



BILL SUMMARY

HF 2591 Dependent Adult Abuse

Status of Bill: Zeke Furlong
Committee: Human Resources (passed Committee 19-0)
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Background

HSB 729 began as a study bill by the Department of Inspections and Appeals (DIA) intended to protect against dependent adult abuse in elder group homes, assisted living programs, adult day service programs, and hospitals.

Before funnel week a compromise could not be made between the DIA and other interested parties. As a result intent language was passed out of Human Resources

Summary

It is the intent of the General Assembly to protect dependent adults in this state from abuse and to facilitate the reporting and collection of dependent adult abuse information in certain facilities.

Amendments

H-2842 by Hunter (D)

This amendment is a strike after amendment. The title of the bill is changed to, "An Act relating to dependent adult abuse in certain facilities and programs and providing penalties."

The Dependent Adult Protective Advisory Council has two new members added, who must be members of the Iowa Caregivers Association.

A new code chapter is created, Chapter 235E, Dependent Adult Abuse Reports in Facilities and Programs.

Definitions

Caretaker is defined as a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court.

Court refers to the District Court.

Dependent adult is defined as a person eighteen years of age or older whose ability to perform the normal activities of daily living or to provide for the person's own care or protection is impaired, either temporarily or permanently.

Dependent adult abuse is defined as the following:

- Any of the following as a result of the willful misconduct or gross negligence or reckless acts or omissions of a caretaker, taking into account the totality of the circumstances:

- a. A physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult which involves a breach of skill, care, and learning ordinarily exercised by a caretaker in similar circumstances. Assault of a dependent adult is defined as the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
 - b. The commission of a sexual offense against a dependent adult.
 - c. Exploitation of a dependent adult. Exploitation is defined as a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult's funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.
 - d. Neglect of a dependent adult. Neglect of a dependent adult is defined as the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.
- Sexual exploitation of a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. Sexual exploitation is defined as any consensual or non-consensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals; or a sex act. This includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing investigation. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

Dependent adult abuse does not include any of the following:

- Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment or care.
- The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian.

Facility is defined as a health care facility or a hospital.

Intimate relationship is defined as a significant romantic involvement between two persons that need not include sexual involvement, but does not include a casual social relationship or association in a business or professional capacity. In determining whether persons are in an intimate relationship, the court may consider the following nonexclusive list of factors:

- The duration of the relationship.
- The frequency of interaction.
- Whether the relationship has been terminated.
- The nature of the relationship, characterized by either person's expectation of sexual or romantic involvement.

Program is defined as an elder group home, a certified assisted living program, or an adult day services program.

Recklessly means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

Support services includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day services, respite services, legal services, and advocacy services.

Dependent Adult Abuse Reports in Facilities and Programs

The DIA must obtain and evaluate reports of dependent adult abuse in facilities and programs. The DIA is required to inform DHS of such evaluations and dispositions for including in the central registry for dependent adult abuse information. A report of dependent adult abuse which DIA determines to be minor, isolated and unlikely to reoccur must be collected and maintained by DHS as an assessment only for a 5 year period and will not be included in the registry, and will not be considered to be founded dependent adult abuse. If another report occurs within the 5 year period, that is committed by the caretaker responsible for the act or omission which was the subject of the previous report which DIA determined minor, isolated and unlikely to reoccur may be considered minor, isolated, and unlikely to reoccur depending on the circumstances of the report.

A staff member, employee of a facility or program who, in the course of employment examines, attends counsels, or treats a dependent adult in a facility or program is required to report abuse to the DIA. The staff member or employee must immediately notify the person in charge or the person's designated agent who must then notify DIA within 24 hours. An employee of a financial institution may report suspected financial exploitation to the DIA. Any other person who suspects abuse may report to the DIA. The DIA must transfer any abuse reports to the appropriate DHS county office.

The DHS office is required to inform the appropriate county attorney of any abuse reports. If necessary a police report must be filed regarding the abuse report. Upon completion of the investigation, if in the best interest of the dependent adult, DIA must notify DHS for the potential need for a guardian or a conservator or for admission or commitment to an appropriate institution or facility.

A person participating in good faith in reporting or cooperating with or assisting DIA has immunity from liability, civil or criminal, based upon the act of making the report or giving the assistance. It is illegal for a person or employer to fire, suspend, or discipline a person required to report or voluntarily reporting an instance of suspected abuse, or cooperating with, or assisting DIA in evaluating a case. A person or employer found in violation of this is guilty of a simple misdemeanor.

A mandatory reporter who fails to file a report or interferes with a filing or applies a requirement that results in a failure is civilly liable for the damages caused by the failure.

Investigators within DIA must be specially trained to investigate cases of dependent adult abuse. An inspector of DIA may enter any facility or program without a warrant and may examine all records pertaining to residents, employees, former employees, and the alleged abuser. An inspector may conduct interviews and take photographs when conducting an investigation.

A union representative may observe an investigative interview conducted by DIA of an alleged abuser if the alleged abuser is part of a bargaining unit that is part of collective bargaining; the alleged abuser requests the presence of the union representative, and the union representative maintains the confidentiality of all information of the interview.

Prevention of Additional Abuse – Notification of Rights

If a police officer has reason to believe that abuse, which is criminal in nature, has occurred in a facility or program, the officer must use all reasonable means to prevent further abuse including remaining on the scene, assisting the dependent adult in leaving and securing support services or emergency shelter services; assisting the dependent adult in obtaining medical treatment as a result of the abuse; and providing the dependent adult with immediate and adequate notice of the person's rights.

Specifically, You have the right to ask the court for the following help on a temporary basis:

- Keeping the alleged perpetrator away from you, your home, your facility, and your place of work.
- The right to stay at your home or facility without interference from the alleged perpetrator.
- Professional counseling for you, your family, or household members, and the alleged perpetrator of the dependent adult abuse.

If you are in need of medical treatment, you have the right to request that the peace officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you. If you believe that police protection is needed for your physical safety, you have the right to request that the peace officer present remain at the scene until you and other affected parties can leave or safety is otherwise ensured.

The notice of rights must also contain the telephone number of the local emergency shelter services, support services, or crisis lines operating in the area.

Rulemaking

DIA in cooperation with and consultation with the Dependent Adult Protective Advisory Council, affected industry representatives, and professional or consumer groups, may adopt rules to administer this new chapter, 235E.