

CHAPTER 80

REGULATION OF HEALTH CARE FACILITIES, ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS, AND ADULT DAY SERVICES PROGRAMS

H.F. 579

AN ACT relating to the regulation of health care facilities, elder group homes, assisted living programs, and adult day services programs.

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

Section 1. Section 135C.10, subsection 9, Code 2015, 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, the rules adopted pursuant to this chapter, or equivalent provisions that the facility is subject to in this state or any other state.

Sec. 2. Section 135C.36, subsection 4, Code 2015, is amended to read as follows:

4. Any state penalty, including a fine or citation, issued ~~as a result of the federal survey and certification process following a state licensure and federal certification survey or investigation~~ shall be dismissed if the corresponding federal deficiency ~~or citation~~ is dismissed or removed. Any state penalty, including a fine or citation, shall be retained or reinstated if the federal deficiency is retained or reinstated.

Sec. 3. Section 135C.41, subsection 2, Code 2015, is amended to read as follows:

2. If the facility desires to contest the citation, notify the director that the facility desires to contest the citation and request do either of the following:

a. Request an informal conference with an independent reviewer pursuant to section 135C.42. Upon the conclusion of an informal conference, in the case of an affirmed or modified citation, the facility may request a contested case hearing in writing within five days after receipt of the written explanation of the independent reviewer.

b. Request a contested case hearing in the manner provided by chapter 17A for contested cases. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

Sec. 4. Section 135C.42, subsection 1, Code 2015, is amended to read as follows:

1. The director shall provide an independent reviewer to hold an informal conference with the facility within ten working days after receipt of a request made under section 135C.41, subsection 2, paragraph "a". At the conclusion of the conference the independent reviewer may affirm or may modify or dismiss the citation. 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 director, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall comply with section 135C.41, subsection 1, within five working days after ~~the informal conference, or after receipt of the written explanation of the independent reviewer, as the case may be, comply with section 135C.41, subsection 1.~~

Sec. 5. Section 135C.43, Code 2015, is amended to read as follows:

135C.43 Formal contest — judicial ~~Judicial~~ review.

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

2. Hearings on petitions for judicial review brought under this section shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other

cases except matters to which equal or superior precedence is specifically granted by law. The times for pleadings and for hearings in such actions shall be set by the judge of the court with the object of securing a decision in the matter at the earliest possible time.

Sec. 6. Section 135C.43A, Code 2015, is amended to read as follows:

135C.43A Reduction of penalty amount.

If a facility has been assessed a penalty, does not request a formal hearing pursuant to section ~~135C.43~~ 135C.41, subsection 2, paragraph “b”, or withdraws its request for a formal hearing within thirty days of the date that the penalty was assessed, and the penalty is paid within thirty days of the receipt of notice or service, the amount of the penalty shall be reduced by thirty-five percent. The citation which includes the civil penalty shall include a statement to this effect.

Sec. 7. Section 231B.9, Code 2015, is amended to read as follows:

231B.9 Public disclosure Disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an elder group home by the department pursuant to this chapter, 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 assessment of a civil penalty pursuant to section 231B.14 or the denial, suspension, or revocation of a certificate under this chapter.

Sec. 8. Section 231B.9A, Code 2015, is amended to read as follows:

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 do either of the following:

a. Request an informal conference with an independent reviewer pursuant to subsection

2. Upon the conclusion of an informal conference, if the elder group home desires to further contest an affirmed or modified regulatory insufficiency, it may do so by giving notice of intent to formally contest the regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer.

b. Request a contested case hearing in the manner provided by chapter 17A for contested cases. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

2. a. 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, paragraph “a”. 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. b. 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. ~~3.~~ 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. 9. Section 231B.10, subsection 1, paragraphs f and i, Code 2015, are amended to read as follows:

~~f.~~ Founded dependent adult abuse as defined in section ~~235B.2~~ 235E.1.

~~i.~~ 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.

Sec. 10. Section 231C.9, Code 2015, is amended to read as follows:

231C.9 Public disclosure Disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an assisted living program by the department pursuant to this chapter, the department's final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living 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 assisted living program shall not be made available to the public except in proceedings involving the assessment of a civil penalty pursuant to section 231C.14 or the denial, suspension, or revocation of a certificate under this chapter.

Sec. 11. Section 231C.9A, Code 2015, is amended to read as follows:

231C.9A Informal conference — formal contest — judicial review.

1. Within twenty business days after issuance of the final findings, the assisted living program shall notify the director if the program desires to contest the findings and request do either of the following:

a. Request an informal conference with an independent reviewer pursuant to subsection

2. Upon the conclusion of an informal conference, if the assisted living program desires to further contest an affirmed or modified regulatory insufficiency, it may do so by giving notice of intent to formally contest the regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer.

b. Request a contested case hearing in the manner provided by chapter 17A for contested cases. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

2. a. The department shall provide an independent reviewer to hold an informal conference with an assisted living program within ten working days after receiving a request from the program pursuant to subsection 1, paragraph "a". 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. b. 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 assisted living 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 assisted living 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. 3. An assisted living 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. 12. Section 231C.10, subsection 1, paragraph i, Code 2015, is amended to read as follows:

i. ~~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.~~

Sec. 13. Section 231D.5, subsection 1, paragraphs g and k, Code 2015, are amended to read as follows:

g. ~~Founded dependent adult abuse as defined in section 235B.2 235E.1.~~

k. ~~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.~~

Sec. 14. Section 231D.10, Code 2015, is amended to read as follows:

231D.10 Public disclosure 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, 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 assessment of a civil penalty pursuant to section 231D.11 or the denial, suspension, or revocation of a certificate under this chapter.

Sec. 15. Section 231D.10A, Code 2015, is amended to read as follows:

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 do either of the following:

a. Request an informal conference with an independent reviewer pursuant to subsection

2. Upon the conclusion of an informal conference, if the adult day services program desires to further contest an affirmed or modified regulatory insufficiency, it may do so by giving notice of intent to formally contest the regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer.

b. Request a contested case hearing in the manner provided by chapter 17A for contested cases. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

2. a. 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, paragraph "a". 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. b. 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.~~ 3. 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. 16. Section 235E.2, subsection 6, paragraph d, Code 2015, is amended to read as follows:

d. In every case involving dependent adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney ~~may~~ shall not be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this paragraph, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

Approved April 24, 2015