

AGING, DEPARTMENT ON[17]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

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

The proposed amendments update the chapter’s purpose; remove unnecessary definitions and add new ones; 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, [Iowa Code section 231.42] 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.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 8, 2010. Such written suggestions or comments should be directed to the Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to lisa.burk@iowa.gov; or faxed to (515)725-3300.

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

The following amendments are proposed.

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, [Iowa Code section 231.42] 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 [Iowa Code section 231.42(5)].

“*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 [Iowa Code section 231.41(7)“a”].

“*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 [Iowa Code section 231.42].

“*Office of the state long-term care resident’s advocate*” means the office established in 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code section 231.42(1)].

“*Official duties*” means those duties specified in 2010 Iowa Acts, Senate File 2263, section 7, [Iowa Code sections 231.42(2) and 231.42(3)] 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 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 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 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.

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 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code ~~chapter 231~~ section 231.42].