

FILED MAR 10 2005

SENATE FILE 332
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 131)

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

A BILL FOR

1 An Act providing for judicial branch employment and compensation
2 of patient advocates for persons involuntarily hospitalized
3 for mental illness.

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

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SF 332

TLSB 1326SV 81

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1 Section 1. Section 225C.4, subsection 1, paragraph m, Code
2 2005, is amended to read as follows:

3 m. Provide consultation and technical assistance to
4 ~~patients~~ patient advocates appointed pursuant to section
5 229.19, in cooperation with the judicial branch and the
6 resident advocate committees appointed for health care
7 facilities pursuant to section 135C.25.

8 Sec. 2. Section 226.31, Code 2005, is amended to read as
9 follows:

10 226.31 EXAMINATION BY COURT -- NOTICE.

11 Before granting the order authorized in section 226.30 the
12 court or judge shall investigate the allegations of the
13 petition and before proceeding to a hearing on the allegations
14 shall require notice to be served on the attorney who
15 represented the patient in any prior proceedings under
16 sections 229.6 to 229.15 or the patient advocate appointed
17 under section 229.19, or in the case of a patient who entered
18 the hospital voluntarily, on any relative, friend, or guardian
19 of the person in question of the filing of the application.
20 At the hearing the court or judge shall appoint a guardian ad
21 litem for the person, if the court or judge deems such action
22 necessary to protect the rights of the person. The guardian
23 ad litem shall be a practicing attorney.

24 Sec. 3. Section 229.2, subsection 1, paragraph f, Code
25 2005, is amended to read as follows:

26 f. Upon approval of the admission of a minor over the
27 minor's objections, the juvenile court shall appoint an
28 individual to act as an a patient advocate representing the
29 interests of the minor in the same manner as an a patient
30 advocate representing the interests of patients involuntarily
31 hospitalized ~~pursuant to section 229.19~~ under this chapter.

32 Sec. 4. Section 229.9A, Code 2005, is amended to read as
33 follows:

34 229.9A PATIENT ADVOCATE INFORMED.

35 The court shall direct the clerk to furnish the patient

1 advocate of for the respondent's county of legal settlement
2 with a copy of the application and any order issued pursuant
3 to section 229.8, subsection 3. The patient advocate may
4 attend the hospitalization hearing of any respondent for whom
5 the patient advocate has received notice of a hospitalization
6 hearing.

7 Sec. 5. Section 229.12, subsection 2, Code 2005, is
8 amended to read as follows:

9 2. All persons not necessary for the conduct of the
10 proceeding shall be excluded, except that the court may admit
11 persons having a legitimate interest in the proceeding and
12 shall permit the patient advocate from the respondent's county
13 of legal settlement to attend the hearing. Upon motion of the
14 county attorney, the judge may exclude the respondent from the
15 hearing during the testimony of any particular witness if the
16 judge determines that witness's testimony is likely to cause
17 the respondent severe emotional trauma.

18 Sec. 6. Section 229.14A, subsection 1, Code 2005, is
19 amended to read as follows:

20 1. With respect to a chief medical officer's report made
21 pursuant to section 229.14, subsection 1, paragraph "b", "c",
22 or "d", or any other provision of this chapter related to
23 involuntary commitment for which the court issues a placement
24 order or a transfer of placement is authorized, the court
25 shall provide notice to the respondent and the respondent's
26 attorney or ~~mental-health~~ patient advocate appointed pursuant
27 to section 229.19 concerning the placement order and the
28 respondent's right to request a placement hearing to determine
29 if the order for placement or transfer of placement is
30 appropriate.

31 Sec. 7. Section 229.15, subsection 5, Code 2005, is
32 amended to read as follows:

33 5. Upon receipt of any report required or authorized by
34 this section the court shall furnish a copy to the patient's
35 attorney, or alternatively to the patient advocate appointed

1 as required by section 229.19. The court shall examine the
2 report and take the action ~~thereon-which-it~~ on the report as
3 the court deems appropriate. Should the court fail to receive
4 any report required by this section or section 229.14 at the
5 time the report is due, the court shall investigate the reason
6 for the failure to report and take whatever action may be
7 necessary in the matter.

8 Sec. 8. Section 229.19, Code 2005, is amended to read as
9 follows:

10 229.19 PATIENT ADVOCATES -- DUTIES -- COMPENSATION --
11 STATE AND-COUNTY LIABILITY.

12 1. The-district-court-in-each-county-with-a-population-of
13 under-three-hundred-thousand-inhabitants-and-the-board-of
14 supervisors-in-each-county-with-a-population-of-three-hundred
15 thousand-or-more-inhabitants For each county, the district
16 court shall appoint an individual who has demonstrated by
17 prior activities an informed concern for the welfare and
18 rehabilitation of persons with mental illness, and who is not
19 an officer or employee of the department of human services nor
20 or of any agency or facility providing care or treatment to
21 persons with mental illness, to act as patient advocate
22 representing for the county. A patient advocate shall
23 represent the interests of patients involuntarily hospitalized
24 by the court, in any matter relating to the patients'
25 hospitalization or treatment under section 229.14 or 229.15.

26 2. The court ~~or, if the advocate is appointed by the~~
27 ~~county-board-of-supervisors, the board~~ shall assign the
28 patient advocate appointed ~~from~~ for a patient's county of
29 legal settlement to represent the interests of the patient.
30 If a patient has no county of legal settlement, the court ~~or,~~
31 ~~if the advocate is appointed by the county-board-of~~
32 ~~supervisors, the board~~ shall assign the patient advocate
33 appointed ~~from~~ for the county where the hospital or facility
34 is located to represent the interests of the patient.

35 3. The patient advocate's responsibility with respect to

1 any a patient shall begin at whatever the time the attorney
2 employed or appointed to represent that patient as respondent
3 in hospitalization proceedings, conducted under ~~sections-229-6~~
4 ~~to-229-13~~ this chapter, reports to the court that the
5 attorney's services are no longer required and requests the
6 court's approval to withdraw as counsel for that patient.
7 However, if the patient is found to be seriously mentally
8 impaired at the hospitalization hearing, the attorney
9 representing the patient shall automatically be relieved of
10 responsibility in the case and an a patient advocate shall be
11 assigned to the patient at the conclusion of the hearing
12 unless the attorney indicates an intent to continue the
13 attorney's services and the court so directs. If the court
14 directs the attorney to remain on the case the attorney shall
15 assume all the duties of ~~an a patient~~ a patient advocate. The clerk
16 shall furnish the patient advocate with a copy of the court's
17 order approving the withdrawal and shall inform the patient of
18 the name of the patient's advocate.

19 4. With regard to each patient whose interests the patient
20 advocate is required to represent pursuant to this section,
21 the patient advocate's duties shall include all of the
22 following:

23 ~~1-~~ a. To review each report submitted pursuant to
24 sections 229.14 and 229.15.

25 ~~2-~~ b. If the patient advocate is not an attorney, to
26 advise the court at any time it appears that the services of
27 an attorney are required to properly safeguard the patient's
28 interests.

29 ~~3-~~ c. To ~~make-the-advocate~~ be readily accessible to
30 communications from the patient and to originate
31 communications with the patient within five days of the
32 patient's commitment.

33 ~~4-~~ d. To visit the patient within fifteen days of the
34 patient's commitment and periodically thereafter.

35 ~~5-~~ e. To communicate with medical personnel treating the

1 patient and to review the patient's medical records pursuant
2 to section 229.25.

3 ~~6.~~ f. To file with the court quarterly reports, and
4 additional reports as the patient advocate feels necessary or
5 as required by the court, in a form prescribed by the court.
6 The reports shall state what actions the patient advocate has
7 taken with respect to each patient and the amount of time
8 spent.

9 5. The hospital or facility to which a patient is
10 committed shall grant all reasonable requests of the patient
11 advocate to visit the patient, to communicate with medical
12 personnel treating the patient, and to review the patient's
13 medical records pursuant to section 229.25. ~~An~~ A patient
14 advocate shall not disseminate information from a patient's
15 medical records to any other person unless done for official
16 purposes in connection with the patient advocate's duties
17 pursuant to this chapter or when as required by law.

18 ~~6.~~ The court-or-if-the-advocate-is-appointed-by-the
19 ~~county-board-of-supervisors,-the-board~~ supreme court shall
20 prescribe reasonable compensation policies for the services of
21 ~~the-advocate~~ patient advocates. The compensation shall ~~may,~~
22 in part, be based upon the reports filed by the patient
23 advocate with the court. ~~The-advocate's-compensation-shall-be~~
24 ~~paid-by-the-county-in-which-the-court-is-located,-either-on~~
25 ~~order-of-the-court-or,-if-the-advocate-is-appointed-by-the~~
26 ~~county-board-of-supervisors,-on-the-direction-of-the-board-~~
27 ~~if-the-advocate-is-appointed-by-the-court,-the-advocate-is-an~~
28 ~~employee-of-the-state-for-purposes-of-chapter-669.--if-the~~
29 ~~advocate-is-appointed-by-the-county-board-of-supervisors,-the~~
30 ~~advocate-is-an-employee-of-the-county-for-purposes-of-chapter~~
31 ~~670-~~

32 7. If the patient or the person who is legally liable for
33 the patient's support is not indigent, the board district
34 court shall recover the costs of compensating the patient
35 advocate from that person. If that person has an income level

1 as determined pursuant to section 815.9 greater than one
2 hundred percent but not more than one hundred fifty percent of
3 the poverty guidelines, at least one hundred dollars of the
4 patient advocate's compensation shall be recovered in the
5 manner prescribed by the ~~county-board-of-supervisors~~ supreme
6 court. If that person has an income level as determined
7 pursuant to section 815.9 greater than one hundred fifty
8 percent of the poverty guidelines, at least two hundred
9 dollars of the patient advocate's compensation shall be
10 recovered in substantially the same manner ~~prescribed-by-the~~
11 ~~county-board-of-supervisors~~ as provided in section ~~815-7~~
12 815.9.

13 Sec. 9. Section 229.25, subsection 1, Code 2005, is
14 amended to read as follows:

15 1. The information is requested by a licensed physician,
16 attorney, or patient advocate who provides the chief medical
17 officer with a written waiver signed by the person about whom
18 the information is sought.

19 Sec. 10. Section 602.1102, Code 2005, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 6A. Patient advocates appointed pursuant
22 to section 229.19.

23 Sec. 11. ACCRUED EMPLOYEE RIGHTS.

24 1. Patient advocates appointed pursuant to section 229.19
25 shall become employees of the judicial branch effective July
26 1, 2005, and the judicial branch shall assume all costs
27 associated with the functions of the patient advocates on that
28 date. Patient advocates who were paid salaries by the
29 counties immediately prior to becoming state employees as a
30 result of this Act shall not forfeit accrued vacation, accrued
31 sick leave, or longevity, except as provided in this section.

32 2. The supreme court, after consulting with the department
33 of administrative services, shall prescribe rules to provide
34 for the following:

35 a. A person referred to in subsection 1 shall have to the

1 person's credit as a state employee commencing on the date of
2 becoming a state employee the number of accrued vacation days
3 that was credited to the person as a county employee as of the
4 end of the day prior to becoming a state employee.

5 b. Each person referred to in subsection 1 shall have to
6 the person's credit as a state employee commencing on the date
7 of becoming a state employee the number of accrued days of
8 sick leave that was credited to the person as a county
9 employee as of the end of the day prior to becoming a state
10 employee. However, the number of days of sick leave credited
11 to a person under this subsection and eligible to be taken
12 when sick or eligible to be received upon retirement shall not
13 respectively exceed the maximum number of days, if any, or the
14 maximum dollar amount as provided in section 70A.23 that state
15 employees generally are entitled to accrue or receive
16 according to rules in effect as of the date the person becomes
17 a state employee, except as otherwise provided in section
18 602.1401.

19 c. Commencing on the date of becoming a state employee,
20 each person referred to in subsection 1 is entitled to claim
21 the person's most recent continuous period of service in full-
22 time county employment as full-time state employment for
23 purposes of determining the number of days of vacation which
24 the person is entitled to earn each year. The actual vacation
25 benefit, including the limitation on the maximum accumulated
26 vacation leave, shall be determined as provided in section
27 70A.1 according to rules in effect for state employees of
28 comparable longevity, irrespective of any greater or lesser
29 benefit as a county employee.

30 3. Persons referred to in subsection 1 who were covered by
31 county employee life insurance and accident and health
32 insurance plans prior to becoming state employees as a result
33 of this Act shall be permitted to apply prior to becoming
34 state employees for life insurance and health and accident
35 insurance plans that are available to state employees so that

1 those persons do not suffer a lapse of insurance coverage as a
2 result of this Act. The supreme court, after consulting with
3 the department of administrative services, shall prescribe
4 rules and distribute application forms and take other actions
5 as necessary to enable those persons to elect to have
6 insurance coverage that is in effect on the date of becoming
7 state employees. The actual insurance coverage available to a
8 person shall be determined by the plans that are available to
9 state employees, irrespective of any greater or lesser
10 benefits as a county employee.

11 4. Commencing on the date of becoming a state employee,
12 each person referred to in subsection 1 is entitled to claim
13 the person's most recent continuous period of service in full-
14 time county employment as full-time state employment for
15 purposes of determining disability benefits as provided in
16 section 70A.20 according to rules in effect for state
17 employees of comparable longevity, irrespective of any greater
18 or lesser benefit as a county employee.

19 EXPLANATION

20 This bill provides for district court appointment and
21 judicial branch compensation of all patient advocates for
22 persons who have been involuntarily hospitalized for mental
23 illness. Under current law, except in counties with a
24 population of 300,000 or more where the patient advocate is
25 appointed by the county board of supervisors, the district
26 court appoints the advocate but the compensation is paid by
27 the county.

28 Code section 602.1102 is amended to include patient
29 advocates in the list of employment positions that make up the
30 judicial branch.

31 The bill also amends other Code sections to conform usage
32 of the term "patient advocate". A person who was employed by
33 a county in service as a patient advocate but who becomes a
34 court employee as a result of the bill retains accrued
35 vacation, accrued sick leave, and longevity credit as provided

1 in a transition section included in the bill.

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Fiscal Services Division
Legislative Services Agency
Fiscal Note

SF 332 - Mental Health Advocates (LSB 1326 SV)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version - New

Requestor: Senator Maggie Tinsman

Description

Senate File 332 provides for district court appointment and Judicial Branch compensation of all patient advocates for persons who have been hospitalized for mental illness. Under current law, the district court appoints the advocate in counties with a population of less than 300,000 and in counties with a population greater than 300,000, the county board of supervisors appoints the advocate. In both situations, the compensation for patient advocates is currently paid by the county. Patient advocates appointed under provisions of this Bill become employees of the Judicial Branch and will be compensated by the State.

Background

1. In calendar year 2004, there were 6,368 filings concerning Chapter 229, Code of Iowa, (Hospitalization of Persons with Mental Illness).
2. An advocate spends approximately three hours per case. The rate of pay for an advocate ranges from \$10 an hour to \$31 an hour.

Assumptions

1. This estimate assumes a rate of pay for a mental health advocate of \$24.40 per hour, including benefits (\$20.00 per hour plus 22% benefits).
2. The Judicial Branch reimburses travel expenses. This estimate assumes \$5 per case.

Fiscal Impact

The fiscal impact for SF 332 is an increase in General Fund expenses of \$498,000 for total annual compensation and travel expenses. County expenses would be reduced by a like amount.

Source

Judicial Branch

/s/ Holly M. Lyons

March 15, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

