

AGING, DEPARTMENT ON[17]

Adopted and Filed Emergency After Notice

Pursuant to the authority of 2010 Iowa Acts, Senate File 2263, the Department on Aging amends Chapter 8, “Long-Term Care Resident’s Advocate/Ombudsman,” Iowa Administrative Code.

These amendments update the chapter’s purpose; remove unnecessary definitions and add new definitions; remove rules on duties for the long-term care resident’s advocate/ombudsman, access requirements, and department responsibilities for confidentiality, complaint referral, and the reporting system that are now covered in 2010 Iowa Acts, Senate File 2263, section 7, or in federal law; and establish procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident’s advocate/ombudsman.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on May 19, 2010, as **ARC 8772B**. The Department received comments on the Notice of Intended Action from three persons.

In response to these comments, the Department made the following changes to the amendments as published under Notice of Intended Action:

- Clarified in rule 17—8.3(231) that a “trained volunteer” is a person certified as a “volunteer long-term care ombudsman” under rule 17—8.7(231).
- Revised rule 17—8.4(231) to clarify that the Director, in consultation with the state long-term care resident’s advocate/ombudsman, may impose a civil penalty.
- Added in rule 17—8.4(231) a sentence stating that if the Director imposes a penalty for a violation, under this rule, no other state agency shall impose a penalty for the same interference violation. This change reflects statutory language in 2010 Iowa Acts, Senate File 2263, section 7(7a).

The Commission on Aging adopted these amendments on June 23, 2010.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived to confer a public benefit by reflecting the requirements set forth in 2010 Iowa Acts, Senate File 2263, to ensure that an appeals process be in place at the same time as the effective date of the statute, which permits a fine to be assessed for interference with the official duties of a long-term care resident’s advocate/ombudsman.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2263.

These amendments became effective on July 1, 2010.

The following amendments are adopted.

ITEM 1. Rescind rule 17—8.1(231) and adopt the following **new** rule in lieu thereof:

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident’s advocate/ombudsman, which are established in 2010 Iowa Acts, Senate File 2263, section 7, and in accordance with Section 712 of the federal Older Americans Act, as codified at 42 U.S.C. Section 3058g. This chapter also establishes criteria for serving under the volunteer long-term care ombudsman program. The resident’s advocates/ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes.

ITEM 2. Rescind rule 17—8.2(231) and adopt the following **new** rule in lieu thereof:

17—8.2(231) Definitions.

“*Access*” means the term defined in 2010 Iowa Acts, Senate File 2263, section 7.

“*Assisted living program*” means a program defined in Iowa Code section 231C.2 and certified under Iowa Code chapter 231C.

“*Civil penalty*” means a civil money penalty not to exceed the amount authorized under 2010 Iowa Acts, Senate File 2263, section 7.

“*Department*” means the Iowa department on aging.

“*Director*” means the director of the department on aging.

“*Elder group home*” means a home defined in Iowa Code section 231B.1 and certified under Iowa Code chapter 231B.

“*Long-term care facility*” means a long-term care unit of a hospital or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“*Long-term care resident’s advocate/ombudsman*” means the individual employed to carry out the duties of 2010 Iowa Acts, Senate File 2263, section 7.

“*Office of the state long-term care resident’s advocate*” means the office established in 2010 Iowa Acts, Senate File 2263, section 7.

“*Official duties*” means those duties specified in 2010 Iowa Acts, Senate File 2263, section 7, and in the federal Older Americans Act.

“*Volunteer long-term care ombudsman*” means a volunteer who has successfully completed all requirements and received certification from a long-term care resident’s advocate/ombudsman.

ITEM 3. Rescind rule 17—8.3(231) and adopt the following **new** rule in lieu thereof:

17—8.3(231) Interference. A local long-term care resident’s advocate/ombudsman or trained volunteer long-term care ombudsman certified under rule 17—8.7(231) who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home, or to medical and personal records while in the course of conducting official duties or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care resident’s advocate who will report the interference to the director of the department on aging.

ITEM 4. Rescind rule 17—8.4(231) and adopt the following **new** rule in lieu thereof:

17—8.4(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care resident’s advocate/ombudsman, may impose a monetary civil penalty of \$1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state or a local long-term care resident’s advocate/ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation.

ITEM 5. Rescind rule 17—8.5(231) and adopt the following **new** rule in lieu thereof:

17—8.5(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.
5. Instructions for responding to the notice, including information on the individual’s right to appeal.

ITEM 6. Renumber rule 17—8.6(231) as 17—8.7(231).

ITEM 7. Adopt the following **new** rule 17—8.6(231):

17—8.6(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil

penalty for interference with the official duties of a long-term care resident's advocate/ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

ITEM 8. Amend **17—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement ~~Iowa Code chapter 231~~ 2010 Iowa Acts, Senate File 2263, section 7.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/10.