identification to the
 4 person in charge of the facility and state that an inspection
 5 is to be made, before beginning the inspection. Upon request
 6 of either the complainant or the department or resident
 7 advocate committee, the complainant or the complainant's
 8 representative or both may be allowed the privilege of
 9 accompanying the inspector during any on-site inspection made
 10 pursuant to this section. The inspector may cancel the
 11 privilege at any time if the inspector determines that the
 12 privacy of any resident of the facility to be inspected would
 13 otherwise be violated. The protection and dignity of the
 14 resident shall be given first priority by the inspector and
 15 others.

16 ~~4.--If-upon-an-inspection-of-a-facility-by-its-resident~~
 17 ~~advocate-committee-pursuant-to-this-section,-the-committee~~
 18 ~~advises-the-department-of-any-circumstance-believed-to~~
 19 ~~constitute-a-violation-of-this-chapter-or-of-any-rule-adopted~~
 20 ~~pursuant-to-it,-the-committee-shall-similarly-advise-the~~
 21 ~~facility-at-the-same-time.--If-the-facility's-licensee-or~~
 22 ~~administrator-disagrees-with-the-conclusion-of-the-committee~~
 23 ~~regarding-the-supposed-violation,-an-informal-conference-may~~
 24 ~~be-requested-and-if-requested-shall-be-arranged-by-the~~
 25 ~~department-as-provided-in-section-135C.42-before-a-citation-is~~
 26 ~~issued.--If-the-department-thereafter-issues-a-citation~~
 27 ~~pursuant-to-the-committee's-finding,-the-facility-shall-not-be~~
 28 ~~entitled-to-a-second-informal-conference-on-the-same-violation~~
 29 ~~and-the-citation-shall-be-considered-affirmed.--The-facility~~
 30 ~~cited-may-proceed-under-section-135C.43-if-it-so-desires.~~

31 Sec. 8. Section 227.2, subsection 2, Code 2001, is amended
 32 to read as follows:

33 2. A copy of the written report prescribed by subsection 1
 34 shall be furnished to the county board of supervisors, to the
 35 county mental health and mental retardation coordinating board

1 or to its advisory board if the county board of supervisors
2 constitutes ex officio the coordinating board, and to the
3 administrator of the county care facility inspected ~~and to its~~
4 ~~resident-advocate-committee, and to the department of elder~~
5 ~~affairs.~~

6 Sec. 9. Section 227.4, Code 2001, is amended to read as
7 follows:

8 227.4 STANDARDS FOR CARE OF PERSONS WITH MENTAL ILLNESS OR
9 MENTAL RETARDATION IN COUNTY CARE FACILITIES.

10 The administrator, in cooperation with the department of
11 inspections and appeals, shall recommend, and the mental
12 health and developmental disabilities commission created in
13 section 225C.5 shall adopt standards for the care of and
14 services to persons with mental illness or mental retardation
15 residing in county care facilities. The standards shall be
16 enforced by the department of inspections and appeals as a
17 part of the licensure inspection conducted pursuant to chapter
18 135C. The objective of the standards is to ensure that
19 persons with mental illness or mental retardation who are
20 residents of county care facilities are not only adequately
21 fed, clothed, and housed, but are also offered reasonable
22 opportunities for productive work and recreational activities
23 suited to their physical and mental abilities and offering
24 both a constructive outlet for their energies and, if
25 possible, therapeutic benefit. When recommending standards
26 under this section, the administrator shall designate an
27 advisory committee representing administrators of county care
28 facilities, and county mental health and developmental
29 disabilities regional planning councils, ~~and county care~~
30 ~~facility-resident-advocate-committees~~ to assist in the
31 establishment of standards.

32 Sec. 10. Section 231.44, subsection 2, Code 2001, is
33 amended to read as follows:

34 2. The responsibilities of the resident advocate committee
35 are in accordance with the rules adopted by the commission

1 pursuant to chapter 17A. When adopting the rules, the
 2 commission shall consider the needs of residents of each
 3 category-of licensed health nursing facility and residential
 4 care facility as defined in section 135C.1, subsection-6,
 5 excluding residential care facilities licensed to serve only
 6 persons with mental illness or mental retardation, and the
 7 services each facility may render. ~~The-commission-shall~~
 8 ~~coordinate-the-development-of-rules-with-the-mental-health-and~~
 9 ~~developmental-disabilities-commission-created-in-section~~
 10 ~~225E-5-to-the-extent-the-rules-would-apply-to-a-facility~~
 11 ~~primarily-serving-persons-with-mental-illness,-mental~~
 12 ~~retardation,-or-a-developmental-disability.~~ The commission
 13 shall coordinate the development of appropriate rules with
 14 other state agencies.

15 EXPLANATION

16 This bill makes changes related to the resident advocate
 17 committee in the regulation of certain health care facilities.
 18 The bill eliminates the directive to the director of the
 19 department of inspections and appeals to advise the resident
 20 advocate committee when, based upon an action to deny,
 21 suspend, or revoke a health care facility license, and prior
 22 to a hearing, the director proceeds with an action for
 23 receivership or to remove residents on an emergency basis.
 24 The bill also eliminates the requirement that the director of
 25 the department of inspections and appeals obtain the advice
 26 and consent of the resident advocate committee when, pending
 27 judicial review of an action, the director determines that the
 28 health, safety, or welfare of the residents of a facility is
 29 in immediate danger and orders the removal of the residents.
 30 The bill also eliminates the provision that the director of
 31 the department of inspections and appeals is not barred from
 32 exercising emergency powers due to the lack of appointment of
 33 a resident advocate committee for a facility.
 34 The bill provides that only nursing facilities and
 35 residential care facilities that do not serve only persons

1 with mental illness or mental retardation, not all health care
2 facilities, are required to have a resident advocate
3 committee. The bill specifically excludes county and private
4 institutions regulated under Code chapter 227, from this
5 requirement.

6 The bill provides that a copy of a complaint filed with the
7 resident advocate committee or the long-term care resident's
8 advocate may be forwarded to the department of inspections and
9 appeals, but is not required to be forwarded.

10 The bill provides that upon receipt of a complaint alleging
11 a violation, the department, and not the department or the
12 resident advocate committee, is to make a preliminary review
13 of the complaint. The bill also provides that the complainant
14 is to be promptly informed of any action taken by the
15 department regarding the complaint. Current law also includes
16 the committee as an entity that might take action relative to
17 a complaint and thereby be required to also inform a
18 complainant of action taken. The bill also eliminates a
19 provision establishing a process upon inspection of a health
20 care facility by the resident advocate committee, to advise
21 the department of inspections and appeals and the facility of
22 circumstances believed to constitute a violation.

23
24
25
26
27
28
29
30
31
32
33
34
35



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

DEPARTMENT OF ELDER AFFAIRS
DR. JUDITH ANNE CONLIN, DIRECTOR

December 27, 2001

MEMORANDUM

TO: Members of the Iowa General Assembly

FROM: Dr. Judith Conlin

RE: 2002 Prefiling Technical Changes to 135C (Dept of Inspections and Appeals).

The proposed modifications to 135C recognize that the long-term care landscape has changed since the legislation was originally enacted, and that advocacy needs of the residents have changed accordingly. Specifically, the delivery systems for persons with mental retardation and mental illness have undergone major reconfiguration and the state's consumer advocate program has evolved into a program focusing on resolution of problems rather than merely identification of problems.

Following is a description of the proposed changes by section:

- Sections 135C.11 and 135C.13 remove the requirement that the Director of the Department of Inspections and Appeals (DIA) consult with the Resident Advocate Committee (RAC) prior to taking certain administration action against a facility. While RAC input is beneficial, requiring RAC consent delays timely implementation of remedies, thereby potentially putting residents at risk. Removal of this requirement will allow the state regulatory agency to take immediate action.
- 135C.25 removes the requirement that facilities licensed to serve primarily persons with mental retardation or mental illness must have a Resident Advocate Committee. The initial legislation was passed prior to the Case Management program, the Central-Point-of-Coordination (CPC) system, and the growth of multiple consumer advocacy groups. Case Managers and CPCs have more frequent and structured involvement with residents than has been the case in the past. This involvement has resulted in more oversight of institutional care and more empowerment of residents and their families than was the role assumed by RAC volunteers in the past.

Additionally, while the number of ICF-MR beds has declined by approximately 500 the number of ICF-MR facilities has grown from 18 in 1985 to 126 in 2001. Consequently, the number of volunteers needed to meet the volunteer-to-resident ratio has tripled. This has created significant strain on the Resident Advocate Committee program. Continued involvement with these types of facilities will divert needed resources away from the mandate under the Older Americans Act that the advocacy program serve persons over 60.

- Sections 135C.37 and 135C.38 remove the requirement that the Resident Advocate Committee operate under the same procedural and investigatory standards as DIA. The goal of the Resident Advocate Committee program is to identify ways to improve the lives of facility residents through collaboration. Resolution is defined by the resident, not by the regulations. The inclusion of RAC resolution data in the new Medicaid Accountability Measures further reinforces the importance of this philosophy. Adherence to the formal investigation model currently in the Code runs counter to the goals of the program.

Please feel free to contact me should you have questions or concerns.

S-2/15/02 Human Res.
S-3/13/02 Amend/Do Pass W/
S 5156

FEB 7 2002
Place On Calendar

S-3/21/02 UNFINISHED BUSINESS CALENDAR

HOUSE FILE 2247
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 570)

Passed House, ^(p. 354) Date 2/14/02
Vote: Ayes 93 Nays 1
Approved _____

Passed Senate, ^(p. 802) Date 3-26-02
Vote: Ayes 48 Nays 0

A BILL FOR

1 An Act relating to the regulation of health care facilities and
2 the duties of resident advocate committees.

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

SENATE AMENDMENT TO HOUSE FILE 2247

H-8448

- 1 Amend House File 2247, as passed by the House, as
- 2 follows:
- 3 1. By striking page 2, line 14 through page 3,
- 4 line 2, and inserting the following:
- 5 "Sec. ____ Section 135C.25, subsection 2, Code
- 6 2001, is amended to read as follows:"
- 7 2. Page 3, by striking lines 7 through 12.
- 8 3. By striking page 6, line 31, through page 8,
- 9 line 14, and inserting the following:
- 10 "Sec. ____ SUBSTITUTE DECISION-MAKERS TASK FORCE --
- 11 REPORT. The governor's developmental disabilities
- 12 council in consultation with the substitute decision-
- 13 makers task force shall submit a report to the general
- 14 assembly by December 1, 2002, regarding the
- 15 continuation of resident advocate committees for
- 16 residential care facilities licensed to serve persons
- 17 with mental illness or mental retardation and
- 18 recommendations regarding resident advocacy
- 19 alternatives."
- 20 4. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8448 FILED MARCH 27, 2002

(p. 1134) *House Refused*
4-2-02

HF 2247

1 Section 1. Section 135C.11, subsection 2, Code 2001, is
2 amended to read as follows:

3 2. The procedure governing hearings authorized by this
4 section shall be in accordance with the rules promulgated by
5 the department. A full and complete record shall be kept of
6 all proceedings, and all testimony shall be reported but need
7 not be transcribed unless judicial review is sought pursuant
8 to section 135C.13. Copies of the transcript may be obtained
9 by an interested party upon payment of the cost of preparing
10 the copies. Witnesses may be subpoenaed by either party and
11 shall be allowed fees at a rate prescribed by the department's
12 rules. The director may~~7-after-advising-the-resident-advocate~~
13 ~~committee-established-pursuant-to-section-135E-257~~ either
14 proceed in accordance with section 135C.30, or remove all
15 residents and suspend the license or licenses of any health
16 care facility, prior to a hearing, when the director finds
17 that the health or safety of residents of the health care
18 facility requires such action on an emergency basis. ~~The fact~~
19 ~~that-no-resident-advocate-committee-has-been-appointed-for-a~~
20 ~~particular-facility-shall-not-bar-the-director-from-exercising~~
21 ~~the-emergency-powers-granted-by-this-subsection-with-respect~~
22 ~~to-that-facility7~~

23 Sec. 2. Section 135C.13, Code 2001, is amended to read as
24 follows:

25 135C.13 JUDICIAL REVIEW.

26 Judicial review of any action of the director may be sought
27 in accordance with the terms of the Iowa administrative
28 procedure Act. Notwithstanding the terms of said Act,
29 petitions for judicial review may be filed in the district
30 court of the county where the facility or proposed facility is
31 located, and pending final disposition of the matter the
32 status quo of the applicant or licensee shall be preserved
33 except when the director~~7-with-the-advice-and-consent-of-the~~
34 ~~resident-advocate-committee-established-pursuant-to-section~~
35 ~~135E-257~~ determines that the health, safety or welfare of the

1 residents of the facility is in immediate danger, in which
2 case the director may order the immediate removal of such
3 residents. ~~The fact that no resident advocate committee has~~
4 ~~been appointed for a particular facility shall not bar the~~
5 ~~director from exercising the emergency powers granted by this~~
6 ~~subsection with respect to that facility.~~

7 Sec. 3. Section 135C.14, subsection 8, paragraph d, Code
8 Supplement 2001, is amended by striking the paragraph.

9 Sec. 4. Section 135C.20B, subsection 2, paragraph c, Code
10 2001, is amended to read as follows:

11 c. Any information submitted by ~~care-review~~ resident
12 advocate committee members or residents with regard to the
13 quality of care of the facility.

14 Sec. 5. Section 135C.25, subsections 1, 2, and 3, Code
15 2001, are amended to read as follows:

16 1. Each health nursing facility and residential care
17 facility excluding residential care facilities licensed to
18 serve only persons with mental illness or mental retardation
19 and county and private institutions regulated pursuant to
20 chapter 227 shall have a resident advocate committee whose
21 members shall be appointed by the director of the department
22 of elder affairs or the director's designee. A person shall
23 not be appointed a member of a resident advocate committee for
24 a ~~health-care~~ facility unless the person is a resident of the
25 service area where the facility is located. ~~The resident~~
26 ~~advocate committee for any facility caring primarily for~~
27 ~~persons with mental illness, mental retardation, or a~~
28 ~~developmental disability shall only be appointed after~~
29 ~~consultation with the administrator of the division of mental~~
30 ~~health and developmental disabilities of the department of~~
31 ~~human services on the proposed appointments.~~ Recommendations
32 to the director or the director's designee for membership on
33 resident advocate committees are encouraged from any agency,
34 organization, or individual. The administrator of the
35 facility shall not be appointed to the resident advocate

1 committee and shall not be present at committee meetings
2 except upon request of the committee.

3 2. Each resident advocate committee shall periodically
4 review the needs of each individual resident of the facility
5 and shall perform the functions pursuant to ~~sections-135C-38~~
6 and section 231.44.

7 3. A health-care facility shall disclose the names,
8 addresses, and phone numbers of a resident's family members,
9 if requested, to a resident advocate committee member, unless
10 permission for this disclosure is refused in writing by the
11 family member. The facility shall provide a form on which a
12 family member may indicate a refusal to grant this permission.

13 Sec. 6. Section 135C.37, Code 2001, is amended to read as
14 follows:

15 135C.37 COMPLAINTS ALLEGING VIOLATIONS -- CONFIDENTIALITY.

16 A person may request an inspection of a health care
17 facility by filing with the department, resident advocate
18 committee of the facility, or the long-term care resident's
19 advocate as defined in section 231.4, subsection 16, a
20 complaint of an alleged violation of applicable requirements
21 of this chapter or the rules adopted pursuant to this chapter.
22 A person alleging abuse or neglect of a resident with a
23 developmental disability or with mental illness may also file
24 a complaint with the protection and advocacy agency designated
25 pursuant to section 135B.9 or section 135C.2. A copy of a
26 complaint filed with the resident advocate committee or the
27 long-term care resident's advocate ~~shall~~ may be forwarded to
28 the department. The complaint shall state in a reasonably
29 specific manner the basis of the complaint, and a statement of
30 the nature of the complaint shall be delivered to the facility
31 involved at the time of the inspection. The name of the
32 person who files a complaint with the department, resident
33 advocate committee, or the long-term care resident's advocate
34 shall be kept confidential and shall not be subject to
35 discovery, subpoena, or other means of legal compulsion for

1 its release to a person other than department employees
2 involved in the investigation of the complaint.

3 Sec. 7. Section 135C.38, Code 2001, is amended to read as
4 follows:

5 135C.38 INSPECTIONS UPON COMPLAINTS.

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

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

1 c. The department may refer to the resident advocate
2 committee of a facility any complaint received by the
3 department regarding that facility, for initial evaluation and
4 appropriate action by the committee.

5 2. a. The complainant shall be promptly informed of the
6 result of any action taken by the department ~~or-committee~~ in
7 the matter. The complainant shall also be notified of the
8 name, address, and telephone number of the designated
9 protection and advocacy agency if the alleged violation
10 involves a facility with one or more residents with
11 developmental disabilities or mental illness.

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

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

24 d. A person who is dissatisfied with any aspect of the
25 department's handling of the complaint may contact the long-
26 term care resident's advocate, established pursuant to section
27 231.42, or may contact the protection and advocacy agency
28 designated pursuant to section 135C.2 if the complaint relates
29 to a resident with a developmental disability or a mental
30 illness.

31 3. An inspection made pursuant to a complaint filed under
32 section 135C.37 need not be limited to the matter or matters
33 included in the complaint. However, the inspection shall not
34 be a general inspection unless the complaint inspection
35 coincides with a scheduled general inspection or unless in the

1 course of the complaint investigation a violation is evident
2 to the inspector. Upon arrival at the facility to be
3 inspected, the inspector shall show identification to the
4 person in charge of the facility and state that an inspection
5 is to be made, before beginning the inspection. Upon request
6 of either the complainant or the department or resident
7 advocate committee, the complainant or the complainant's
8 representative or both may be allowed the privilege of
9 accompanying the inspector during any on-site inspection made
10 pursuant to this section. The inspector may cancel the
11 privilege at any time if the inspector determines that the
12 privacy of any resident of the facility to be inspected would
13 otherwise be violated. The protection and dignity of the
14 resident shall be given first priority by the inspector and
15 others.

16 ~~4.---If-upon-an-inspection-of-a-facility-by-its-resident~~
17 ~~advocate-committee-pursuant-to-this-section,-the-committee~~
18 ~~advises-the-department-of-any-circumstance-believed-to~~
19 ~~constitute-a-violation-of-this-chapter-or-of-any-rule-adopted~~
20 ~~pursuant-to-it,-the-committee-shall-similarly-advise-the~~
21 ~~facility-at-the-same-time.--If-the-facility's-licensee-or~~
22 ~~administrator-disagrees-with-the-conclusion-of-the-committee~~
23 ~~regarding-the-supposed-violation,-an-informal-conference-may~~
24 ~~be-requested-and-if-requested-shall-be-arranged-by-the~~
25 ~~department-as-provided-in-section-135C-42-before-a-citation-is~~
26 ~~issued.--If-the-department-thereafter-issues-a-citation~~
27 ~~pursuant-to-the-committee's-finding,-the-facility-shall-not-be~~
28 ~~entitled-to-a-second-informal-conference-on-the-same-violation~~
29 ~~and-the-citation-shall-be-considered-affirmed.--The-facility~~
30 ~~cited-may-proceed-under-section-135C-43-if-it-so-desires.~~

31 Sec. 8. Section 227.2, subsection 2, Code 2001, is amended
32 to read as follows:

33 2. A copy of the written report prescribed by subsection 1
34 shall be furnished to the county board of supervisors, to the
35 county mental health and mental retardation coordinating board

1 or to its advisory board if the county board of supervisors
2 constitutes ex officio the coordinating board, and to the
3 administrator of the county care facility inspected ~~and-to-its~~
4 ~~resident-advocate-committee,-and-to-the-department-of-elder~~
5 ~~affairs.~~

6 Sec. 9. Section 227.4, Code 2001, is amended to read as
7 follows:

8 227.4 STANDARDS FOR CARE OF PERSONS WITH MENTAL ILLNESS OR
9 MENTAL RETARDATION IN COUNTY CARE FACILITIES.

10 The administrator, in cooperation with the department of
11 inspections and appeals, shall recommend, and the mental
12 health and developmental disabilities commission created in
13 section 225C.5 shall adopt standards for the care of and
14 services to persons with mental illness or mental retardation
15 residing in county care facilities. The standards shall be
16 enforced by the department of inspections and appeals as a
17 part of the licensure inspection conducted pursuant to chapter
18 135C. The objective of the standards is to ensure that
19 persons with mental illness or mental retardation who are
20 residents of county care facilities are not only adequately
21 fed, clothed, and housed, but are also offered reasonable
22 opportunities for productive work and recreational activities
23 suited to their physical and mental abilities and offering
24 both a constructive outlet for their energies and, if
25 possible, therapeutic benefit. When recommending standards
26 under this section, the administrator shall designate an
27 advisory committee representing administrators of county care
28 facilities, and county mental health and developmental
29 disabilities regional planning councils, ~~and-county-care~~
30 ~~facility-resident-advocate-committees~~ to assist in the
31 establishment of standards.

32 Sec. 10. Section 231.44, subsection 2, Code 2001, is
33 amended to read as follows:

34 2. The responsibilities of the resident advocate committee
35 are in accordance with the rules adopted by the commission

1 pursuant to chapter 17A. When adopting the rules, the
2 commission shall consider the needs of residents of each
3 ~~category-of~~ licensed health nursing facility and residential
4 care facility as defined in section 135C.1, subsection-6,
5 excluding residential care facilities licensed to serve only
6 persons with mental illness or mental retardation, and the
7 services each facility may render. ~~The-commission-shall~~
8 ~~coordinate-the-development-of-rules-with-the-mental-health-and~~
9 ~~developmental-disabilities-commission-created-in-section~~
10 ~~225E-5-to-the-extent-the-rules-would-apply-to-a-facility~~
11 ~~primarily-serving-persons-with-mental-illness,-mental~~
12 ~~retardation,-or-a-developmental-disability.~~ The commission
13 shall coordinate the development of appropriate rules with
14 other state agencies.

15 EXPLANATION

16 This bill makes changes related to the resident advocate
17 committee in the regulation of certain health care facilities.
18 The bill eliminates the directive to the director of the
19 department of inspections and appeals to advise the resident
20 advocate committee when, based upon an action to deny,
21 suspend, or revoke a health care facility license, and prior
22 to a hearing, the director proceeds with an action for
23 receivership or to remove residents on an emergency basis.
24 The bill also eliminates the requirement that the director of
25 the department of inspections and appeals obtain the advice
26 and consent of the resident advocate committee when, pending
27 judicial review of an action, the director determines that the
28 health, safety, or welfare of the residents of a facility is
29 in immediate danger and orders the removal of the residents.
30 The bill also eliminates the provision that the director of
31 the department of inspections and appeals is not barred from
32 exercising emergency powers due to the lack of appointment of
33 a resident advocate committee for a facility.

34 The bill provides that only nursing facilities and
35 residential care facilities that do not serve only persons

1 with mental illness or mental retardation, not all health care
2 facilities, are required to have a resident advocate
3 committee. The bill specifically excludes county and private
4 institutions regulated under Code chapter 227, from this
5 requirement.

6 The bill provides that a copy of a complaint filed with the
7 resident advocate committee or the long-term care resident's
8 advocate may be forwarded to the department of inspections and
9 appeals, but is not required to be forwarded.

10 The bill provides that upon receipt of a complaint alleging
11 a violation, the department, and not the department or the
12 resident advocate committee, is to make a preliminary review
13 of the complaint. The bill also provides that the complainant
14 is to be promptly informed of any action taken by the
15 department regarding the complaint. Current law also includes
16 the committee as an entity that might take action relative to
17 a complaint and thereby be required to also inform a
18 complainant of action taken. The bill also eliminates a
19 provision establishing a process upon inspection of a health
20 care facility by the resident advocate committee, to advise
21 the department of inspections and appeals and the facility of
22 circumstances believed to constitute a violation.

23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 2247**S-5156**

1 Amend House File 2247, as passed by the House, as
2 follows:

3 1. By striking page 1, line 1, through page 3,
4 line 12.

5 2. By striking page 4, line 3, through page 8,
6 line 14 and inserting the following:

7 "Sec. ____ . SUBSTITUTE DECISION-MAKERS TASK FORCE --
8 REPORT. The interagency substitute decision-makers
9 task force shall submit a report to the general
10 assembly by December 1, 2002, regarding the
11 continuation of resident advocate committees for
12 residential care facilities licensed to serve persons
13 with mental illness or mental retardation and
14 recommendations regarding resident advocacy
15 alternatives."

16 3. By renumbering as necessary.

By COMMITTEE ON HUMAN RESOURCES
JOHN REDWINE, Chairperson

S-5156 FILED MARCH 13, 2002

Adopted
3-26-02 (p. 802)

HOUSE FILE 2247**S-5236**

1 Amend the amendment, S-5156, to House File 2247, as
2 passed by the House, as follows:

3 1. Page 1, by striking lines 3 through 6, and
4 inserting the following:

5 "____. By striking page 2, line 14 through page 3,
6 line 2, and inserting the following:

7 "Sec. ____ . Section 135C.25, subsection 2, Code
8 2001, is amended to read as follows:"

9 ____ . Page 3, by striking lines 7 through 12.

10 ____ . By striking page 6, line 31, through page 8,
11 line 14, and inserting the following:"

12 2. Page 1, by striking lines 8 and 9, and
13 inserting the following: "REPORT. The governor's
14 developmental disabilities council in consultation
15 with the substitute decision-makers task force shall
16 submit a report to the general".

17 3. By renumbering as necessary.

By JACK HOLVECK
NANCY BOETTGER

S-5236 FILED MARCH 20, 2002

Adopted
3/26/02
(p. 802)