

GOVERNOR'S TASK FORCE ON

Date: 4/1/09

DEPENDENT ADULTS WITH MENTAL RETARDATION

2009 Final Report

Pursuant to Executive Order No. 11

ACKNOWLEDGEMENTS

The Task Force acknowledges the extraordinary support it received from Professor Leonard Sandler of the University of Iowa Clinical Law Program. This Final Report would not have been possible without his probing questions, insight and tireless efforts. Thank you, Len.

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IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER ELEVEN

WHEREAS, it is a goal of this Administration to achieve and maintain a fair and equitable workforce environment and quality of life in the State of Iowa; and

WHEREAS, it is the responsibility of state government to protect our most vulnerable residents—such as dependent adults with mental retardation—from becoming the targets of predatory actions by others; and

WHEREAS, certain persons in Iowa and elsewhere have taken advantage of those who are dependent upon others for their care; and

WHEREAS, it is imperative to know whether the mistreatment of dependent adults with mental retardation occurs as isolated incidences or whether it is the result of systemic problems with existing laws, regulations and practices; and

WHEREAS, incidences of mistreatment of dependent adults with mental retardation not only adversely affects those persons but also has serious adverse effects on the residents, businesses, economy and quality of life of Iowa and the reputation of our State; and

WHEREAS, enforcement efforts to address challenges related to the treatment of dependent adults with mental retardation should be studied and enhanced, to improve the efficient coordination and cooperation between state agencies to address problems related to the care and treatment of these citizens; and

WHEREAS, the creation of a Task Force to examine and report on the issues related to dependent adults with mental retardation is an effective method to better understand the magnitude of these practices and to effectuate cooperative solutions to the enforcement of applicable laws.

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the laws and constitution of the State of Iowa, do hereby order as follows:

A DEPENDENT ADULT TASK FORCE shall be created.

A. **Membership.** Membership on the Task Force shall include:

- The Governor, or the Governor's designee;
- The Director of the Department of Elder Affairs or the Director's designee;
- The Director of the Iowa Department of Human Services, or the Director's designee;
- The Director of the Department of Inspections and Appeals, or the Director's designee;
- The Commissioner of the Department of Public Safety, or the Commissioner's designee;
- The Labor Commissioner, or the Commissioner's designee; and
- The Executive Director of the Iowa Civil Rights Commission, or the Executive Director's designee.

EXECUTIVE ORDER NO. 11 (CONTINUED)

The Director of the Department of Elder Affairs or that Director's designee shall serve as Chairperson of the Task Force.

B. Duties. The Task Force shall:

1. Review Iowa laws, regulations, policies and procedures related to the care and employment of dependent adults with mental retardation;
2. Engage the assistance and services of state agencies, members of the nonprofit and nongovernmental sector, interested groups and citizens who are not formally named to the Task Force, but who can assist with analysis of and access to data bases and systems that might help detect the existence of unregulated congregate residential settings and non-registered and / or unregulated workplaces where there may exist abuse or neglect of dependent adults with mental retardation;
3. Determine the extent to which dependent adults with mental retardation are residents of or are receiving care in unlicensed facilities;
4. Assess existing methods, both within Iowa and in other jurisdictions, of investigating and initiating enforcement action against persons who neglect, abuse or take advantage of dependent adults with mental retardation;
5. Identify and recommend potential regulatory or statutory changes that would improve prevention and enforcement efforts and systematically address the problem of the mistreatment of dependent adults with mental retardation in the State of Iowa;
6. Develop a plan and a timeline, with input from appropriate stakeholder groups, to redress the problems caused by and prevent the mistreatment of dependent adults with mental retardation through coordinated legal and regulatory changes; and
7. Identify and recommend ways to increase public awareness and education to prevent the mistreatment of dependent adults with mental retardation.

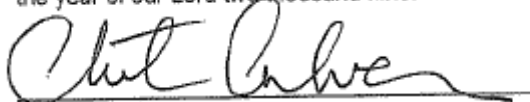
C. Final Report. The Task Force shall submit a written report outlining its activities and making recommendations for corrective action to the Governor's Office no later than April 1, 2009.

D. Administrative Support. The Department of Elder Affairs shall provide the administrative support necessary to facilitate the work of the Task Force.

E. Dissolution. The Task Force shall be dissolved upon submission of its report to the Governor's Office.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 17th day of February, in the year of our Lord two thousand nine.



CHESTER J. CULVER
GOVERNOR

ATTEST:

MICHAEL A. MAURO
SECRETARY OF STATE

Task Force Membership

<u>Name</u>	<u>Department</u>
Director John McCalley (Member)	Elder Affairs
Director Gene Gessow (Member)	Human Services
Director Ralph Rosenberg (Member)	Iowa Civil Rights Commission
Director Dean Lerner (Member)	Inspections & Appeals
Jim Larew, General Counsel (Member)	Office of the Governor
Director Jim Kenkel (Member)	State Fire Marshal's Office
Gail Sheridan-Lucht (Member), Representing Dave Neil, Labor Commissioner	Iowa Workforce Development Division of Labor Services
Kate Walton, Senior Policy Advisor	Office of the Governor
Julie Pottorff, Deputy Attorney General, Providing legal advice and counsel	Office of Attorney General
Danika Welsch, Providing administrative support	Elder Affairs
Deanna Horn, Providing administrative support	Elder Affairs



Meeting Schedule

<u>Date</u>	<u>Location</u>	<u>Facility</u>	<u>Time</u>
February 20, 2009	Des Moines	Historical Bldg	10:30 AM
February 27, 2009	Des Moines	Historical Bldg	10:30 AM
March 6, 2009	Des Moines	Historical Bldg	10:30 AM
March 13, 2009	Iowa City	Highlander Conference Center	10:30 AM
March 20, 2009	Des Moines	Historical Bldg	10:30 AM
March 27, 2009 POSTPONED	Des Moines	South Side Library	10:30 AM
March 30, 2009	Des Moines	Historical Bldg	1:00 PM

Overview

Executive Order No. 11 charged the state agency members of the Governor's Task Force on Dependent Adults with Mental Retardation with developing recommendations pertaining to identification, protection and caretaking of vulnerable Iowans.

Governor Culver created the task force in response to revelations in February, 2009, that for most of the past 34 years, a company called Henry's Turkey Service paid dozens of men with intellectual disabilities less than a dollar per hour on average, plus room and board, to work in a West Liberty meat processing plant. The dilapidated boarding home in Atalissa, Iowa where Henry's housed the men was closed by the state fire marshal in consultation with multiple state agencies.

The coordinated response of the Culver administration has significantly improved the lives of the remaining 21 men. They were moved to several state-licensed residential care facilities (RCFs) in Waterloo, Iowa, where they have received extensive healthcare, mental health, and vocational rehabilitation services. At the time of this report, the Iowa Division of Criminal Investigations (DCI) has an ongoing case on Henry's Turkey Service. In addition, several federal and state agencies continue to pursue criminal and civil investigations into the situation.

In the Final Report, the Task Force proposes dozens of action steps intended to improve dependent adult protection and detecting mistreatment of vulnerable adults. The Task Force also proposes outreach efforts intended to balance the needed public awareness messages regarding the protection of vulnerable adults with positive messages emphasizing the ability of people with disabilities to work in competitive jobs and live in the least restrictive environment possible. The recommendations do not apply exclusively to individuals with intellectual disabilities nor do they assume that all persons with disabilities are dependent.

The Task Force recommends several steps that establish or improve systems of coordination between government entities that should have existed long before the Culver Administration and can be implemented immediately. In addition, a series of proposals from the Department of Human Services (DHS) that redesign the adult abuse assessment process are necessary for long-term reform. Included in them is a proposal to enhance a community's capacity to provide a safety net of services, as well as formal and informal supports for vulnerable adults through partnerships among multiple local stakeholders.

Action at the state and community level must be complemented by federal reforms. Several federal agencies provided – or should have provided – services, supports, and workplace oversight that could have assisted in the detection of problems in Atalissa, Iowa. The Task Force suggests six proposed changes to the way federal agencies do business that will help vulnerable Iowans.

The Task Force is mindful of the extreme pressure the economic downturn has put on programs and services provided by the State. Of the 26 recommendations, 21 require no new appropriation from the State. The Task Force asks that policymakers strongly consider the five (5) recommendations that may require additional state appropriations as a reflection of the policies and values expressed by Iowans during the Task Force's proceedings.

Finally, the Task Force does not believe that its work is completed simply by issuing this report by the due date of April 1, 2009. The dialogue that has occurred during the past six weeks has led us to issues that are worthy of much deeper consideration. We propose, therefore, that the Task Force continue its work through 2009. The Task Force wants both more time to engage stakeholders and the opportunity to consider issues uncovered by the civil and criminal investigation of Henry's Turkey Service so that more recommendations can be proposed prior to the 2010 General Assembly.

Just as the state rebuilds after the devastating tornadoes, floods and downturn in the economy, so must we rebuild our connections in communities. The Task Force stands ready to work with Governor Culver, the General Assembly and all other stakeholders to remain accountable to its responsibilities to Iowa's most vulnerable citizens.

I. Initial Recommendations

The initial recommendations were presented to Governor Culver and the co-chairs of the Government Oversight Committee, Senator Rich Olive and Representative Vicki Lensing, on March 6, 2009, leading to legislation that is expected to pass during the 83rd General Assembly. The appropriate state agencies will implement them as soon as they become law. The Task Force believes no additional state appropriations will be required for the implementation of the initial recommendations.

- A. Require annual registration and occupancy reporting with the Department of Inspections and Appeals (DIA) (number of tenants and their dependency status) for all types of boarding homes in the State.
- B. Notwithstanding registration, dependency would be determined by the Department of Human Services (DHS).
- C. Require all state agencies involved in determining dependent adult abuse to utilize a uniform assessment tool for that purpose by 2011. The uniform assessment tool is not applicable to Iowa Code Chapter 235E determination. The assessment tool must also meet applicable federal requirements.
 - Require a formal assessment of risk or an inability to meet individual needs as the last step in each evaluation.
 - When risk exists, and the at-risk person consents, assign a case manager to assist in the preparation of and implementation of a safety plan.
- D. When risk exists but the individual chooses to not accept services, DHS will maintain periodic contact to listen to the individual's goals, feelings, and concerns to help them when they are ready to put in place supports and services that maintain, sustain, or improve their safety and independence.
- E. Require DHS to improve record keeping of allegations of dependent adult abuse as follows:
 - Rejected intakes -- extend from 6 months to 18 months.
 - Unfounded assessments/evaluations - extend to 5 years.
- F. Require joint interagency coordination in the investigation of all allegations against unlicensed health care facilities. Require a multidisciplinary team to work both on site and at central State agency offices, in consultation with local, state and federal law enforcement; first responders; health and human services professionals; and governmental and nongovernmental advocacy entities. (DIA, DHS, State Fire Marshal (SFM), Division of Criminal Investigation (DCI), and other agencies as needed.)
- G. Require Iowa Workforce Development (IWD)-- Division of Labor, in consultation with the US Department of Labor (DOL), to develop and maintain a database of employers utilizing special certificates as provided in the federal Fair Labor Standards Act, 29 U.S.C. 214.

- H. If DHS, DIA or other agencies receive an allegation of dependent adult abuse that relates to wages, workplace safety, or any other labor and employment matters under the jurisdiction of IWD--Division of Labor a referral shall automatically be made to IWD--Division of Labor. The Iowa Civil Rights Commission (ICRC) shall also receive referrals that pertain to their jurisdiction on discrimination.
- I. Direct DHS to work with other state agencies to coordinate cross-training regarding intake procedures and referrals. Direct DHS to work with any state inspectors, including but not limited to IWD, ICRC, and Department of Public Safety (DPS), on dependent adult abuse awareness and appropriate referral methods.
- J. The Task Force supports SF 96, which provides subpoena power to the ICRC to investigate unfair or discriminatory practices in any situation, including housing and employment.
- K. The Task Force supports SF 137, which makes wage discrimination against any employee (including those with disabilities) an unfair employment practice.

II. Additional Recommendations

The Task Force believes no additional state appropriations will be required for the implementation of the following additional recommendations. The appropriate state agencies will implement them as soon as the General Assembly and Governor enact them.

Workforce

- A. Integrate benefit planning & counseling and Work Incentive Planning and Assistance (WIPA), as well as work incentives into entitlement programs that allow persons with disabilities to build wealth and become self-sufficient. Please refer to page A53 of the Appendix for more information.
- B. Engage the Iowa WIPA to identify support systems for Social Security recipients who need assistance with benefits planning and management systems as they return to work.

Public Awareness

- C. Implement a public awareness campaign that balances the needed public awareness messages regarding the protection of “vulnerable citizens” with positive messages that emphasize the ability of people with disabilities to work in competitive jobs. See Section VI.
- D. Balance needed public awareness messages regarding the exploitation of subminimum wage workers with positive success stories of individuals with disabilities working in competitive jobs.
- E. The Governor’s Developmental Disabilities Council should take an active role in the public awareness and self-advocacy campaign.
- F. Apply for a VISTA volunteer to assist with the outreach campaign to conduct community forums to educate people at the local level and gather additional recommendations. Coordinate with ISU Extension, University of Iowa Center for Developmental Disabilities, and other entities as needed.

Extend the Task Force

- G. Allow the Task Force to continue meeting through December, 2009 to provide additional recommendations to the 2010 General Assembly and react to any findings uncovered in the civil and criminal investigations of Henry’s Turkey Service, then transition the responsibilities to an existing body in state government, such as the MH/MR/DD/BI Commission and the Dependent Adult Protective Advisory Council (DAPAC). Have the Task Force and its successor provide periodic reports on the recommendations to the Governor.

1. Refine the definition of “unlicensed facility.”
2. Clarify the link between licensure and dependent adults and mistreatment of dependent adults.
3. Refine the definition of “dependent adults.”
4. Study the practicality and benefit to consolidating various toll-free hotlines so that proper referrals occur between intake workers to create a “no wrong door” for anyone calling about dependent adult issues.
5. Discuss the appropriateness and feasibility of 211, an Information and Referral database for health and human services, serving as an umbrella referral phone system.
6. Determine the value and efficacy of developing an interstate compact – conceptually similar to the foster and adoptive children – regarding out-of-state placements of dependent adults linked to the current dependent adult registry and employment.
7. Determine the impact on Iowa Code Chapter 235 of striking the word “caretaker” and replacing it with “person.”
8. Determine the impact of applying the minimum wage, without exception, to all workers.
9. Evaluate the federal Employee Free Choice Act in relation to the mission of the Task Force.
10. Determine the adverse impact and solutions to the rapid closure of residential care facilities (approximately 33 closed within the last three years; 13 of them in the last 10 months).
11. Study confidentiality provisions.
12. Study injunctive relief for DIA.
13. Determine the extent to which the authority and resources available to the State Fire Marshal need to be augmented.
14. Require education and training for public employees, law enforcement, county attorneys, investigators, inspectors, community providers, consumer directed attendant care (CDAC), direct care workers and stakeholders including potential criminal prosecution and civil/criminal penalties.
15. Research grant opportunities with governmental and non-governmental entities that would help fund implementation of the recommendations.
16. Consider amending current law to allow for follow-up visits due to changes in physical/mental condition and dependency.
17. Provide guidance to agencies regarding outcomes sought for unlicensed operations. (i.e. closure, reduction to two (2) individuals who are dependent, criminal prosecution, civil penalties, etc.)
18. Establish timeframes for investigating reports of unlicensed boarding homes.
19. Study funding sources available to help move dislocated people when licensed entities are closed.

The Task Force believes minimal new state appropriations may be required for the implementation of the following additional recommendations:

Workforce

- H. Increase Iowa Workforce Development programs in place to provide workplace support with support staff that is trained to manage the unique needs of the consumers. Please refer to page A52 in the Appendix for more information.

Public Awareness

- I. Publicize Iowa COMPASS, Iowa's disability information and referral database, as a tool that Iowans with disabilities, families, providers and the public can use to find out how to report suspected abuse and identify available community resources relating to housing and employment.

The Task Force believes additional state appropriations will be required for the implementation of the following additional recommendations:

DHS System Redesign

- J. Implement all recommendations found in Section V of the report -- DHS "Action Steps to Improve Iowa's Dependent Adult Abuse Assessment Process."

Program Changes & Training

- K. Provide caregiver training and support, adjust support services based on functional ability, and coordinate this with the Direct Care Worker Advisory Council. Implement a statewide training symposium, as well as local training forums for professional and family caregivers.
- L. Eliminate the Medicaid "waiting" lists for services to the extent possible.
- M. Centralize service planning and accountability for Iowans with intellectual, cognitive or neurological disabilities to the extent possible.
- N. Expand the Office of Substitute Decision Maker (OSDM) in the next five years.
- O. Expand the Elder Abuse Initiative (EAI) from 30 counties to 99 counties by 2016.

III. Non-General Fund Resources

To fund these priorities, the Task Force recommends to the Governor and the General Assembly for serious consideration two possible sources of revenue:

First, the Task Force suggests that enough of the American Recovery and Reinvestment Act (ARRA) money be set aside to assure DHS, DIA and other essential agencies are able to timely meet the obligations of the State of Iowa to address these issues.

Second, the Task Force suggests the Governor and General Assembly consider dedicating DIA's Medicaid Fraud Control Unit (MFCU) "penalty recoveries" from the National Association of Medicaid Fraud Control Unit (NAMFCU) pharmaceutical prosecutions for this purpose. The use of the NAMFCU "penalty recoveries" would be consistent with both the letter and spirit of how this resource should be utilized. The "penalty recoveries" are not composed of state or federal taxes.

IV. Federal Requests

1. Require the US Department of Labor (DOL) to provide the IWD – Labor Commissioner with access to information about special certificate facilities in Iowa.
2. Require CMS to allow Medicaid targeted case management funds to pay for evaluations by outside inspectors of facilities in which waiver services are provided.
3. Allow a portion of the stimulus funds for workforce to help provide incentives to employ persons with disabilities.
4. Amend the Social Security Act to provide a permanent federal source of funding for protective services for adults like it does for children.
5. Request strengthened communication between state and federal agencies, particularly when the DOL conducts an audit or investigation pertinent to the mission of the IWD – Labor Commissioner.

V. Action Steps to Improve Iowa's Dependent Adult Abuse Assessment Process

DHS Dependent Adult Abuse Intake Process:

We have reviewed our existing intake system and based on this review we have identified the following actions:

Within 30 days

- Provide training to all intake staff regarding intake definitions and responsibilities
- Provide training to all staff on what to do when receiving calls relating to dependent adult abuse
- Implement a quality assurance system to ensure intakes reach accurate decisions and are consistent
- Issue a written notice to all reporters on accepted or rejected intake

Within 60-120 days

- Revise Dependent Adult Abuse Staff manual to clarify processes, definitions and decision points.
- Review and revise information and referral process (must have Code change)
- Convene a stakeholder group to review definition of "dependent adult" and "caretaker" for potential revisions
- Implement an automated dependent adult management information system

Recommended Statutory Changes

- Amend Chapter 235B.9 to retain rejected intake reports 18 months and unconfirmed reports for five (5) years.
- Amend Chapter 235B.6

DHS Dependent Adult Assessment Process:

We have reviewed our existing intake system and based on this review we have identified the following actions:

Within 30 days

- Assure consistency of contact with the Medicaid Targeted Case Managers and other established Case Managers
- Assure appropriate coordination with the Division of Mental Health and Disability Service and Iowa Medicaid Enterprise for review for accreditation standard or certification requirement violations

Within 90-180 days

- Identify/develop and implement standardized assessment tool to assist staff in determining dependency
- Identify and implement a tool to guide next steps at the conclusion of an assessment process

Services:

Public Awareness

Within 30 days

- Share with DHS Service Area Advisory Boards, County Central Points of Coordination, key providers and other key stakeholders information including key contact numbers and basic referral guidelines for dependent adult concerns

Within 60-120 days

- Meet with Service Area Advisory Groups, County Central Points of Coordination and other key groups to identify gaps in programming for dependent adults

Create greater shared responsibilities through the development of Community Partnerships for Dependent Adults (Requires an appropriation)

Within 90 days

- Convene stakeholders to a statewide conversation to develop a model for community partnership for dependent adults. Community Partnership is designed to enhance a community's capacity to provide a safety net of services and formal and informal supports for vulnerable adults

Within 180 days

- Implement a Pilot Community Partnership

Create Transitional Case Manager (Requires an appropriation)

Within 60-90 days

- Determine method for implementing Transitional Case Management Services for persons who have been abused and do not otherwise have an ongoing case manager who will be responsible for coordinating natural supports or community services to assure the individual will remain safe. This person will facilitate the integration into ongoing services and is necessary for a period of time after services between initial assessment and ongoing services

Establish a Dependent Adult Safety Services Adult Appropriation

Establish an appropriation to provide for safety services for consumers not otherwise eligible for services. The appropriation may be used for Transitional Case Managers to arrange for services, emergency housing, medical care, and supports. The appropriation may also be used to meet the necessary costs of community collaborations.

The cost components:

- Public Awareness
- Information management and reporting for public accountability and transparency
- Community collaboration and public awareness of dependent adult abuse
- Safety independence planning and service arrangements in partnership with the dependent adult, the community, and the family. The case manager will continue to monitor and evaluate service as needed.
- The provision of services not otherwise funded for basic needs and services focused on the safety of independent plan.

Strengthen existing Adult Multidisciplinary Team

Within 120 days

- Assess existing use and effectiveness of Multidisciplinary Teams
- Identify and implement changes to improve

Strengthen DHS Accreditation and Certification requirements for providers

Within 180 days

- Implement enhanced provider requirements for identifying and reporting potential consumer safety issues
- Implement enhanced provider requirements for training regarding consumer safety

VI. Public Awareness Campaign Outline

A sustained public awareness campaign to inform and educate the general public on spotting and reporting any suspected abuse cases of vulnerable adults is a logical outgrowth of the **Governor's Task Force on Dependent Adults with Mental Retardation**:

In considering the number of potential audience 'touch points' available today, a marketing mix would be very effective. This public awareness campaign to educate and inform the general public about spotting and reporting abuse to our most vulnerable citizens could include the following elements:

- **Earned Media** – Develop press releases, bylined articles, letters to the editor, PSAs (public service announcements), radio and TV interviews, and online newsletters, etc. to broaden our audience
- **Community Relations** – Develop 'direct-contact' opportunities to reach audiences, such as conference/meeting participation, speaking engagements with community groups, event sponsorships, strategic partnerships with advocate groups, community celebrations etc...
- **Web Site** – Lead people to a web site, page or multiple web pages and links to services that brings the targeted messages directly to the public.
 - Coordinate web pages and links with federal, state, county and city government web sites
- **Internet Applications** – Using tools such as Facebook and YouTube, target outreach with information and options:
 - Service awareness
 - Information on identifying and reporting abuse
 - Caregiver support and outreach education
 - Civil rights information for people with disabilities related to employment and residence issues
- **Toll-free Phone Numbers** - One way to get the public to report suspected abuse or have questions answered in relation to the issue:
 - DIA Toll free phone number: 1-877-686-0027
 - DHS Toll free phone number: 1-800-362-2178
 - ICRC Toll free phone number: 1-800-457-4416
 - IWD Toll free phone number: 1-800-562-4692

<u>Target Audience</u>	<u>Key Messages</u>	<u>Method of Communication</u>	<u>Timeframe</u>
1. General Public	Educate public on how and where to report suspected abuse of vulnerable citizens and on what are acceptable conditions, and what are not, as it pertains to residential housing and work situations of dependent adults with mental retardation	Earned media: PSA Press release Letters to the editor Radio/TV interviews Online newsletter on agency website with links to other agencies	May 2009 Through December 2012
2. Consumers	Educate consumers on the resources available to them now for help and on what are acceptable conditions, and what are not, as it pertains to residential housing, work situations, including pay and SS benefits, of dependent adults with mental retardation.	Earned media Newsletters, other related publications, e-mail, websites, press releases, radio/TV interviews ,etc.	May 2009 Through December 2012
3. Healthcare professionals	Educate consumers on the many resources available to them now for help and on what are acceptable conditions, and what are not, as it pertains to residential housing and work situations of dependent adults with mental retardation	Earned media Newsletters, other related publications, e-mail, websites, press releases, radio/TV interviews etc	May 2009 Through December 2012
4. * Advocate Groups	Help with general public awareness campaign by sending key message through their newsletters and contacts	Newsletters, other publications, e-mail and websites	May 2009 Through December 2012
	Help support vulnerable citizens by highlighting the 10 th anniversary of the Olmstead Decision 'Iowa Real Choices' July 26, 1999- July 26, 2009	Earned media: PSA Press release Letters to the editor Radio/TV interviews Community forums or conversations Online access to information on Olmstead – Real Choices	May 2009 Through July 2009

<u>Target Audience</u>	<u>Key Messages</u>	<u>Method of Communication</u>	<u>Timeframe</u>
6. General Public & * Advocate Groups	Continue support for the ADA (Americans with Disabilities Act) by highlighting the 19 th Anniversary of ADA which is July 26, 2009 and upcoming 20 th anniversary July 2010	Earned media Press releases & Letters Editorials Community forums Radio/TV interviews Online access to information	July 2009 Through July 2010
7. General Public & * Advocate Groups	Continue support for the ADA (Americans with Disabilities Act) by highlighting the 19 th Anniversary of ADA which is July 26, 2009 and upcoming 20 th anniversary July 2010	Community Relations Direct contact through county fairs, community celebrations and the Iowa State Fair through outreach materials placed at booths and other venues available	August 2009 Through July 2010
8. General Public	Educate public on how and where to report suspected abuse of vulnerable citizens and on what are acceptable conditions, and what are not, as it pertains to residential housing and work situations of dependent adults with mental retardation	Community Relations Direct contact through participation in meetings, conferences, speaking engagements with community groups, event sponsorships, strategic partnerships with advocate groups	May 2009 Through December 2012
9. General Public	Educate public on how and where to report suspected abuse of vulnerable citizens and on what are acceptable conditions, and what are not, as it pertains to residential housing and work situations of dependent adults with mental retardation	Web Site & Toll-Free Numbers: (DHS) 1-800-362-2178 (DIA) 1-877-686-0027 (ICRC) 1-800-457-4416 (IWD) 1-800-562-4692 Website/page Included in entire public awareness campaign to lead public to a website or web page. Toll-Free numbers for public to report or ask questions in relation to the issues.	May 2009 – ongoing

<p>Potential partners, advocate groups and other contacts:</p> <ul style="list-style-type: none"> • Nurses, Doctors and other healthcare professionals • Law enforcement • Labor/Unions • Small Business • Mental health advocates • The Arc of Iowa • Governor's DD Council • Older Iowan advocates • State Agency partners • Neighborhood and other community associations • Iowa Emergency Med. Services • Iowa Psychiatric Society • Iowa Assisted Living Association • Iowa Medical Society 	<ul style="list-style-type: none"> • Food banks • Civic orgs/ clubs such as: Lions, Eastern Star, Kiwanis, Jaycees • Organizations such as the Shriners, Easter Seals and United Way • Local Health Departments • Local Government Departments • Iowa Protection and Advocacy Services • NASW (National Association of Social Workers – Iowa Chapter) • Hospitals and Clinics • Iowa Department of Public Health (has lists of licensed health care professionals) • Iowa State Association of Counties • Fire Departments – both professional/ state and local volunteer departments • Caregivers, both paid and family/friends unpaid caregivers • Brain Injury Association of Iowa 	<ul style="list-style-type: none"> • Iowa Association of Realtors • Iowa Judge's Association • Iowa Association of Magistrate Judges • Iowa County Attorney's Association • Iowa Association of Criminal Defense Lawyers • Iowa State Bar Association • Iowa County Sheriff's Association • *Colleges and Universities and other higher education institutions and associations 	<ul style="list-style-type: none"> • Iowa Hospital Association • Iowa Healthcare Association • NAMI – National Alliance on Mental Illness - Iowa • Iowa Legal Aid • Iowa Association of Community Providers • Iowa Business Council • Iowa Caregivers Association • Iowa Children's and Family Services • Provider groups • Faith based organizations 	<ul style="list-style-type: none"> • Iowa Citizen Action Network • Iowa Citizens for Community Improvement • Iowa Community Action Association • Iowa Lodging Association • Iowa Business and Industry • Healthcare Provider Groups • Transportation • Veterans • Iowa Hospice • Area Agencies on Aging
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Note: Iowa Department of Elder Affairs and the Iowa Commission on Human Rights will explore the possibility of obtaining help from a VISTA volunteer (this will be done with the help of the Iowa Civil Rights Commission) to assist in the implementation of the Task Force's Public Awareness Campaign.

Note: *Task Force will work with the University of Iowa Center for Disabilities and Iowa Workforce Development on an awareness campaign on the availability of competitive work and equality in work issues such as pay and social security benefits.

VII. Detection and Prevention

No additional unlicensed boarding homes have been reported to the Task Force. The Task Force acknowledges it is not possible to detect or prevent another situation like that found in Atalissa, Iowa, without engaging the broader community in a respectful and positive way.

Below is a list of governmental and nongovernmental entities to engage for detecting mistreatment in residential or workplace settings. The Task Force has discussed several mechanisms for engaging these groups as partners including, but not limited to:

1. Sending a letter from the Department of Inspections and Appeals to entities that are directly or indirectly involved with placing individuals in residential settings, like primary health care providers;
2. Posting information on supports and services for persons with disabilities on county and city websites, as well as resources for reporting suspected mistreatment of dependent adults;
3. Integrating informational brochures into events such as county fairs, at the community level;
4. Conducting community forums, utilizing a tool kit developed by the state, intended to spark discussions at events like city councils or county boards of supervisors meetings.
5. Develop a speakers' bureau to speak to local civic and community groups about the rights of persons with disabilities and the available supports and services to help them live and work with the greatest autonomy possible.

A. Community Groups:

Non Profit

1. Canvass all Area Agencies on Aging and their network of providers.
2. Neighborhood Associations
3. Visiting Nurses Services

Civic Organizations/Clubs

1. Kiwanis
2. Lions
3. Jaycees
4. Masons/Shriners
5. Elks
6. Citizens for People with Disabilities
7. PADS

B. Local Government

Local state agency affiliate:

1. Public Health agencies and their local providers.
2. Municipalities (cities, towns, townships)
3. Local Civil Rights Commissions

C. County Government

1. Central Point of Coordination (CPCs)
2. County Health Departments
3. County Clerks
4. Boards of Supervisors

D. State Agencies:

1. Vocational Rehabilitation: Canvassing all sheltered workshops.
2. Vocational Rehabilitation: Canvass all Centers for Independent Living
3. DHS Targeted Case Management Advisory Committee
4. MH/MR/DD/BI Commission
5. Olmstead Task Force
6. Mental Health Planning Council
7. Governor's DD Council
8. Iowa Department of Human Rights

E. State Associations:

1. Iowa Protection & Advocacy Services
2. Iowa Association of Realtors
3. Iowa Judges' Association
4. Iowa Association of Magistrate Judges
5. Iowa County Attorneys' Association
6. Iowa Association of Criminal Defense Lawyers
7. Iowa State Bar Association
8. Iowa County Sheriff's Association
9. Iowa Hospital Association
10. Iowa Health Care Association
11. Iowa Legal Aid
12. Iowa Association of Community Providers
13. Iowa Business Council
14. Iowa Caregivers Association
15. Iowa Children's and Family Services
16. Iowa Citizen Action Network
17. Iowa Citizens for Community Improvement
18. Iowa Community Action Association
19. Iowa Lodging Association
20. ID Action – Iowans with Disabilities in Action
21. Arc of Iowa
22. Iowa Statewide Independent Living Council (SILC)
23. Alzheimer's Association
24. NAMI – Iowa – National Alliance on Mental Illness - Iowa
25. Families of Iowa Network for Disabilities
26. Iowa Advocates for Mental Health Recovery
27. Iowa Respite Crisis Care Coalition
28. Brain Injury Association of Iowa
29. Iowa Association of Community Providers
30. Iowa Behavioral Health Association

31. Iowa Association of Counties
32. Iowa League of Cities
33. National Association of Social Workers – Iowa Chapter
34. Firefighters Associations

F. Labor Unions

1. Iowa Federation of Labor AFL-CIO
2. Service Employees International Union (SEIU)
3. American Federation of State, County and Municipal Employees (AFSCME)

G. Business Associations

1. Iowa Association of Business and Industry (ABI)

H. Faith Organizations:

1. AMOs
2. United Methodist Conference
3. Catholic Charities
4. Lutheran Social Service
5. Interfaith Alliance
6. Local Ministerial Alliances

I. Healthcare Provider Groups and Associations:

1. Iowa Health System
2. Iowa Hospice Organization
3. Iowa Physicians Assistant Society
4. Iowa Emergency Medical Services Association
5. Iowa Psychiatric Society
6. Iowa Assisted Living Association
7. Iowa Medical Society
8. All Targeted Case Management Providers
9. All Home and Community Base Service (HCBS) Providers

J. Federal Agencies:

1. Social Security Administration
2. CMS – Center for Medicare and Medicaid Services
3. Equal Employment Opportunity Commission
4. Department of Justice
5. Department of Labor

K. Consumers

L. Other:

1. University of Iowa – Center for Developmental Disabilities, Iowa Consortium for Mental Health, Law Clinics.
2. Iowa State University Extension
3. University of Northern Iowa – College of Education, College of Social and Behavioral Science
4. Community Colleges

**Iowa Department of Human Services
Information for Dependent Adult with Mental Retardation Task Force
2/25/09**

I. Introduction:

Addressing the health and safety issues and needs of dependent adults with mental retardation requires a balance to the support of individual rights and choices for living environments, employment opportunities and social interactions with the need to assure that individuals are safe and not exploited.

Iowa's service delivery system provides an array of services to support individuals with mental retardation based on their individual needs along a continuum from least to most restrictive residential setting.

Although protection of dependent adults with mental retardation is the responsibility of all Iowans, the Iowa Code specifically establishes

- Who must report abuse
- The circumstances when adult abuse assessments must occur
- Requirements related to record keeping
- Requirements related to findings and consequences

II. Overview of DHS Responsibilities

DHS has the following key responsibilities related to dependent adults with mental retardation:

- Adult protective services for dependent adults in unlicensed or unregulated living environments
- Evaluation of criminal and abuse histories for persons that work with vulnerable adults, including those with disabilities and the elderly
- Administration of Iowa's Medicaid Program that provides health and behavioral health care services for eligible Iowans. The Medicaid Program establishes conditions for provider participation, which outline expectations for client rights and include a complaint resolution process for all Medicaid providers and clients.
 - In addition to traditional health care and institutional long term care services; the Medicaid Program provides Home and Community Based Waiver Services (HCBS) to over 7,500 adults with mental retardation.
 - Persons served by HCBS waiver services reside independently—by self or with others.
 - One of the requirements for HCBS Waiver providers is to have an incident management system. IME oversees the response to Home and Community Based Waiver provider incidents.
 - All Medicaid members receiving HCBS/MR Waiver services have a Targeted Case Manager who assesses needs, coordinates services, and plays a role in ensuring the health and safety of the member.
- Implementation of accreditation standards for services for persons with mental illness and mental retardation. These services include targeted case management, supported community living, outpatient and evaluation, emergency services, and intensive psychiatric rehabilitation. The standards set for basic quality of care expectations, require providers to have complaint resolution processes, notify clients of their rights, and contain a process for referring complaints to state surveyors.

- DHS is a provider of services.
 - Targeted Case Management – DHS is a provider of Medicaid funded Targeted Case Management Services for persons with mental retardation. Members served through the MR HCBS waiver are required to have a Targeted Case Manager, who ensures they have service plans to meet their individual health, safety and support needs, and coordinates with providers to deliver the services. In addition the TCM are often front line responders when there are complaints or emergencies.
 - Transition Planning for Youth in Foster Care – DHS works with County Central Points of Coordination (CPC's) to assist youth in foster care with mental retardation to make a successful transition to adult disability services.
 - Intermediate Care Facility for Persons with Mental Retardation – DHS operates two of Iowa's 139 ICF/MR facilities through the Glenwood and Woodward Resource Centers. One of the requirements to receive Medicaid funding is the assurance of health and safety of persons served. All ICF/MR must report allegations of abuse and neglect of clients to the Department of Inspections and appeals and per regulations conduct internal investigations within 5 working days.
 - Home and Community Based Waiver Services — Glenwood and Woodward also provide HCBS Waiver Services.
- DHS also provides for basic needs. As identified above, health care services are provided through the Medicaid program. In addition, the Department administers the Food Assistance Program, In-Home Health Related Care (IHHRC) and Residential Care Facility (RCF) services.
 - IHHRC and RCF services are part of the State Supplementary Assistance (SSA) program. The SSA program assists individuals who are aged, blind or disabled and who are either:
 - Receiving Supplementary Security Income (SSI); or
 - Meet all SSI eligibility criteria, but are over income; or
 - Are not eligible for SSI because they are working.
 - In-Home Health Related Care is provided to persons with physical or mental problems that keep them from independent self-care, but who are able to stay in their own homes with some assistance or personal services.
 - Residential Care Facilities provide for 24 consecutive hours accommodation, board, personal assistance, and other essential living activities to at least three individuals. These persons are unable to properly care for themselves because of illness, disease, or physical infirmity, but they do not require the services of a registered or licensed nurse except on an emergency basis.

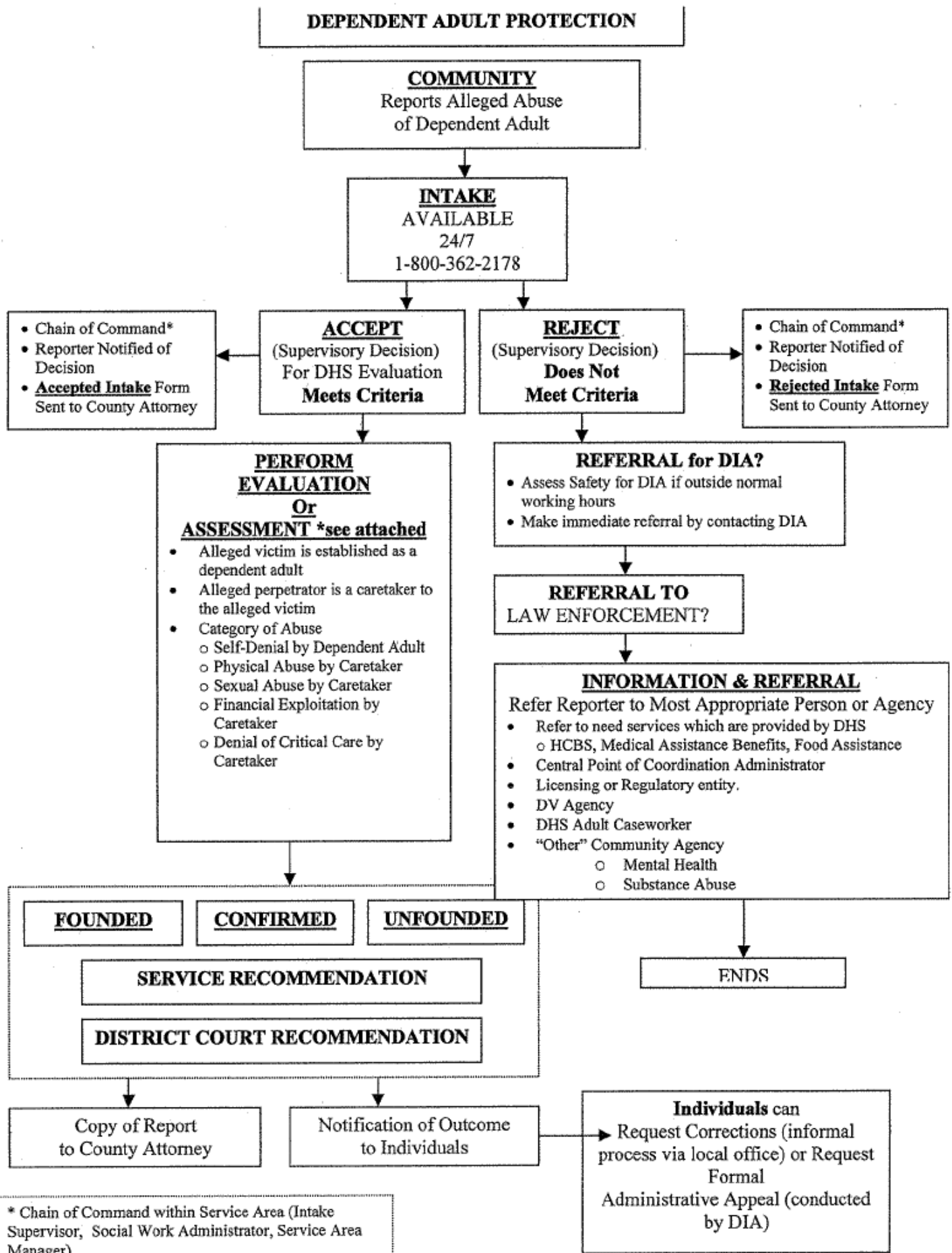
III. Dependent Adult Protective Services

A. Regulatory Citations

<u>IOWA CODE</u>	
Chapter 235B	Dependent Adult Abuse Services and Registry
<u>IOWA ADMINISTRATIVE RULES</u>	
441-176	Dependent Adult Abuse
<u>DHS POLICY MANUALS</u>	
Dependent Adult Intake Manual, Employees Manual 16-G(1)	Provides instructions for intake workers on how to complete intake on reports of dependent adult abuse
Dependent Adult Protective Services, Employees Manual 16-G	Provides specific instructions for conducting an evaluation or assessment of dependent adult abuse
Dependent Adult Protective Services Handbook, Comm. 96	Provides DHS protective services workers guidelines and suggestions on how to thoroughly conduct intake or evaluation of reports of abuse.
Dependent Adult Protective Services, Employees Manual 16-G Appendix	Provides forms and instructions to complete intake and evaluation or reports of abuse
Facility, Agency and Program Evaluation Handbook, Comm. 195	Provides instructions to DHS staff regarding the DA evaluations they conduct for facilities, agencies, programs, and in the community for which they are responsible.
Dependent Adult Abuse, A Guide for Mandatory Reporters, Comm. 118	Provides instructions for persons who, because of their jobs, are mandated to report abuse of dependent adults when they become aware of it.

B. Dependent Adult Abuse Assessment Process and Glossary

The following flowchart shows DHS response to reports of dependent adult abuse, beginning with a report of alleged abuse from someone in the community through the intake and evaluation process, and potential referrals for services and/or district court action.



Glossary

"Accepted" Criteria needed to accept:

- Can infer the alleged victim is a dependent adult
- Can infer the alleged person responsible is a caretaker
- Can infer the alleged incident is an allegation of dependent adult abuse as defined in Iowa Code Section 235B

Employees Manual 16-G(1)

"Assessment" means the process of collecting and examining information concerning a dependent adult who allegedly has been denied critical care **due to the acts or omissions of the dependent adult**, for the purpose of determining the circumstances of the adult. The information is used to write the dependent adult abuse assessment report. (Iowa Code section 235B.3; 441 IAC 176.3(3)) "Assessment" also means the completed report when:

- ♦ The dependent adult is responsible for the abuse; **or**
- ♦ The report of abuse is "confirmed, not registered" because the physical abuse or denial of critical care was minor, isolated, and unlikely to reoccur.

Employees Manual 16-G

"Caretaker" means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

Code of Iowa Section 235B.2(1)

"Confirmed, not registered" physical abuse or denial of critical care is determined by a preponderance of evidence (more than 50%) to have occurred, but because the abuse is minor, isolated, and unlikely to reoccur, the report is not placed on the Registry.

Employees Manual 16-G

"Denial of critical care" exists when the dependent adult's basic needs are denied or ignored to such an extent that there is immediate or potential danger of the dependent adult suffering injury or death, or is a denial of, or a failure to provide the mental health care necessary to adequately treat the dependent adult's serious social maladjustment, or is a gross failure of the caretaker to meet the emotional needs of the dependent adult necessary for normal functioning, or is a failure of the caretaker to provide for the proper supervision of the dependent adult.

IAC 441-176.1

"Dependent adult abuse" means:

- (1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
 - (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.
 - (b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.
 - (c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
 - (d) 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 health.
- (2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.
- (3) Sexual exploitation of a dependent adult by a caretaker.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. 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.

"Dependent adult abuse" does not include any of the following:

- (1) 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.
- (2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, 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.
- (3) 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 pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.

Code of Iowa Section 235B.2(5)

"Dependent adult" means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

Code of Iowa Section 235B.2(4)

"Evaluation" means the process of collecting and examining information concerning a dependent adult who allegedly has been abused or denied critical care **due to the acts or omissions of the caretaker**, for the purpose of determining the circumstances of the dependent adult. The information is used to write the dependent adult abuse evaluation report. An evaluation is done on all allegations of dependent adult abuse that are not due to the acts or omissions of the dependent adult.

Employees Manual 16-G

"Founded" it has been determined by a preponderance of evidence (more than 50%) that dependent adult abuse has occurred.

Employees Manual 16-G

"Rejected" means information received does not meet the criteria established in the code to accept a report for evaluation or assessment.

Employees Manual 16-G(1)

"Unfounded" means that it has been determined by a preponderance of evidence (more than 50%) that dependent adult abuse has not occurred.

Employees Manual 16-G

C. Reporting of Dependent Adult Abuse and Neglect

Who can report?

- Mandatory reporters are persons, who because they examine, attend, counsel or treat dependent adults, are required by law to report suspected abuse of dependent adults.
- Anyone in the community who suspects abuse can make a report

How can people report?

- The Abuse Hotline accepts calls at any time of day and then forwards calls to the service area's centralized intake unit.
- The Abuse Hotline number is 1-800-362-2178.
- The Hotline accepts calls 24 hours a day, 7 days a week.

How do people know whom to contact?

- The phone number to make a report of dependent adult abuse is listed in all Iowa local phone books.
- The hotline number is listed on the DHS website.
- Abuse Hotline information is published in the brochure "Dependent Adult Abuse, Comm. 82. It is disseminated in trainings, conferences, forums, meetings and whenever requested.

How are records maintained?

- Reports that are founded are kept for 10 years from the date of the last report and then sealed. (Iowa Code 235B.9)
- Reports that find physical abuse or denial of critical care caused by a caretaker occurred [confirmed] but because the abuse was minor, isolated and unlikely to reoccur are kept for 5 years as assessments in the local office and not placed on the Central Abuse Registry. (Iowa Code, Section 235B.3, paragraph 1, subparagraph c)
- Reports of self-denial of critical care when the dependent adult is responsible for the abuse are called assessments and kept in the local office case records. Case records are kept for 5 years from the date of the last service and then sealed. (Iowa Code, Section 235B.3, paragraph 1, subparagraph b)
- Reports of dependent adult abuse that are unfounded are kept for 1 year in the local office and then destroyed. (Iowa Code 235B.9)
- Intakes on reports of dependent adult abuse that are rejected are kept in the local office for 6 months and then destroyed. (DHS Dependent Adult Abuse Intake Manual, Employees Manual, Title 16, Chapter G(1))
- Intake reports of dependent adult abuse that are rejected are sent to local county attorney offices, along with all documents concerning dependent adult abuse, so the county attorney may pursue other legal remedies not covered in the dependent adult abuse law. (Iowa Code, Section 235B.3, paragraph 9).

D. Key Information of Dependent Adult Protective Services

Calendar Year	Accepted Reports	Number of Founded	Percentage Founded
Jan.-June 2007	893	208	23.3%
July-Dec. 2007	785	192	24.5%
Jan.-June 2008	899	177	19.7%

IV. Mental Health and Disability Services - Accreditation Services

A. Regulatory Citations

IOWA CODE	
Chapter 225C	Mental Illness, Mental Retardation, Developmental Disability or Brain Injury
IOWA ADMINISTRATIVE RULES	
441-Chapter 24	Accreditation of Providers of Services to Persons with Mental Illness, Chronic Mental Illness, Mental Retardation, Developmental Disability: Index and Definitions

B. Overview of Organizations and Services Accredited under 441-Chapter 24

Following is a listing of the types of organizations and services accredited under 441- Chapter 24.

Organization	
Case Management	Organization established pursuant to Iowa Code 225C.20
Community Mental Health Center	Organization providing mental health services that is established pursuant to Iowa Code chapters 225C and 230A.
Supported Community Living Services	Organization providing services to individuals with a mental illness, mental retardation, or developmental disability to enable them to develop supports and learn skills to live in the community
Other Mental Health Service Providers	Organization whose services are established to specifically address mental health services to individuals or the administration of facilities in which these services are provided.

Services	
Case Management	Services established pursuant to Iowa Code section 225C.20.
Supported Community Living Services	services provided to individuals with a mental illness, mental retardation, or developmental disability to enable them to develop supports and learn skills to live in the community
Intensive Outpatient/Day Treatment	Individualized service emphasizing mental health treatment and intensive psychosocial rehabilitation activities designed to increase the individual's ability to function independently or facilitate transition
Psychiatric Rehabilitation Services	Services designed to restore, improve, or maximize level of functioning, self-care, responsibility, independence, and quality of life; to minimize impairments, disabilities, and disadvantages of people who have a disabling mental illness
Outpatient Psychotherapy/Counseling Services	A dynamic process in which the therapist uses professional skills, knowledge and training to enable individuals using the service to realize and mobilize their strengths and abilities
Partial Hospitalization Services	An active treatment program providing intensive group and individual clinical services within a structured therapeutic environment for individuals who are exhibiting psychiatric symptoms of sufficient severity
Emergency Services	Crisis services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress
Evaluation Services	screening, diagnosis and assessment of individual and family functioning needs, abilities, and disabilities, and determining current status and functioning in the areas of living, learning, working, and socializing

C. Key accreditation requirements related to individual safety under Chapter 24

Organizations must:

- There must be criminal checks on all employees per Iowa code 135C.33(5)
- Provides approved training on child and dependent adult abuse reporter requirements to all staff who are mandatory abuse reporters.
- Respond to any situation that poses a danger or threat to staff or to individuals using the services for necessity, appropriateness, effectiveness, and prevention.
- Provides services in a safe and supportive environment for the individuals being served and the staff providing services and meets all applicable local, state, and federal regulations.
- Reviews the organization's response to incidents including annual analysis of data to identify any patterns of risk to the health and safety of consumers.

Providers of accredited services must:

- Develop an individualized crisis intervention plan for all participants of accredited services
- Verify that individuals using the service and their guardians are informed of the process to express questions, concerns, complaints, or grievances
- Provide the individuals and their guardians the right to appeal the application of policies, procedures, or any staff action that affects the individual using the service.
- Have established written appeal procedures and a method to ensure that the procedures and appeal process are available to individuals using the service.
- Complete incident reports when staff first become aware that an incident has occurred

D. Key Information of MHDS Accreditation Services

- Number of Providers Accredited Under Chapter 24 (IAC) – 227
- Number of Complaints filed (2008) – 0; (2009) - 1

V. Iowa Medicaid Enterprise

A. Regulatory Citations

FEDERAL LAW	
42 USC Sec. 1396a, Title XIX of the Social Security Act	Medicaid State Plans for Medical Assistance – see sections 1802, 1851, and 1860 regarding residents rights to make informed decisions about their care
42 USC Sec. 12111	Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008 – prohibits discrimination on the basis of disability in employment. The 1999 US Supreme Court decision in Olmstead v. LC and EW found that segregation of individuals in institutions by reason of their disability is unlawful discrimination and interpreted provisions of Title II of the ADA to require states to administer their programs, services, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

42 CFR Parts 400-499	Chapter IV Centers for Medicare and Medicaid Services
<u>IOWA CODE</u>	
Chapter 249A	Medical Assistance
Chapter 249A.26	State and county participation in funding for services to person with disabilities – case management
<u>IOWA ADMINISTRATIVE RULES</u>	
IAC 441-77-80	Medicaid Rules for Conditions of Participation for Medicaid providers, Amount, Duration and Scope of Medicaid Services, Procedure and Method of Payment for Medicaid providers
<u>DHS POLICY MANUAL</u>	
Medicaid HCBS Provider Manual Consumer Directed Attendant Care Manual Targeted Case Management Provider Manual	
Link to Provider Manual Website: http://www.dhs.state.ia.us/policyanalysis/PolicyManualPages/MedProvider.htm	

B. Medicaid Overview

Medicaid is a state/federal program that provides health insurance for certain groups of low income people. Medicaid is a 'payor' of health care services, not a provider. Medicaid pays health care providers for a wide range of health care services, sets requirements for providers in delivering services, ensures sufficient access to services for Medicaid members, assures Medicaid members have a choice of providers, and provides utilization management to ensure services are medically necessary.

The Medicaid program covers over 350,000 Iowans that are:

- Low income parents and their children,
- Older people who need long-term care, and
- People with disabilities, including persons with mental retardation. Of the Medicaid population, approximately 17,432 have mental retardation.

The health care services covered by Medicaid include traditional acute care services, such as Hospital, physician, prescription drugs, lab, X-ray, etc. In addition, Medicaid covers long-term care services such as nursing facilities and Intermediate Care Facilities for the Mentally Retarded (ICF/MR). Medicaid also covers home and community based supports that assist a person to live independently in their own home, called 'Home and Community Based Waiver Services'.

The key services targeted to persons with Mental Retardation are ICF/MR (approximately 2,105 members), and the Mental Retardation Home and Community Based Waiver (approximately 7,913 adults). Those on the MR waiver are supported by specialized home and community based supports that help a person live in their home as independently as possible. To receive these services, members must meet the criteria for ICF/MR level of care (defined by IQ score and the need for assistance with Activities of Daily Living).

The Iowa Medicaid Enterprise provides oversight and quality assurance of the HCBS providers. This function is administered through a contract with Iowa State University, which conducts quality assurance and technical assistance for the seven Medicaid HCBS waiver programs, Habilitation program and Remedial Services. The contract is housed on site with IME state staff, and is monitored through a number of performance measures.

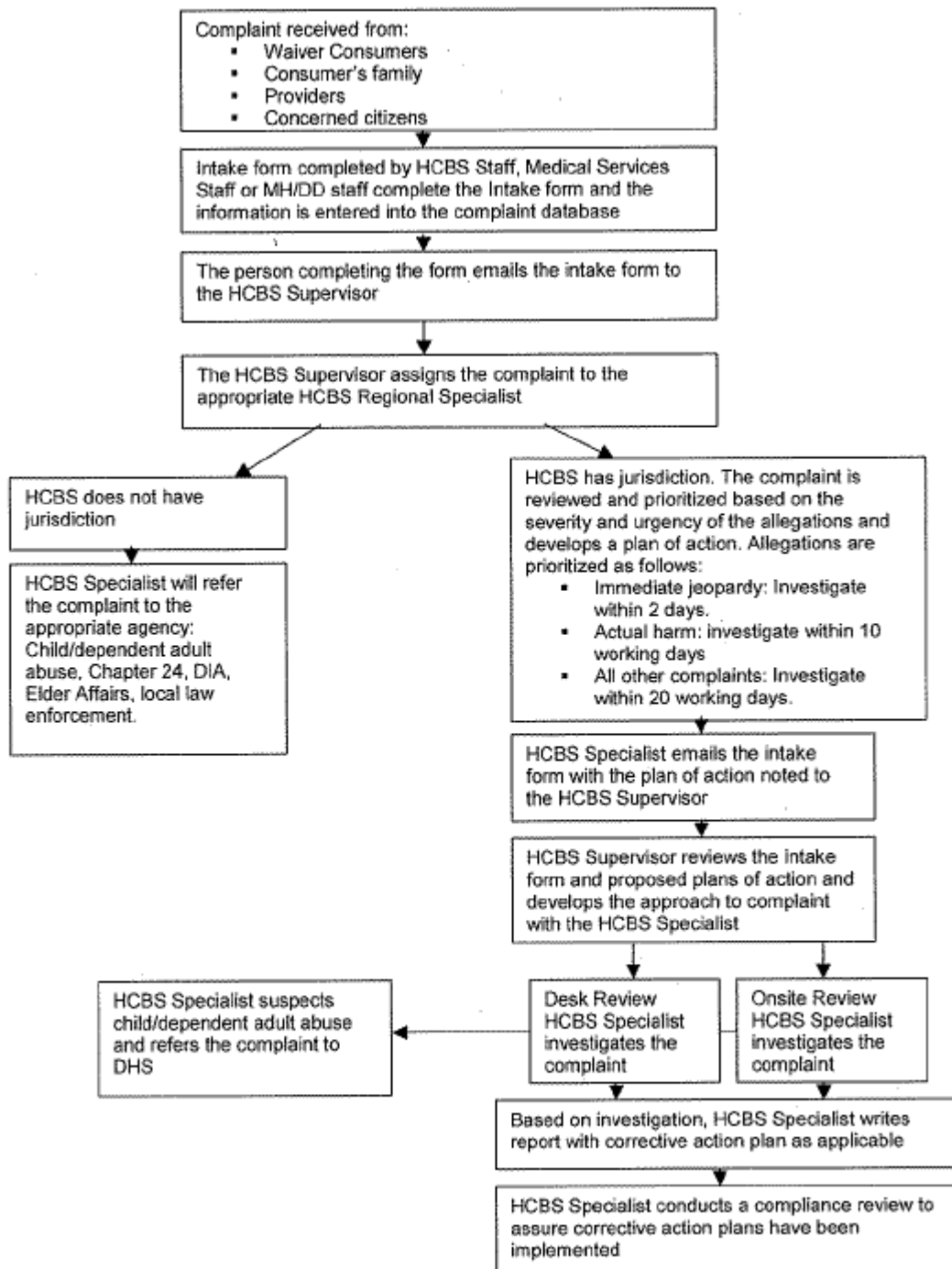
Complaints and 'incidents' are both monitored through the HCBS quality assurance process. Complaints generally are about a Medicaid provider. They could be from a member, a family member, provider staff, the community, etc. Complaints are about almost anything and are reviewed per the process in the "HCBS Complaint Process" flowchart.

Incident Reports are different from complaints. Incidents include suspected abuse; but also include accidents or injuries that occur in the course of normal life (falls, mental health crises, aggressive behaviors, etc.) The purpose of Incident Reporting is to ensure that providers follow-up appropriately on incidents, make appropriate referrals and have systems in place that ensure clients needs are being met. The incident reporting process relies on the existing dependent adult and law enforcement entities -- does not replace them -- rather monitors to ensure the processes that are supposed to happen, in fact do. It also looks for systemic issues, or problems with a provider or a region of the state that may be having particular issues that require training, corrective action, or sanctions.

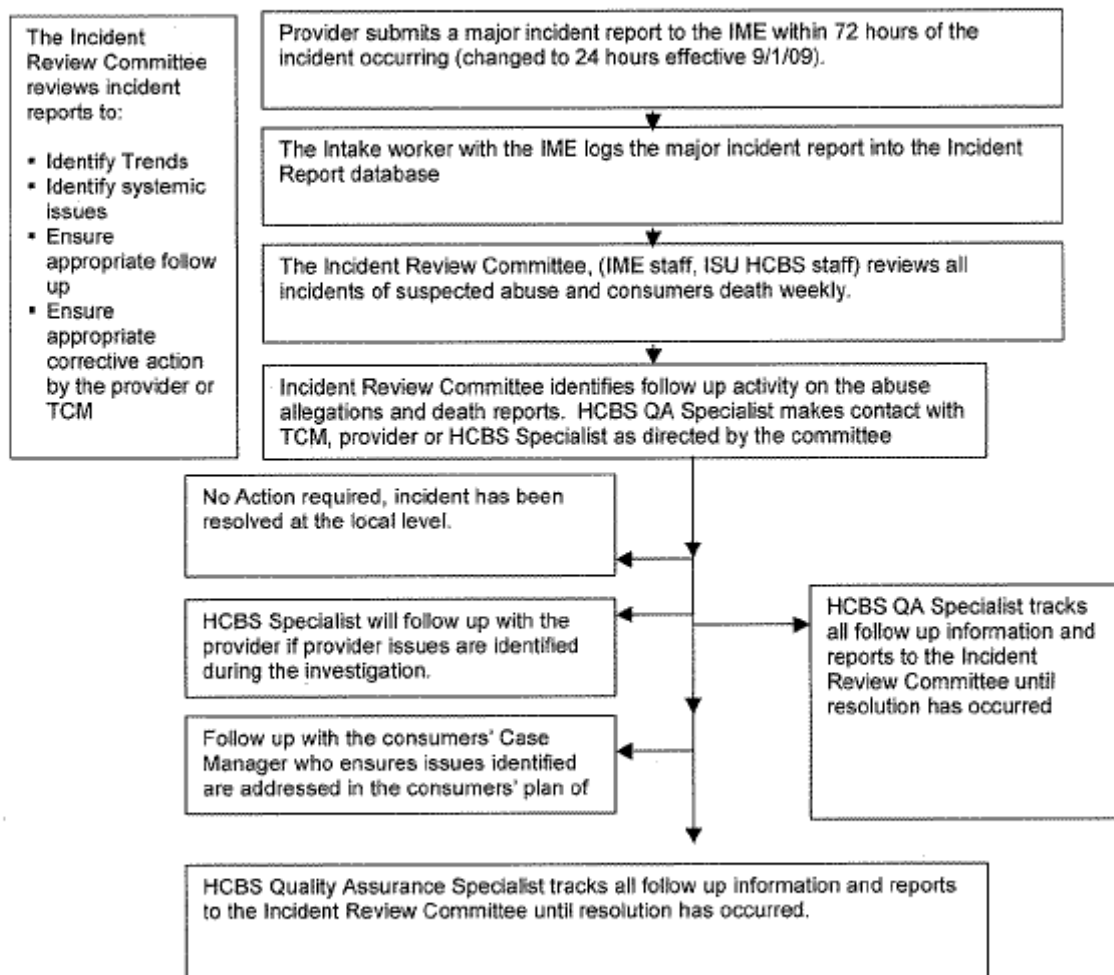
"Major incident" reports are required to be submitted to the IME within 72 hours of the occurrence. (This rule is being changed 9/01/2009 to be reported within 24 hours). "Major incidents" are all allegations of child and dependent adult abuse (either directly by the provider to DHS or the provider becomes aware that a report has been filed), deaths, emergency room visits resulting in hospitalization, calls to law enforcement, attendance by mental health professionals, medication errors that lead to hospitalization or death.

Please see the following flow charts for the complaint and incident management processes.

HCBS Complaint Process



Iowa Medicaid Enterprise Incident Report and Review Process



C. Key Medicaid Requirements Related to Assuring Health and Safety

- All members receiving MR Waiver Services are required to have a Targeted Case Manager. Targeted Case Management is a Medicaid covered service. The TCM ensures members have service plans designed to meet their individual health, safety and support needs, and coordinates with providers to deliver the services. In addition the TCM are often front line responders when there are complaints or emergencies.
- Providers of HCBS services are required to inform members of the complaint process within their agency when the Medicaid member begins to utilize services.
- All Medicaid providers who provide direct services are mandatory reporters. HCBS providers are required to do mandatory training for all employees within six (6) months of employment. The training curriculum must be approved by the Department of Public Health. Provider training compliance is checked during the provider certification and the HCBS quality assurance process.
- Each Medicaid card contains the Iowa Medicaid Enterprise Member Services phone number. This is an access point for any type of question or concern regarding Medicaid services. Concerns regarding services are forwarded to the licensing body if applicable (i.e. Dr. or Dentist). Any abuse allegations is forwarded on to either DHS or DIA dependent on the place of service. If the allegation is for an HCBS provider, the contracted HCBS Specialist is typically involved with the follow-up of the investigation. The process explained in the HCBS Complaint flow chart.

VI. Medicaid Targeted Case Management

A. Regulatory Citations

<u>IOWA CODE</u>	
225C	Mental Illness, Mental Retardation, Developmental Disability, or Brain Injury
249A	Medical Assistance
<u>IOWA ADMINISTRATIVE RULES</u>	
441-24	Accreditation of Providers of Services to Persons with Mental Illness, Chronic Mental Illness, Mental Retardation, Developmental Disability: Index and definitions
441-90	Case Management for people with Mental Retardation, Chronic Mental Illness or Developmental Disabilities
<u>DHS POLICY MANUAL</u>	
DHS-TCM Administrative Handbook	

B. Overview of Targeted Case Management

- Medicaid Targeted Case Management is a service to assist Medicaid members in gaining access to and coordinating appropriate and necessary medical services and interrelated social and educational services. Medicaid Targeted Case Management services ensure that necessary evaluations are conducted; individual services and treatment plans are developed, implemented and monitored; and reassessment of consumers' needs and services occurs on an ongoing, regularly scheduled basis. (IAC 441—Chapter 90). These services are available for persons with mental retardation, chronic mental illness or developmental disabilities.
- The targeted case manager monitors the physical and mental health status, placement, and service plan monthly for each individual served. Changes in the service plan, placement, and/or provider occur as needed to maintain the health and safety of the individual.
- The following factors are considered when determining the need for case management:
 - The consumer has a need for case management to manage multiple resources pertaining to medical and interrelated social and educational services for the benefit of the consumer;
 - The consumer has functional limitations and lacks the ability to independently access and sustain involvement in necessary services; and
 - The consumer is not receiving other paid benefits under the medical assistance program or under a Medicaid managed health care plan that serves the same purpose as targeted case management.
- Medicaid Targeted Case Management is required for all persons with Mental Retardation receiving services in the Medicaid Home and Community Based Waiver Program.
- County Boards of Supervisors select the TCM provider per Section 225C.20 of the Code. Each county is required to designate a case management provider and counties may subcontract for these services.
- There are over 465 Medicaid TCMs for persons with mental retardation. Most serve persons with chronic mental illness and developmental disabilities, as well as persons with mental retardations.
- DHS provides TCM in 25 counties for adults and an additional 69 counties utilize DHS TCM for specific populations.

C. TCM requirements

- TCM providers must meet the standards established under 441 - Chapter 24. Providers are accredited by the Division of Mental Health and Disability Services and receive accreditation for up to three years. These standards set forth expectations for staff qualifications, staff development, case planning and service delivery, and documentation.
- To become and to remain a Medicaid enrolled TCM provider, the entity must be accredited under 441-Chapter 24. TCM providers must submit documentation to determine that the member meets the criteria for eligibility for Medicaid funded Targeted Case Management Services. The Targeted Case Management provider must also meet the documentation requirements. IME is currently in the process of revising requirements to enhance the provisions to ensure the health, safety, and welfare of members. There

will an expectation that the TCM conduct an assessment to identify potential health and safety risks and plan to address the identified risks.

- TCMs document issues of client incidents or client safety issues and use this information in case planning and monitoring as required in Chapter 24.
 - TCM are often contacted by DHS Adult Protective Assessors when there is an assessment of dependent adult abuse and the individual has a TCM.
 - TCM are required to develop individualized crisis intervention plans that includes natural supports and self-help methods as required in Chapter 24. The plan must include:
- An emergency contact person.
- A detailed list of the people, the individual, or someone acting on the individual's behalf should contact in the event of an emergency.
- A plan specific to the individual's needs, comprising of a medical emergency plan, a mental health plan (if it applies), and a physical disaster or emergency plan. The crisis intervention plan shall include natural supports that should be contacted before calling the emergency contact person.
- Natural supports, self help methods, triggers leading to behavioral issues for the Mental Health Plan.
- Notification to the Targeted Case Manager of any emergency, hospitalization, or reportable incident within 72 hours of the incident, along with a copy of the incident report provided to the Targeted Case Manager within 72 hours.

In addition, include the following, if determined necessary and appropriate:

- Name, address, and telephone number of the individual's physician and hospital of choice.
- Medical information such as:
- Drug and food allergies.
- Current prescribed and non-prescribed medications being taken by the individual.

VII. Preliminary Recommendations

At this juncture, we continue to identify areas that may need to be addressed both in our internal processes as well as those outside of the Department's scope of responsibility.

Key areas we are focusing on relate to:

- Improving public awareness about what dependent adult abuse is
- Improving public awareness about how and where to report concerns of abuse or neglect
- Improving our assessment and referral processes
- Aligning assessment findings with Accreditation and Certification, Incident reporting and monitoring requirements
- Assuring that all persons are aware of their potential eligibility for other basic services provided through the Department or other entities.

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 1

1. Federal Code Requirements & Responsibilities

- Title 42: Public Health Part 442 – Standards for Payment to Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded, Subparts A, B & C.
- This document identifies the statutory requirements for establishing provider agreements with ICF/MRs, thus allowing payment under the Medicaid system. Subpart C outlines obtaining certification, certification periods, termination of certification and denial of payment for new admissions to an ICF/MR based on survey findings.
- The actual text of this document is located at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e57b8314a674f79b7d8f18de5c0040ca&rqn=div6&view=text&node=42:4.0.1.5.22.9&idno=42>
- Title 42: Public Health Part 483 – Requirements for States and Long Term Care Facilities
- This document identifies the conditions of participation and standard requirements that must be met by an ICF/MR provider to obtain/retain certification and payment under the Medicaid system.
- The actual text of this document is located at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title42/42cfr483_main_02.tpl

2. Federal Regulations

- State Operations Manual: Appendix J – Guidance to Surveyors: Intermediate Care Facilities for Persons with Mental Retardation
- This document identifies the investigative procedure required to be used by Health Facilities Surveyors when conducting onsite visits. It also contains all regulatory requirements to be reviewed, as well as guidelines and probes to assist the surveyor in making a determination of a deficient practice.
- The actual text of this document is located at http://www.cms.hhs.gov/manuals/downloads/som107ap_j_intermcare.pdf.
- State Operations Manual: Chapter 2 – The Certification Process
- This document provides general certification information for the state agency as well as specific information related to each of the distinct federal programs. Please reference specifically Section 2000 – 2018, and Section 2130 – 2141 for ICF/MR programs.
- The actual text of this document is located at <http://www.cms.hhs.gov/manuals/downloads/som107c02.pdf>
- State Operations Manual: Chapter 3 – Additional Program Activities
- This document provides general information on adverse actions, appeals and hearings, changes in provider status or services, validation surveys and handling public inquiries.
- The actual text of this document is located at <http://www.cms.hhs.gov/manuals/downloads/som107c03.pdf>

3. Iowa Code Requirements & Responsibilities

- Chapter 135C Health Care Facilities
- Statutory requirements for licensing of health care facilities, inclusive of those specific to facilities for the mentally retarded.
- The most applicable provisions to note are 135C.1(17) definitions and 135C.21 (unlicensed)
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/CHAPTER%20135C.pdf>

4. Iowa Administrative Code

- Chapter 50 – Health Care Facilities Administration
- Chapter 50 is a general information chapter which includes, but is not limited to, the requirement that a facility notify the director of certain occurrences at the facility.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2050.pdf>
- Chapter 56 – Fining and Citation
- Chapter 56 outlines the process for issuing a Class I, Class II or Class III citation to a licensed facility, and the facility's right to appeal those findings.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2056.pdf>
- Chapter 57 – Residential Care Facilities
- Chapter 57 outlines the minimum requirements to attain and maintain licensure as a residential care facility.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2057.pdf>
- Chapter 60 – Minimum Physical Standards for Residential Care Facilities
- Chapter 60 outlines the basic structural requirements for a building serving as a residential care facility.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2060.pdf>
- Chapter 63 – Residential Care Facilities for the Mentally Retarded
- Chapter 63 outlines the minimum requirements to attain and maintain licensure as a residential care facility for the mentally retarded.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2063.pdf>
- Chapter 64 – Intermediate Care Facilities for the Mentally Retarded
- Chapter 64 outlines the minimum requirements to attain and maintain licensure as an intermediate care facility for the mentally retarded.
- The actual text of this document is located at
<http://www.state.ia.us/government/dia/481%20IAC%2064.pdf>
- Chapter 82 – Intermediate Care Facilities for the Mentally Retarded
- Chapter 82 are rules promulgated by the Department of Human Services, and reflects the Conditions of Participation and standards reflected in the federal regulations.
- The actual text of this document is located at
<http://www.legis.state.ia.us/aspx/ACODocs/ruleList.aspx?pubDate=2-11-2009&agency=441&chapter=82>

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 2

2. Please provide a flow chart of how your agency receives and processes complaints from initiation to completion or resolution of the complaint.

DIA/HFD Complaint Unit Intake and Investigation Process

Complaint intakes are received from the public via:

- Phone call (toll free hotline available)
- Fax
- Web based complaint report
- U. S. Mail
- In-person

Determination by Complaint Intake Specialist (Registered Nurses, Social Worker, all are qualified Health Facilities Surveyors) as to whether the entity about which the complaint is filed is certified and/or licensed by DIA. If the entity is certified/licensed by DIA, go to Step 1, below. If the entity is not certified or licensed by DIA, go to Step 2, below.

1. **Licensed and/or certified program:** Complaint Intake Specialist (CIS) receives concerns from the complainant, enters information into the database, and generates the complaint intake. If Dependent Adult Abuse (DAA) is alleged or suspected, a DHS Central Registry number is assigned to the case and a Comprehensive Abuse Memo will be written by the investigating Health Facilities Surveyor. The complaint is scheduled for investigation within 2, 10, or 20 working days, or within 45 calendar days, depending on the nature of the complaint and the facility type. A letter with detailed findings of the investigation is sent to the complainant at the conclusion of the investigation. A letter is also sent acknowledging receipt of the complaint and explaining the investigation process.
2. **Regulated by another entity:** CIS determines whether the facility that is the subject of the complaint is regulated by another entity (e.g., HCBS program, substance abuse program, women's shelter, etc.). If the facility is regulated by another entity, a referral is made to that entity (e.g., DHS, DPH, etc.). If DAA is suspected or alleged, a referral is also made to DHS regarding the suspected/alleged abuse. If the facility is not known to be regulated by another entity or by DIA, go to Step 3.
3. **Unlicensed, 2 or fewer residents:** The CIS attempts to gather information from the complainant regarding the number of unrelated persons alleged to be served by the subject entity. If there are 2 or fewer residents served, the complainant is informed that this living arrangement is not subject to regulation UNLESS DAA is suspected/alleged. If DAA is suspected/alleged, a referral is made to DHS regarding the suspected/alleged abuse. If more than 2 unrelated persons are served by the facility, go to Step 4.
4. **Unlicensed, 3 or more residents:** If complaint information indicates 3 or more unrelated persons are receiving services in a facility that is not licensed/certified by DIA nor subject to regulation by another entity, an Unlicensed Facility investigation is initiated. If DAA is also suspected/alleged, a referral is also made to DHS regarding the suspected/alleged abuse. DIA's investigation will be conducted by Assisted Living Monitors and/or Health Facilities Surveyors depending on the nature of the care that is alleged to have been provided by the facility. If the investigation shows that the facility is operating as a facility that is required to be licensed/certified, DIA participates in the process of either finding alternative living arrangements for the residents or assisting the facility's owner/operator to obtain necessary licensure status. A follow up letter identifying findings is sent to the complainant.

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 3

3. Please provide the methodologies utilized by your organization to inform consumers and the general public of your agency's complaint process.

Complaint Process Methodology

There are four major methods used to inform the public about the Health Facilities Division's complaint process, as well as to accept complaint intakes: The nursing facility hot line, the "submit a complaint" application on the Health Facilities Division web site, complaints e-mailed to the Department via the webmaster address, and the postings in licensed health care facilities. The Department's general telephone number and specific calls to Department employees also serve as the basis of filing complaints.

The method most commonly used by the general public to contact the Department regarding concerns with licensed health care facilities is the Complaint Hot Line (1-877-686-0027). The complaint hot line number is posted to the Department's two web sites (the Health Facilities Division web site and the DIA web site – see illustration below), as well as referenced in many Department's publications. The Complaint Hot Line telephone is answered by intake specialists in the Division's complaint unit.

Health Facilities Division's
Submit a Complaint web page

Department of Inspections and Appeals'
Contact Us web page

Complaints submitted to DIA via the webmaster e-mail are probably the second most common method of communicating with the Department. On average, the Department's Public Information Officer (who serves as the webmaster for the DIA web pages) receives six to ten complaint messages a week from lowans concerned about the care being provided to loved ones in licensed facilities.

The Health Facilities Division web site contains a "submit a complaint" application, which is not often used by the general public. Relatively few complaints are generated as a result of the Internet-based application.

The fourth major public notification for input regarding quality of care or service issues at licensed health care facilities may be the requirement that facilities "post in a prominent area the name, telephone number, and address of the ... survey agency." The administrative rules governing residential care facilities, nursing facilities, and intermediate care facilities all require the posting of the Department's contact information. Individuals who contact the Department via the general telephone number are redirected by the receptionist to the Complaint Bureau in the Health Facilities Division.

The Department often requests that media note the Department's contact information in news accounts about how to file a complaint.

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 4

4. If your agency sub-contracts oversight responsibilities, to whom are the responsibilities sub-contracted and what systems are utilized to provide oversight of the sub-contractor?

- DIA sub-contracts with DPS to survey for life safety compliance with Medicare Regulations, 42 CFR, section 482.41(a)(b) for hospitals, 483.70(a)(b) for skilled nursing facilities, 416.44(b) for ambulatory surgical centers, 418.100(d) for free-standing in-patient hospices, 405.1723, 405.1725 for rehabilitation agencies, 485.62(a)(b) for comprehensive rehabilitation facilities and 405.2102 for end stage renal dialysis units.
- DIA also sub-contracts with DPS to survey for fire safety compliance with all state licensed (only) facilities, including, but not limited to, Nursing Facilities, Residential Facilities, Residential MR and Residential MI Facilities.

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 5

5. Please describe common outcomes related to any enforcement responsibilities your organization may have.

As to operating an unlicensed health care facility, see Iowa Code section 135C.21:

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

- a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.
- b. Examining any relevant books or records of a health care facility.
- c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

Governor's Task Force on Dependent Adults with Mental Retardation

Department of Inspections and Appeals Template Question 6

6. Please describe any proposed recommendations that emerge from your agency as you compile this report.

- a) Consider requiring joint interagency (DIA, DHS, SFM) investigations of unlicensed health care facility allegations.
- b) Consider mandating required follow-up visits on a periodic basis for all previously substantiated unlicensed health care facility investigations.
- c) Consider Requiring an annual attestation/reporting of occupancy (by number of tenants and dependency issues of occupants) by all boarding homes statewide.
- d) Consider enhancing the criminal penalty for operating an unlicensed health care entity from the current serious misdemeanor.
- e) Consider creating a criminal sanction for refusal to allow access when initiating an unlicensed health care facility investigation.
- f) Consider mandating that all state department Directors and Division Administrators (enterprise wide) have access to each other's home, personal cell phone and work cell phone numbers.

Detection and Outreach Strategies - DIA

An immediate outcome of the Governor's Task Force on Dependent Adults with Mental Retardation is the Governor's expectation that **"the state now has an obligation to improve the oversight and protection of disabled Iowans"** and he is **"calling on the Iowa Department of Inspections and Appeals to begin monitoring boarding houses that currently aren't licensed or inspected"**.

The following guidance is to be followed to implement this expectation.

During any onsite visit to a regulated or unregulated entity, the attached form will be provided to the person in charge with a brief explanation that the Iowa Department of Inspections and Appeals monitors for unlicensed/uncertified premises that may be providing housing to three or more adults that may be incapable of meeting their own needs independently. As such, the Department is requesting they complete the form. The information will be reviewed and pursued, as appropriate. A Department representative may contact the person completing the form with questions or for further clarification.

When packets from onsite visits are received in the office, the attached document will be removed from the packet and forwarded to the CU for review, pursuit of additional information, scheduling of onsite investigations and data base tracking.

Governor's Task Force on Dependent Adults with Mental Retardation
DRAFT REPORT TEMPLATE

Department of Elder Affair

Due 5 pm, Wednesday, February 25, 2009
For the Task Force Meeting, Friday, February 27, 2009

Below, please provide the information requested related to the employment and housing of Iowans with MR. If web addresses or links are provided, please provide text to put the links and web sites in context. Please draft the information in language that is understandable to the average person in a thorough but concise manner:

1. Please provide the following citations for your agency:

- Federal Code Requirements & Responsibilities
 1. Title VII, Older Americans Act – Elder Abuse Prevention
- Federal Regulations
 1. None
- Iowa Code Requirements & Responsibilities
 1. 231.56A ELDER ABUSE INITIATIVE, EMERGENCY SHELTER, AND SUPPORT SERVICES PROJECTS.

DEA Works with Area Agencies on Aging and local multidisciplinary teams. The program is currently in 30 counties. The program targets older adults who are the subject of suspected dependent adult abuse (defined by 235B). The local projects identify emergency shelter and support services. The area agencies on aging implement the projects and coordinate with the local provider network through the use of referrals or other engagement of community resources.

The goals of the initiative include improvement in the following areas:

- Public awareness, including prevention, detection, reporting, and intervention in incidence of elder abuse and exploitation.
- Accuracy of reporting elder abuse incidents.
- Identifying individuals who potentially could be exposed to some form of abuse or exploitation.

- Training of law enforcement, county attorneys, physicians, health care providers, and the general public.

2. 231E OFFICE OF SUBSTITUTE DECISIONMAKER

- Administrative Code
 - Iowa Administrative Code 321-22Office of Substitute Decision Maker
- Policy and procedure manuals and protocols
 - Trainers Guide for Mandatory Reporters of Dependent Adult Abuse (multi-agency product available at www.iowa.gov/elderaffairs).
- Any other requirements and responsibilities
 - None

2. Please provide a flow chart of how your agency receives and processes complaints from initiation to completion or resolution of the complaint.

The department does not handle complaints related to dependent adult abuse. The department's complaint process is as follows:

Department of Elder Affairs complaint and appeal procedures – summary of IAC 321 -2.9

If an agency, organization, or individual alleges a violation of their rights or that services provided were not in compliance with regulations or were substandard because of an action of the department, the commission of elder affairs, an Area Agency on Aging or their subcontractor, the following process applies:

A. If the complaint is against an Area Agency on Aging or their subcontractor the complaint or appeal must be heard first by the AAA using the AAA's procedures, except in cases where an AAA is acting in its capacity as a Medicaid provider, in which case the complaint would follow DHS procedures.

B. If the local complaint procedures of an AAA or an AAA subcontractor are exhausted, but the complainant or appellant is not satisfied they may bring the concern to the department of elder affairs. They may:

1. Requests for an informal review or a contested case hearing.
 - a. This is an informal review where the aggrieved party or a party appealing an AAA-level decision has 30 calendar days from receipt

of written notice of action from the AAA or the department to request an informal review by the department or a contested case hearing.

b. The request must be in writing, must contain the subject matter(s) of the complaint and an explanation of steps taken to resolve the matter prior to requesting an informal review.

c. The department may, as a result of the review, negotiate a settlement of the complaint or, if appropriate, may send the matter back to the AAA for reconsideration.

d Parties desiring informal settlement must set forth the various points of a proposed settlement, which may include a stipulated statement of facts, all in writing.

e. When signed by the parties to a controversy, a proposed settlement represents the final disposition of the matter in place of contested case proceedings, which shall be terminated.

f. A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding in accordance with IAC Chapter 321-13 Rules and practices and contested cases

3. Please provide the methodologies utilized by your organization to inform consumers and the general public of your agency's complaint process.

The department outlines its complaint process in IAC 321

4. If your agency sub-contracts oversight responsibilities, to whom are the responsibilities sub-contracted and what systems are utilized to provide oversight of the sub-contractor?

The department does not sub-contract its oversight responsibilities.

5. Please describe common outcomes related to any enforcement responsibilities your organization may have.

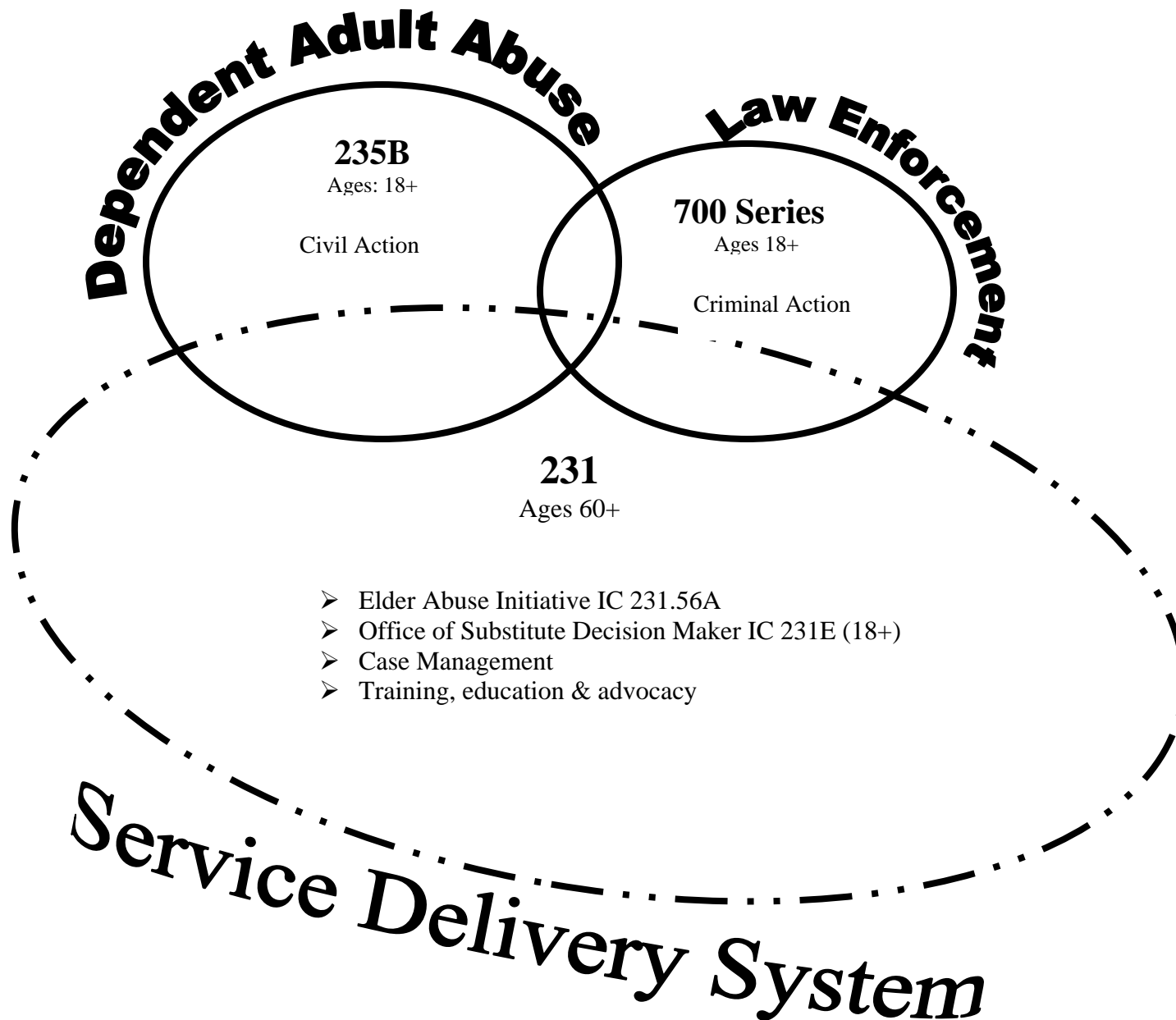
The department has no enforcement responsibilities related to dependent adult abuse or housing.

6. Please describe any proposed recommendations that emerge from your agency as you compile this report.

- Need for standardized assessment tool to determine dependency.
- Need to expand number of local long-term care ombudsman
- Enhance Office of Substitute Decision Maker
- Enhance Iowa's Elder Abuse Initiative and possibly add to the target population adults with MR.
- Need to have a consolidated and streamlined dependent adult abuse reporting system.

COMPREHENSIVE SERVICE DELIVERY SYSTEM

Adult Abuse Prevention, Detection, Intervention, And Reporting



Governor's Task Force on Dependent Adults with Mental Retardation
REPORT TEMPLATE

State Fire Marshal

1. Please provide the following citations for your agency:

- Federal Code Requirements & Responsibilities

(See DIA's information)

- Federal Regulations

(See DIA's information)

- Iowa Code Requirements & Responsibilities

100.1 FIRE MARSHAL

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode>

The chief officer of the division of state fire marshal in the department of public safety shall be known as the state fire marshal. The fire marshal's duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;
2. To investigate into the cause, origin and circumstances of fires;
3. To promote fire safety and reduction of loss by fire through educational methods;
4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:
 - a. The prevention of fires;
 - b. The storage, transportation, handling, and use of flammable liquids, combustibles, and explosives;
 - c. The storage, transportation, handling and use of liquid petroleum gas;
 - d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, health care facilities as defined in section 135C.1, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;
5. To promulgate fire safety rules. The state fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but the rules shall be promulgated only after public hearing. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, the rules and standards shall promote and enforce fire safety, fire protection and the

elimination of fire hazards as the rules may relate to the use, occupancy and construction of the buildings, establishments or structures. The word "*construction*" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in this chapter, with the standards of the national fire protection association relating to fire safety as published in the national fire codes.

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required by law. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

7. To administer the fire extinguishing system contractor, alarm system contractor, and alarm system installer certification program established in chapter 100C.

100.35 RULES OF MARSHAL

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode>

The fire marshal shall adopt, and may amend rules under chapter 17A, which include standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, apartment buildings, food establishments as defined in section 137F.1, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Violation of a rule adopted by the fire marshal is a simple misdemeanor. However, upon proof that the fire marshal gave written notice to the defendant of the violation, and proof that the violation constituted a clear and present danger to life, and proof that the defendant failed to eliminate the condition giving rise to the violation within thirty days after receipt of notice from the fire marshal, the penalty is that provided by law for a serious misdemeanor. Each day of the continuing violation of a rule after conviction of a violation of the rule is a separate offense. A conviction is subject to appeal as in other criminal cases.

Rules by the fire marshal affecting the construction of new buildings, additions to buildings or rehabilitation of existing buildings and related to fire protection, shall be substantially in accord with the provisions of the nationally recognized building and related codes adopted as the state building code pursuant to section 103A.7 or with codes adopted by a local subdivision which are in substantial accord with the codes comprising the state building code.

The rules adopted by the state fire marshal under this section shall provide standards for fire resistance of cellulose insulation

sold or used in this state, whether for public or private use. The rules shall provide for approval of the cellulose insulation by at least one nationally recognized independent testing laboratory.

135C.1 DEFINITIONS

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode>

9. "*Intermediate care facility for persons with mental retardation*" means an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have mental retardation or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1936d, which are contained in 42 C.F.R. pt. 483, subpt. D, § 410--480.

17. "*Residential care facility*" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis or who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided. For the purposes of this definition, the home and community-based services to be provided are limited to the type included under the medical assistance program provided pursuant to chapter 249A, are subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services, are limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

- Iowa Administrative Code

<http://www.legis.state.ia.us/asp/ACODocs/DOCS/2-25-2009.661.205.15.pdf>

205.15(1) *New intermediate care facilities.* New intermediate care facilities for the mentally retarded and new intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

- NFPA 101, Life Safety Code, 2000 edition, Chapter 18.
- NFPA 101, Life Safety Code, 2000 edition, Chapter 32, with the following amendments:

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which is dependent upon an evacuation capability rating other than "impractical" shall be unavailable.

(1) Delete Section 32.2.1.2.1 and insert in lieu thereof the following new section:

32.2.1.2.1

Small facilities shall comply with the requirements of Section 32.2 as indicated for an evacuation capability of impractical.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(2) Delete Section 32.2.1.2.2 and insert in lieu thereof the following new section:

32.2.1.2.2

The evacuation capability shall be classified as impractical.

(3) Delete Exception No. 1 to Section 32.2.2.1.

(4) Delete Exceptions No. 2 and No. 3 to Section 32.2.2.4.

(5) Delete the Exception to Section 32.2.3.3.2.

(6) Delete Exception No. 1 to Section 32.2.3.5.1.

(7) Delete Exceptions No. 1, No. 3 and No. 4 to Section 32.2.3.5.2.

(8) Delete Exception No. 2 to Section 32.2.3.5.2 and insert in lieu thereof the following new

Exception No. 2: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Facilities with more than eight residents shall be treated as two-family dwellings with regard to water supply.

(9) Delete Exception No. 5 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 5: In facilities up to and including four stories in height, systems in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered.

(10) Delete Section 32.2.3.5.3.

(11) Delete Section 32.2.3.5.4 and insert in lieu thereof the following new section:

32.2.3.5.4

Automatic sprinkler systems shall be supervised in accordance with Section 9.7.

(12) Delete Exception No. 1 to Section 32.2.3.6.1.

(13) Delete Section 32.3.1.2.1.

(14) Delete Section 32.3.1.2.2 and insert in lieu thereof the following new section:

32.3.1.2.2

Large facilities shall meet the requirements for limited care facilities in Chapter 18.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(15) Delete Section 32.3.1.2.3.

(16) Delete the Exception to Section 32.3.1.3.3, paragraph (a).

(17) Delete Section 32.4.1.4 and insert in lieu thereof the following new section:

32.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 30, apartment buildings housing residential board and care facilities shall meet the construction requirements of 18.1.6. In applying the construction requirements, Ch 205, p.2 IAC

the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

EXCEPTION: If the new board and care occupancy is created in an existing apartment building, the construction requirements of 19.1.6 shall apply.

(18) Delete Exception No. 2 to Section 32.7.3 and insert in lieu thereof the following new Exception No. 2:

EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 18.7 shall apply in such instances.

205.15(2) Existing intermediate care facilities. Existing intermediate care facilities for the mentally retarded and existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 33, with the following amendments:

NOTE: Any requirement contained in Chapter 33 that is determined on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which depends upon an evacuation rating of "prompt" or "slow" shall be unavailable.

(1) Delete Section 33.1.7.

(2) Delete Section 33.2.1.2.1 and insert in lieu thereof the following new section:

33.2.1.2.1 Small facilities shall comply with the requirements of Section 33.2.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(3) Delete Section 33.2.1.2.2 and insert in lieu thereof the following new section:

33.2.1.2.2 The evacuation capability shall be classified as impractical.

(4) Delete Section 33.2.1.3 and insert in lieu thereof the following new section:

33.2.1.3 Minimum Construction Requirements.

Buildings shall be of any construction type in accordance with 8.2.1 other than Type II(000), Type III(200), or Type V(000) construction.

EXCEPTION: Buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5 shall be permitted to be of any type of construction.

(5) Delete Exception No. 1 to Section 33.2.2.1.

(6) Delete Section 33.2.2.2.2 and insert in lieu thereof the following new section:

33.2.2.2.2 The primary means of escape for each sleeping room shall not be exposed to living areas and kitchens.

EXCEPTION: Buildings equipped with quick-response or residential sprinklers throughout. Standard response sprinklers shall be permitted for use in hazardous areas in accordance with 33.2.3.2.

(7) Delete Exception No. 2, Exception No. 3, and Exception No. 4 to Section 33.2.2.4.

(8) Delete the Exception to Section 33.2.3.3.

(9) Delete Section 33.2.3.5.2 and insert in lieu thereof the following new section:

33.2.3.5.2* Where an automatic sprinkler system is installed, for either total or partial building coverage, the system shall be in accordance with Section 9.7 and shall activate the fire alarm system in accordance with

33.2.3.4.1. The adequacy of the water supply shall be documented to the authority having jurisdiction.

EXCEPTION NO. 1: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

EXCEPTION NO. 2: In facilities up to and including four stories in height, systems installed in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential IAC Ch 205, p.3 Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

EXCEPTION NO. 3: Initiation of the fire alarm system shall not be required for existing installations in accordance with 33.2.3.5.5.

(10) Delete Section 33.2.3.5.3 and insert in lieu thereof the following new section:

33.2.3.5.3 All facilities shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5.2.

(11) Delete Exception No. 1 and Exception No. 4 to Section 33.2.3.6.1.

(12) Delete Section 33.3.1.1 and insert in lieu thereof the following new section:

33.3.1.1 Scope. Section 33.3 applies to residential board and care occupancies providing sleeping accommodations for more than 16 residents. Facilities having sleeping accommodations for not more than 16 residents shall be evaluated in accordance with Section 33.2.

(13) Delete Section 33.3.1.2 and insert in lieu thereof the following new section:

33.3.1.2 Requirements. Large facilities shall meet the requirements for limited care facilities in Chapter 19. Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(14) Delete the Exception to Section 33.3.1.3.3, paragraph (a).

(15) Delete Exception No. 2 to Section 33.3.3.6.1.

(16) Delete Exception No. 2 to Section 33.3.3.6.3.

(17) Delete Section 33.4.1.3 and insert in lieu thereof the following new section:

33.4.1.3 Requirements.

33.4.1.3.1 Apartment buildings housing board and care facilities shall comply with the requirements of Section 33.4.

Exception*: Facilities where the authority having jurisdiction has determined that equivalent safety for housing a residential board and care facility is provided in accordance with Section 1.5.

33.4.1.3.2 All facilities shall meet the requirements of Chapter 31 and the additional requirements of Section 33.4.

(18) Delete Section 33.4.1.4 and insert in lieu thereof the following new section:

33.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 31, apartment buildings housing residential board and care facilities shall meet the construction requirements of 19.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

(19) Delete Exception No. 2 to Section 33.7.3 and insert in lieu thereof the following new exception:

EXCEPTION NO. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 19.7 shall apply in such instances.

205.15(3) Alcohol-based hand rub dispensers. Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if:

- a. Use of alcohol-based hand rub dispensers does not conflict with a local code that prohibits or otherwise restricts the placement of alcohol-based hand rub dispensers in health care facilities;
- b. The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;
- c. The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and Ch 205, p.4 IAC

d. The dispensers are installed in accordance with Section 18.3.2.7 or Section 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004

Chapter 661-205.100(135C) "Residential Care Facilities" also apply to persons with mental retardation. Under this set of rules, Chapter 18, of the 2003 edition of NFPA 101, is adopted for Residential Care Facilities.

<http://www.legis.state.ia.us/aspx/ACODocs/DOCS/2-25-2009.661.205.100.pdf>

661—205.100(135C) Residential care facilities.

205.100(1) Definitions. The following definitions apply to rule 661—205.100(135C):

“Existing residential care facility” means a residential care facility which has been in continuous operation since before April 1, 2004.

“New residential care facility” means a residential care facility which begins operation on or after April 1, 2004.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“Residential care facility” means a facility that is licensed or seeking licensure by the department of inspections and appeals as a residential care facility pursuant to the provisions of Iowa Code section 135C.6, or has been identified by the department of inspections and appeals as a facility that requires licensure as a residential care facility pursuant to Iowa Code section 135C.6.

205.100(2) New residential care facilities. NFPA 101, Life Safety Code, 2003 edition, Chapter 18, “New Health Care Facilities,” is adopted by reference as the rules governing new residential care facilities. For purposes of this subrule, a residential care facility is a “limited care facility” as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

205.100(3) Existing residential care facilities. NFPA 101, Life Safety Code, 2003 edition, Chapter 19, “Existing Health Care Facilities,” is adopted by reference as the rules governing existing residential care facilities. For purposes of this subrule, a residential care facility is a “limited care facility” as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

EXCEPTION: Existing residential care facilities which were approved by the fire marshal on or before March 11, 2003, pursuant to rules 661—5.550(100) to 5.552(100) and which have been in continuous operation since on or before March 11, 2003, may continue to operate in compliance with rules 661—5.550(100) to 5.552(100) as those rules existed on March 10, 2003.

NOTE: Rules 661—5.550(100) to 5.552(100) were rescinded effective March 11, 2003.

This rule is intended to implement Iowa Code sections 100.35 and 135C.9 **It should be noted that existing care facilities have never been approved by the state fire marshal. They must meet Chapter 18 of the 2003 edition of NFPA 101.**

- Policy and procedure manuals and protocols

N/A

- Any other requirements and responsibilities

N/A

2. Please provide a flow chart of how your agency receives and processes complaints from initiation to completion or resolution of the complaint.

(See Complaint Flow Chart Attachment)

3. Please provide the methodologies utilized by your organization to inform consumers and the general public of your agency’s complaint process.

Our agency does not have a formal means to notify the general public on how to file a complaint. We do however accept complaints via phone at 515-725-6145 or

by e-mail at fminfo@dps.state.ia.us On our web site, there is a "Contact Us" button that people can use. We currently receive a number of questions and some complaints from this e-mail address.

4. If your agency sub-contracts oversight responsibilities, to whom are the responsibilities sub-contracted and what systems are utilized to provide oversight of the sub-contractor?

None

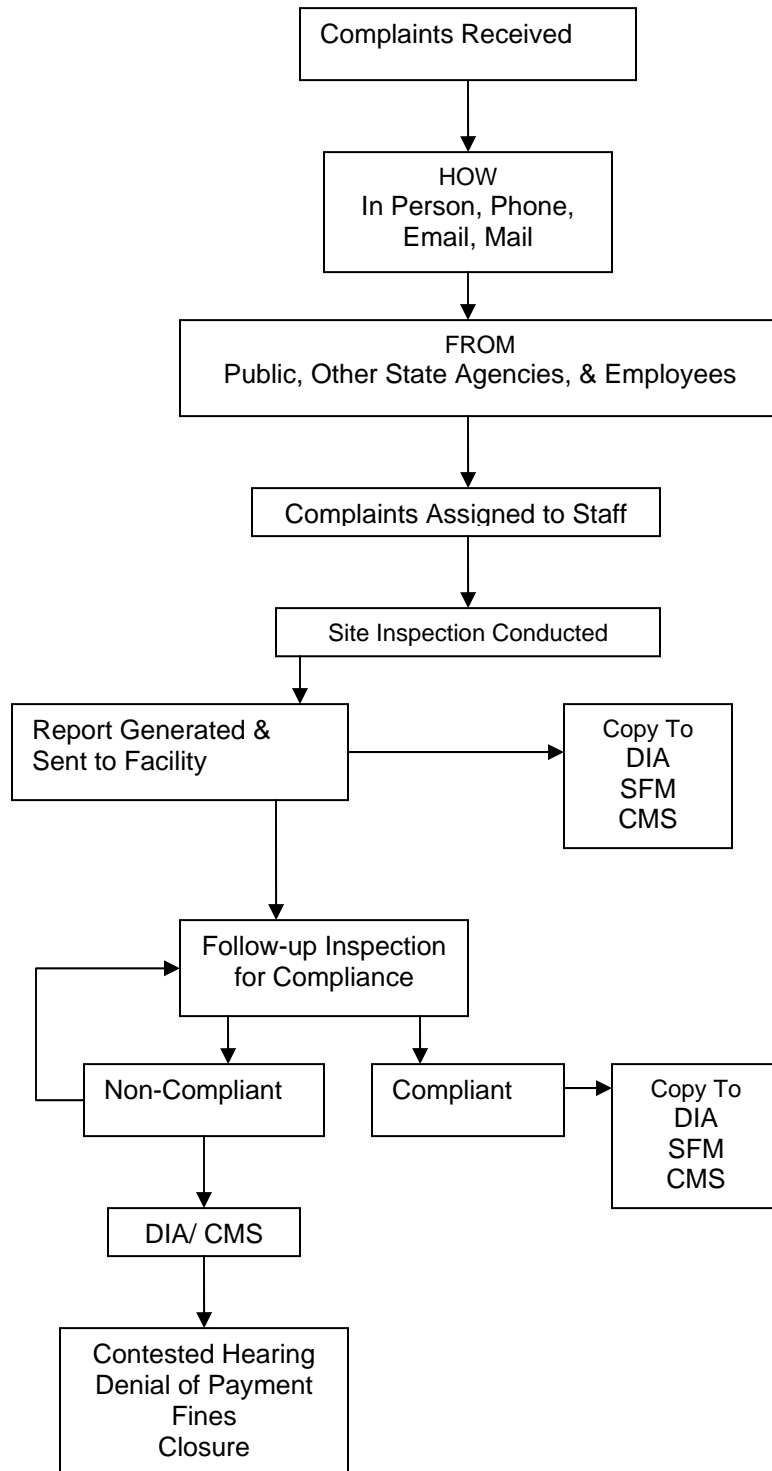
5. Please describe common outcomes related to any enforcement responsibilities your organization may have.

Provide a fire safe living environment for the occupants.

6. Please describe any proposed recommendations that emerge from your agency as you compile this report.

Cooperation and good communications among all agencies involved.

State Fire Marshall
Complaint Flow Chart



Iowa Civil Rights Commission (ICRC)

1. Please provide the following citations for your agency:

- **The Federal laws prohibiting job discrimination are:**
 - [Title VII of the Civil Rights Act of 1964](#), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
 - [the Equal Pay Act of 1963](#) (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
 - [the Age Discrimination in Employment Act of 1967](#) (ADEA), which protects individuals who are 40 years of age or older;
 - [Title I and Title V of the Americans with Disabilities Act of 1990](#) (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
 - [Sections 501 and 505 of the Rehabilitation Act of 1973](#), which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and
 - [The Civil Rights Act of 1991](#), which, among other things, provides monetary damages in cases of intentional employment discrimination.
 - Federal laws prohibiting housing discrimination
- **HUD-- Fair Housing Act, 42 U.S.C. §§ 3601 et seq.**
- **Iowa Code Requirements & Responsibilities –Chapter 216 of the Code of Iowa.**
 - The “Iowa Civil Rights Act of 1965, as amended” prohibits discrimination in the areas of employment, housing, credit, public accommodations (services by public employees or facilities open to the public, i.e. businesses or government) and education.
 - Discrimination (different treatment) and harassment are illegal if based on race, color, creed, national origin, religion, sex, sexual orientation, gender identity, pregnancy, physical disability, mental disability, age (in employment and credit), familial status (in housing and credit), and marital status (in credit). The Commission interprets ‘mental disability’ to include mental retardation.
- Iowa Administrative Code –see I.A.C. 161
- Policy and procedure manuals and protocols –see website for extensive material on how to file a complaint -
http://www.state.ia.us/government/crc/file_complaint/index.html
- Any other requirements and responsibilities –see website
<http://www.state.ia.us/government/crc/index.html>

2. Please provide a flow chart of how your agency receives and processes complaints from initiation to completion or resolution of the complaint. **See attached.**

3. Please provide the methodologies utilized by your organization to inform consumers and the general public of your agency's complaint process. We inform the public of our process through our website, outreach at community events and festivals (including the Iowa State Fair), and via specific training sessions.
 - Through ongoing outreach and education efforts, for FY08, ICRC presented before 231 audiences, totaling 11,213 attendees.
 - Through our VISTA Project, we participated in 148 educational and outreach events in more than 18 cities in a 16 month period ending 1/09. ICRC reached 23,005 individuals and distributed over 58,503 in educational items.
 - As part of our outreach, VISTA members were responsible for coordination of the Friends of Iowa Civil Rights, Inc.'s booth at the Iowa State Fair. In 2008, this event reached over 8,000 people and distributed 44,137 educational items.
 - In addition, ICRC: received a grant for joint television advertising with the Des Moines Human Rights Commission; held joint public hearings across the state with local commissions; published articles and advertisement in Latino newspapers; and conducted extensive housing outreach efforts resulted in the leafleting of over 1000 rental units in Dubuque and Des Moines, and the creation of fair housing posters and flyers

4. If your agency sub-contracts oversight responsibilities, to whom are the responsibilities sub-contracted and what systems are utilized to provide oversight of the sub-contractor?
 - ICRC contracts with local commissions (9 across the state) to assist in the receipt and resolution of civil rights complaints.
 - Local commissions provide local, on-site supervision
 - Annual contracts (memoranda of agreements) are executed between the state and local commissions.
 - Local cases are routinely 'cross-filed' with the state to permit for state oversight of cases.

5. Please describe common outcomes related to any enforcement responsibilities your organization may have.
 - Referring to the actual outcomes of our investigations, examples of common remedies include—financial reimbursement for lost wages, including back pay; job reinstatement; training of business or landlord; return of rental deposits; cancellation of housing evictions; reasonable accommodation; compensation for direct consequential damages, such as emotional distress, and financial settlements for out-of-pocket expenses. Housing cases can also involve civil penalties.

6. Please describe any proposed recommendations that emerge from your agency as you compile this report.
- Strengthen the ability of ICRC to investigate and resolve discrimination complaints (subpoena power bill—SF 96)
 - Strengthen the ability of ICRC to investigate and enforce complaints alleging discrimination in pay (“equal pay” bill --SF 137 --is an effort to accomplish this goal)\

What kinds of discriminatory acts are covered under Iowa Law?

The “Iowa Civil Rights Act of 1965” prohibits discrimination in the areas of employment, housing, credit, public accommodations (services by public employees or facilities open to the public, i.e. businesses or government) and education.

Discrimination (different treatment) and harassment are illegal if based on race, color, creed, national origin, religion, sex, sexual orientation, gender identity, pregnancy, physical disability, mental disability, age (in employment and credit), familial status (in housing and credit), and marital status (in credit).

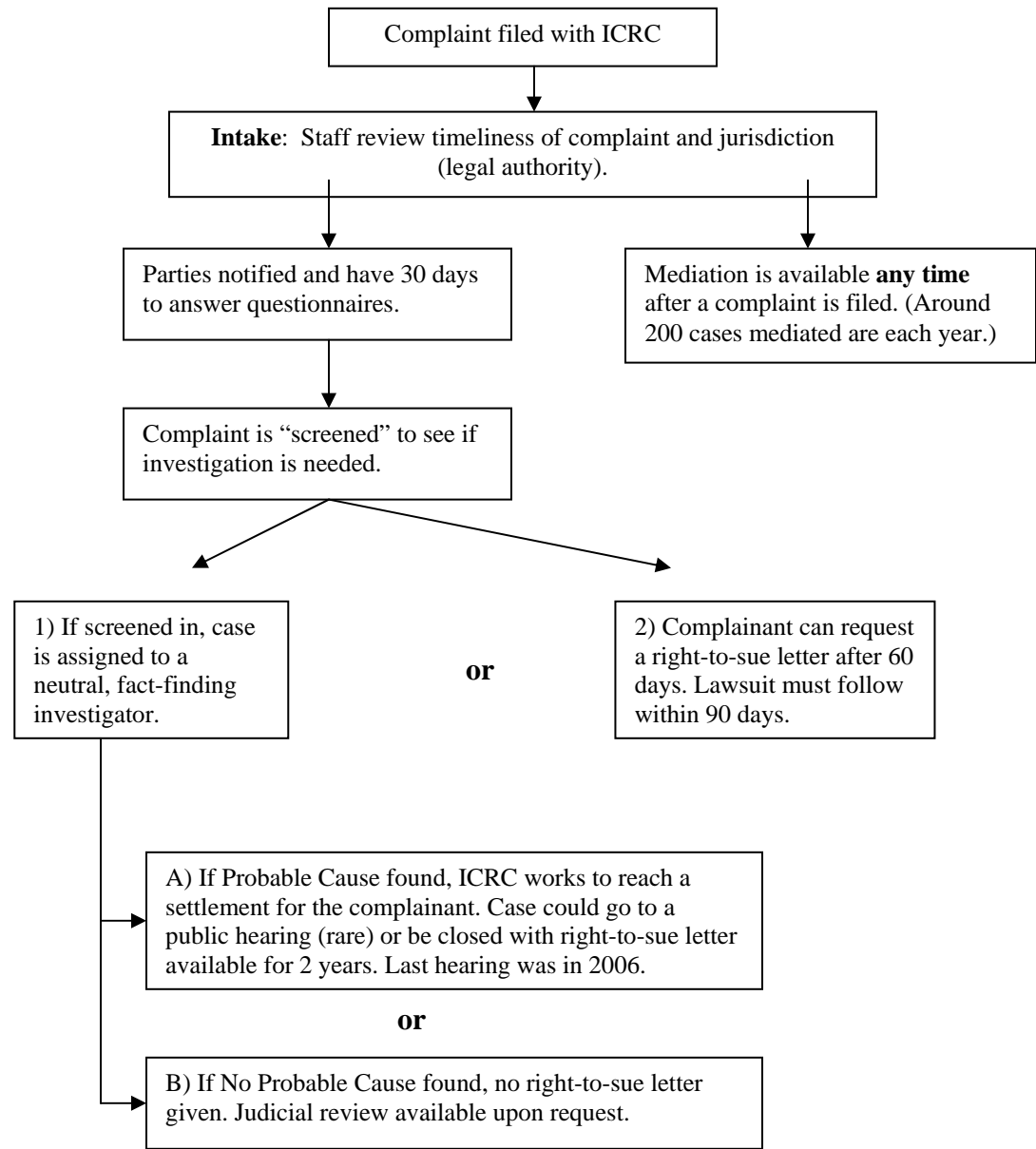
The Iowa Civil Rights Commission

The Iowa Civil Rights Commission is a neutral, fact-finding administrative agency that enforces the “Iowa Civil Rights Act of 1965,” Iowa’s anti-discrimination law. It does not provide legal representation/services.

The Commission addresses discrimination in the following ways:

- Case resolution through intake, screening, mediation, investigation, conciliation, and public hearings
- Conducting a state-wide education program for urban and rural areas, businesses, landlords, government, and the general public
- Testing to determine the existence of discrimination in Iowa
- Supporting civil rights and diversity programs and projects throughout Iowa
- Partnerships with communities wanting to identify and resolve diversity and discrimination issues locally.

The Iowa Civil Rights Commission’s Complaint Process (Feb. 10, 08) □



Governor's Task Force on Dependent Adults with Mental Retardation

Labor Commissioner

Pursuant to the Draft Report Template, the Iowa Division of Labor Services provides the following information to the Governor's Task Force on Dependent Adults with Mental Retardation:

1. The Iowa Division of Labor Services enforces 14 different labor and employment programs for the State of Iowa. Our enforcement authority is pursuant to Iowa Code 91 and Chapter 1 of the Labor Services Chapter 875 of the Iowa Administrative Code. The 14 programs are as follows:
 - 1) Collection of Payments—Subrogation, Iowa Code 85.68 (Second Injury Fund of Workers' Compensation)
 - 2) Occupational Safety and Health, Iowa Code 88 and IAC 875—Chapters 2-5, 8-10, 26-29
 - 3) Safety Inspection of Amusement Rides, Iowa Code 88A and IAC 875—Chapters 61-62
 - 4) Removal and Encapsulation of Asbestos, Iowa Code 88B and IAC 875—155
 - 5) Boilers and Unfired Steam Pressure Vessels, Iowa Code 89 and IAC 875—Chapters 80-85, 90-96, 201
 - 6) State Elevator Code, Iowa Code 89A and IAC 875—Chapters 65-77
 - 7) Hazardous Chemicals Risks—Right to Know, Iowa Code 89B and IAC 875—Chapters 110, 120, 130 and 140
 - 8) Boxing and Wrestling, Iowa Code 90 and IAC 875—Chapters 170-177
 - 9) Wage Payment Collection and Minimum Wage, Iowa Code 91A and IAC 875—34-36
 - 10) Contractor Registration, Iowa Code 91C and IAC 875-150
 - 11) Minimum Wage, Iowa Code 91D and IAC 875—215-220
 - 12) Non-English Speaking Employees, Iowa Code 91E and IAC 875—160
 - 13) Child Labor, Iowa Code 92 and IAC 875—32
 - 14) Employment Agencies, Iowa Codes 94A and IAC 875-38

The Division consists of 4 Bureaus:

- 1) Occupational Safety and Health Enforcement Bureau (enforces occupational safety and health rules in workplaces through inspections based on accidents, complaints, and programmed inspections)
- 2) Occupational Safety and Health Consultation and Education Bureau (conducts occupational safety and health inspections at the request of an employer and conducts educational programming)
- 3) Inspections and Reporting Bureau (conducts amusement ride, elevator and boiler inspections and maintains statistical information on workers' illnesses and injuries and the division's inspection activities)

- 4) Employee Protection Bureau (responsible for child labor, wage payment and collection, minimum wage, employment agency licensing, workplace standards, asbestos removal and encapsulation permits and licensing, community and emergency right to know, contractor registration, non-English speaking employee rights and second injury fund collection)

Our address is Department of Workforce Development, Division of Labor Services, 1000 E. Grand Avenue, Des Moines, IA 50319. Our telephone number is 515-281-3606 or 800-562-4692 and fax number is 515-281-7995.

Our website is www.iowaworkforce.org/labor All our forms we utilize, interpretations and policy manuals we rely on, etc. are located on our website, as well as links to the Iowa Code and Iowa Administrative Code. We also have links to the US Dept. of Labor, Wage and Hour and OSHA.

Many of our programs are patterned after federal laws and rules:

Our Occupational Safety and Health laws are adopted from 29 CFR Parts 1908, 1910, 1926 and 1928 standards as they are promulgated. We also adopt federal directives and/or create our own compliance directives which are available online from our website or in the office.

Our wage and hour laws are taken from 29 USC 203 and 214 of the Fair Labor Standards Act (FLSA) and 29 CFR Parts 516, 519, 522, 531, 541, 552, 553, 776, 779, 780 and 785. We have only one reference to dependent adults in our wage laws as it relates to special certificates for disabled employees that can be issued by the US Dept. of Labor that we recognize pursuant to 29 USC 214. The Iowa Administrative Code section for this is IAC 875—216.30(91D). In addition, Iowa does allow a “training” wage that all employees can earn the first 90 days of employment which is a sub-minimum wage of \$6.35/hour as opposed to the minimum wage of \$7.25/hour.

Our Occupational Safety and Health program also has a policy and procedure manual entitled “The Field Inspection Reference Manual” which is available online or in the office.

2. A flow chart of how our Division receives and processes complaints from initiation to completion depends on the program area. For example, our Iowa Occupational Safety and Health (IOSHA) complaint form and process is explained and is available on our website under our IOSHA program entitled “phone and fax.” If an employee has a safety and health complaint, they can telephone, email, fax or in-person file a complaint and it can be handled informally through the “phone and fax” program or be processed as a formal complaint that would require an on-site inspection. A database is kept of all formal complaints. Child labor complaints are handled by telephone, email, fax or in-person. They can be oral or written. A database is kept of formal complaints filed. Wage complaints must be filed in writing and a database is kept of all complaints. Other types of wage complaints that are more informal, like civil penalty complaints, do not need to be in writing but are received via telephone, fax, email and in-person.

3. The methodologies utilized to inform consumers and the general public of our complaint process is through the internet, over the telephone, by fax, and in-person.
4. We do not sub-contract oversight responsibilities for any of our programs in the Division of Labor, but because some of our programs are federally funded like IOSHA (50-50 fed/state for enforcement and 90-10 fed/state for consultation) we are monitored by OSHA, our parent federal agency.
5. Common outcomes related to our enforcement responsibilities varies on the program. For instance, in our wage program, a common outcome is for a wage claimant to be paid the wages owed to them. In our IOSHA program, a common outcome is to make the workplace safer and healthier for employees.
6. We are working on recommendations, not only from our Division but IWD as a whole. One recommendation that Labor would make initially is setting up a "phone and fax" program for dependent adults in which the public would have an 800 telephone number to call in and report abuses of dependent adults, much like the "phone and fax" program that IOSHA has. It is very successful, and callers can be anonymous if they choose or can file formal complaints.

Additional IWD Background Information

In 2000, two years into the state agency collaboration in the administration of a five year RSA grant to explore and determine the tangible benefits of agencies working together to serve communities (in terms of impact for lowans with disabilities), an opportunity came to us from the Department of Labor to expand our efforts. The Department for the Blind and the Iowa Governor's Council on Developmental Disabilities joined our group for the purpose of applying for a three year Work Incentive Grant through the Department of Labor. The research of both initiatives combined created discussion within the state agency collaboration on where gaps existed in Iowa's current employment service system and supported conversation on collaborative strategy to address those gaps.

Iowa Navigator Program

At the completion of the RSA grant and the WIG grant, the Department of Labor approached the State of Iowa regarding their interest in having Iowa participate as one of 17 states to pilot the "Navigator" program. This idea was developed through an RSA initiative in the state of Colorado. The idea was placing individuals in a "One-Stop" workforce environment who would not be a direct service provider, but would connect people with disabilities to services in the system that would support their career success, and support the staff of all one-stop services in their success in including job seekers with disabilities in their services. A focus on supporting area businesses in meeting their employment goals through the employment of qualified people with disabilities was also part of the role. In Iowa, as we had already established a strong partnership at the state level with these agencies, it made sense that this role would be established and directed to support the success of all of the One-Stop partner agencies in the implementation. Throughout the course of the program, the objective has always been to enhance the collaborative response of the service community for job seekers with disabilities, more than to support the success of any one particular agency. The navigators do not promote the navigator role or position to the disability community, but the services available through the collaborative employment center system. This approach has worked pretty well, and we are now in the 6th year of program operation, and working through our partnership to support Iowa's local regions who wish to continue the program in sustaining this role through their outcomes with the Ticket to Work program.

Iowa Work Incentive Planning and Assistance

As the Benefits Planning Assistance and Outreach (SSA) program ended, there was discussion among some of the state partner agencies that had supported the lead agency in Iowa (Blackhawk Center for Independent Living in Waterloo) about how to continue this effort to address the common misinformation about working and social security benefits throughout the state in partnership. The BPAO grantee was not going to make application for the WIPA (also SSA), and we had learned a lot through our efforts since 1994, in developing and supporting SSA benefits planning assistance for

job seekers who are SSA disability recipients. During the period of BPAO operation there were as many as 3 separate benefits planning resources in operation at one time throughout the state, and given what we'd learned in the process, there was an opportunity for us to bring these interests together through this application.

Again, the Governance Group applied in collaboration to administer this effort in our state in a way that enhances and ties in to the employment and support services all of us provide to Iowa job seekers. The purpose of the WIPA grant is to provide quality and accurate information to support SSA disabilities recipients who wish to work, and connect them with supports that will allow them to be successful in their employment efforts. Our objective was bold given the resources available to us. SSA reports that there were approximately 90,000 "ticket" holders (SSA disability beneficiaries, whom SSA wishes to provide incentives to explore employment opportunities), and they project that over 40% of ticket holders wish to work. We believe that this number could be higher if it wasn't for the great amount of misinformation around the state about work and social security benefits. The resources of Iowa's WIPA allotment was enough to employ two individuals to operate as "Community Work Incentive Coordinators". It was necessary to establish the common ground with other agencies who provide employment services for Iowa's SSA disability recipients, to expand the collaborative network and support the reach of this effort statewide. To this point, over 300 individuals from diverse agencies across the state, including staff from County Case Management offices, Community Rehabilitation programs, Vocational Rehabilitation offices, advocacy organizations, and workforce centers are part of a network of "Benefits Liaisons" that are supported by the grant staff through information and training. These "Benefits Liaisons" connect SSA disability beneficiaries to the WIPA staff and work with them to provide accurate information to the beneficiary and encourage them to engage in employment in a way that increases their standard of living. For many Iowans, accepting that they are better off not working to protect their benefits is a conscious decision to live their life in a poverty level status. This program is now in its third year, and the collaboration is considering how this effort can be expanded to support more Iowans.

Working Together so More Can Work (Iowa's Medicaid Infrastructure Grant, or MIG)

In 2000, the agency that was then HCFA offered Iowa this grant opportunity. This effort has been a part of Iowa's development of a very strong Medicaid Buy-in effort that provides our health benefit safety net for Iowans with disabilities who engage in employment. Efforts have also been in effect to enhance the availability of personal attendant services for Iowans with disabilities. In the last couple of years, the Department of Human Services, one of the collaborating state agency partners on the Governance Group, which administers the MIG in Iowa, has connected Iowa's MIG efforts very successfully with the Governance Group's other initiatives. This collaboration has been the basis of using resources effectively to enhance the ability of One-Stops (with their navigators) in their outreach and connections with Iowa's Medicaid recipients, and with the broader expansion of outreach for the WIPA program throughout the state. Recognizing the importance of accurate SSA benefits information

and benefits planning assistance for Medicaid recipients, the MIG has coordinated with the Governance Group's WIPA efforts to purchase additional benefits planning assistance through professionals that were supported through the Iowa BPAO program that operated prior to WIPA. The role that MIG and its staff have played to provide more effective public education of the resources and services available in our state has been very effective in creating stronger perceptions of the available services among individuals in the disability community.

Additional IWD Background Information

IWD program source references:

There is nothing that I can think of that applies directly to dependent adults – or mental retardation specifically – as they would apply to workforce development or services. I know that with some of our programs, having a disability could allow an applicant to meet eligibility requirements, and we do address accessibility – both physical and program access (in compliance with ADA, Section 504 of the Rehabilitation Act, and 29 CFR 37 – Also Program Access is addressed in Section 188 of WIA. Section 188 is supported by a checklist where the recipient reviews how they promote accessibility and the opportunity to have services and information provided in alternative ways.

Additional IWD Background Information

Unemployment

96.19(18)(a)(6)d cited below states schools for the disabled do not cover the employment of the students for the Employment Security tax.

- (d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

96.19(81)(g)6, second unnumbered paragraph states that services by inmates of a hospital are not covered for Iowa's employment security, UI tax.

- 8) Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

Additional IWD Background Information

Workers Compensation Data

We do not have any regs on point other than possibly rule 876 IAC 6.2(7). The Division of Workers' Compensation does not administer any programs for dependent adults but do administer the law regarding workers' compensation benefits which include survivor's benefits for dependent/surviving individuals including adults. Following are a list of Code sections you may want to review where the word dependent appears: Iowa Code sections 85.21, 85.22, 85.23, 85.26, 85.31, 85.41, 85.42, 85.44, 85.49, 86.45 and 627.13.

Following are two cases citing authority that parents can receive survivor's benefits as dependent adults: *Murphy v Franklin*, 259 Iowa 703, 145 N.W.2d 465 (1966) and *Iowa Erosion Control, Inc. v. Sanchez*, 599 N.W.2d 711 (Iowa 1999).

Iowa Workforce Development Acronyms

RSA – the Rehabilitation Services Administration

WIPA – Work Incentive Planning and Assistance

PJ – PROMISE JOBS

FIP – Family Investment Program

TANF – Temporary Assistance to Needy Families

VR – Vocational Rehabilitation

ODEP – Office of Disability Employment Policy

WIG – Work Incentive Grant

HCFA – Health Care Finance Administration – is now the Centers for Medicare and Medicaid Services (CMS)

Iowa Workforce Development's Partnership Efforts to Expand Employment Opportunities for Iowans with Disabilities

Since the implementation of the Workforce Investment Act of 1998, IWD has strengthened collaborative relationships with other state agencies to enhance the usefulness of Iowa's labor exchange system for Iowans with disabilities. This is not an IWD effort but a collaborative effort, and it has been important to look to each other for leadership. Separate accountability in the past has always meant that Iowans with disabilities can be lost between us.

Governance Group

Seven Agencies:

Iowa Vocational Rehabilitation Services, Iowa Governors Developmental Disabilities Council, Iowa Department of Human Services, Iowa Department of Education, Iowa Workforce Development, Iowa Department for the Blind, Iowa Division of Persons With Disabilities

**PROMISE JOBS
Disability
Specialists**

**MOA
Support
Team**

**Navigator
Program**

**Medicaid
Infrastructure
Grant**

**Work Incentive
Planning and
Assistance**

**Employer's
Disability
Resource
Network**

PROMISE JOBS Disability Specialists In a collaborative initiative beginning in 1998, one of the projects based in Sioux City was to determine best practices in identifying and addressing "hidden disability" among participants in Iowa's Temporary Assistance to Needy Families (TANF) program. Lessons learned led to the development of "Disability Specialist" positions within the PROMISE JOBS program, which are based in eight One-Stop workforce centers. This is funded through Iowa's TANF funds.

Memorandum of Agreement – Support Team In 2003, the above seven Iowa agencies sought to address barriers within policy that prevented staff in different agencies from sharing customers, information and resources for the purpose of serving Iowans. Research indicated that policy did not need to be changed, but direction did. Rather than restrictions, this MOA signed and released together by the Directors of these seven agencies outlined the flexibility in policy that allowed our staff to work together to serve the community. This document created a "Support Team" that existed to resolve ongoing questions and problems. Activities of this support team are a contribution of each of the seven agencies as a function of existing roles.

Navigator Program Since 2003, these agencies have coordinated an initiative through grant funding from the Department of Labor. This initiative place a “Disability Program Navigator” in Iowa One-Stop offices. The role of a navigator is to support staff in existing service programs in their inclusion of lowans with disabilities in services; support Iowa businesses in their successful employment of lowans with disabilities; and assist lowans with disabilities who wish to work in utilizing available services and resources. Funding is somewhat limited and these agencies are working with local workforce boards to sustain the program through the Ticket to Work.

Iowa Medicaid Infrastructure Grant (MIG) The Department of Human Services has provided the leadership for this initiative through the Commission on Medicare and Medicaid Services. The collaborative network of the seven agencies has offered strong input into this effort in an advisory capacity, and the MIG has greatly enhanced the outreach and networking connections with the Navigator and WIPA initiatives. The focus is to enhance employment opportunities for lowans with Developmental Disabilities who have not been served well in the past through our traditional labor exchange services.

Iowa Work Incentive Planning and Assistance (WIPA) The complexities of Social Security Administration (SSA) disability benefits and work incentives have been a barrier for many lowans to career pursuits. Because of incorrect information, many lowans decide to live at a poverty level of income rather than work. Through a grant with SSA, Iowa’s partnership is addressing this misinformation, and encouraging lowans to successfully use available work incentives to establish careers. There is enough funding through this grant to employ two “Community Work Incentive Coordinators” but this effort supports a network of over 300 “volunteer” professionals and advocates around the state to effectively connect with SSA disability beneficiaries.

Employer’s Disability Resource Network Through the leadership of Iowa Vocational Rehabilitation Services, this partnership and other agencies have developed a “demand side” resource to Iowa’s business and industry – to support them in successful employment of qualified lowans with disabilities. This effort is just getting started through in-kind contribution from the partners, and currently supports Iowa businesses in their direct recruitment of qualified employees.

DIA – Revisiting of Facilities Code References**135C.16 INSPECTIONS.**

1. In addition to the inspections required by sections 135C.9 and 135C.38, the department shall make or cause to be made such further unannounced inspections as it deems necessary to adequately enforce this chapter. At least one general unannounced inspection shall be conducted for each health care facility within a thirty-month period. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. An employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to the merit system provisions of chapter 8A, subchapter IV, the discipline shall not exceed the discipline authorized pursuant to that subchapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards. When the plans and specifications have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications. When construction or alteration of a facility or portion of a facility has been completed in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted. If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and

specifications therefor, subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph "b" shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. **If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.**

135C.21 PENALTIES.

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

REPORT OF UNLICENSED OR UNCERTIFIED FACILITY

If you suspect that an unlicensed or uncertified facility is operating in your area, you should report the facility to the Iowa Department of Inspections and Appeals (DIA). As guidance, please use the definition of a Residential Care Facility (RCF) as the basis for your report: a premise housing three or more people, not related to the owner, who are unable to provide for their activities of daily living without supervision and/or assistance.

You may file a report either by completing the form below, or calling the Department's toll-free Complaint Hot Line at **1-877-686-0027**. If DIA reasonably believes that the facility should be licensed or certified under Iowa law, an investigation will be conducted to determine its status.

Thank you for your assistance in helping DIA to identify potentially unlicensed or uncertified health care facilities. By reporting a suspected facility, you may be helping to protect the health, safety, and welfare of Iowa's elderly or disabled residents.

Please provide the address (or general location) of the suspected facility:

Describe the circumstances which make you suspect that the facility is operating as an unlicensed or uncertified health care facility. (Please provide as much detail as possible, including number of occupants and services provided.)

Please provide any information about agencies or individuals who might have referred individuals to the facility. (Please provide contact information for the referring parties, if available.)

Name of Individual Making Report: _____

Address of Reporting Individual: _____

Telephone Number of Reporting Individual: _____

Note: This document, including the name of the individual making the report, is subject to a public information request. If the individual chooses, the report may be made anonymously.

Send completed report to:

Iowa Department of Inspections and Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, IA 50319-0083
FAX: (515) 242-5022
DIA Webmaster address: hfdinfo@dia.iowa.gov

CHESTER J. CULVER
GOVERNOR

DEAN A. LERNER, DIRECTOR

PATTY JUDGE
LT. GOVERNOR

DRAFT

Date

Administrator's Name

Hospital's Name

Street Address

City, State, Zip Code

Dear Administrator's Name:

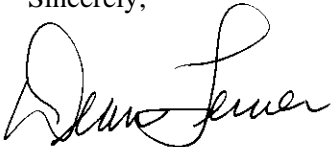
We know that patient care is your number one responsibility. From the moment a patient is admitted until the time that he or she is discharged, the patient is your primary concern. We also know that not all patients are discharged to their homes. Sometime it is necessary for a patient to undergo rehabilitative services after being hospitalized; sometimes the family is unable to properly care for the patient. During these difficult times, patients and their family members often turn to the hospital's social services staff to assist them in locating appropriate living environments.

As you may be aware, Governor Chet Culver recently appointed a task force to examine how Iowa deals with dependent adults with mental retardation. During testimony before the task force, the members learned that Iowans are sometimes discharged from hospitals and referred to facilities that are not licensed or certified. Such referrals are not made out of indifference to the patient. Rather, they are often made because the referring hospital is unaware of a facility's status.

As part of the task force's mission, we are asking all hospital administrators in the State of Iowa to make their social services departments aware of a facility's status prior to making a referral. Patients or other individuals who require medical care should only be referred to licensed or certified facilities. If your staff is unaware of a facility's status, they are urged to contact the Department of Inspections and Appeals (515-281-4115) prior to making a referral. Additionally, a facility's licensure or certification status may be checked through the Health Facilities Division's web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

We know that taking this extra step may complicate your staff's time. However, by making sure that discharged patients are only referred to licensed or certified facilities, you and your staff will be helping DIA to protect the health, safety, and welfare of Iowa's elderly or infirmed residents. Please do not hesitate to contact the Department if you have questions about this request.

Sincerely,



DEAN A. LERNER
Director

LUCAS STATE OFFICE BUILDING, 321 EAST 12TH STREET, DES MOINES, IOWA 50319-0083

ADMINISTRATION
(515) 281-5457
FAX: (515) 242-6863

ADMINISTRATIVE HEARINGS
(515) 281-6468
FAX: (515) 281-4477
Telephone Number for the Hearing Impaired: (515) 242-6515

HEALTH FACILITIES
(515) 281-4115
FAX: (515) 242-5022

INVESTIGATIONS
(515) 281-5714
FAX: (515) 242-6507

DIA INTAKE: Unlicensed/uncertified Facility Complaints

1. Obtain as much specific information as you can at the initial intake. You may be unsure whether the entity in question is regulated by DIA, another state agency, or some other authority. Before you can make that determination, it is important that you gather as much information as possible. Sometimes, after the initial contact from the “complainant”, you are not able to make contact with them again. It is critical that you obtain as much information as is available during your first contact with the complainant.
2. Determine the number of persons residing in the home/facility. If there are 3 or more persons residing in the home/facility, the home/facility may potentially be an unlicensed facility. If there are fewer than 3 persons, be aware that there may still be issues of Dependent Adult Abuse or Neglect. You will still need to obtain enough information to determine whether there is a potential abuse/neglect situation. If you suspect abuse/neglect or abuse/neglect is alleged, make a referral to DHS after you’ve gathered all available information.
3. If possible, get the name of each resident. Ask questions regarding the care needs of each individual residing in the home/facility. For each resident:
 - a.) Do they need assistance with personal care such as bathing, toileting, eating, or ambulation?
 - b.) Do residents need assistance with transportation, medication administration, or management of their personal funds?
 - c.) Are there any known safety issues such as the physical condition of the interior or exterior of the property?
 - d.) Are there any known unsafe behaviors of residents such as wandering, aggression, sexually inappropriate or self-injurious behavior?
 - e.) Are residents employed? If so, does each resident work at an independent employer or do multiple residents attend a group worksite?
 - f.) Do any residents have case management or home health services? If so, what agency is providing those services?

It’s important to note that in many cases, the complainant may not know the answers to some or all of these questions. They may have very vague information about the situation other than that it appears to be a congregate living situation. That is understood, but it is important to at least attempt to gather any information the complainant may have regarding the residents’ status.

4. Ask the complainant for contact information including his/her name, address, and a phone number where he/she can be reached. The complainant does not have to give his/her name, but encourage them to do so, so that we can follow up with them if there are further questions, etc. Also, if a court order is necessary to gain entrance to the facility/entity, a judge may be more likely to grant the order if there is a named complainant.

5. Evaluate the information obtained from the complainant to determine whether the facility/entity is one that is already regulated by DIA, DHS, DPH, or some other federal/state/local authority. Some congregate living situations may NOT be unlicensed health care facilities, but may instead be one of the following: women's shelter, homeless shelter, substance abuse treatment center, Home and Community Based Waiver program, Supported Community Living program, independent living unit, Section 8 housing (independent living), or some other type of living arrangement. If the facility/entity is regulated by DIA or some other authority, refer the complaint information to the appropriate person and note the date/time and contact information for the person to whom the referral was made.

6. For each report of an unlicensed facility/entity, evaluate whether there is an allegation of, or indication of Dependent Adult Abuse (DAA). If there are allegations or indications of potential DAA, refer the potential abuse information to DHS. Note the date/time and contact information for the person to whom the referral was made.

7. Report the receipt of a complaint regarding an unlicensed facility/entity to the Complaint Unit Bureau Chief and Program Coordinator as soon as it is received. The BC/PC will assist in determining the regulatory status (if any) of the facility/entity and will determine follow-up activities necessary (referrals, onsite investigation, etc.).

235B.1 DEPENDENT ADULT ABUSE SERVICES.

4. a. The establishment of a dependent adult protective advisory council. The advisory council shall do all of the following:

(1) Advise the director of human services, the director of elder affairs, the director of inspections and appeals, the director of public health, the director of the department of corrections, and the director of human rights regarding dependent adult abuse.

(2) Evaluate state law and rules and make recommendations to the general assembly and to executive branch departments regarding laws and rules concerning dependent adults.

(3) Receive and review recommendations and complaints from the public, health care facilities, and health care programs concerning the dependent adult abuse services program.

b. (1) The advisory council shall consist of twelve members. Six members shall be appointed by and serve at the pleasure of the governor. Four of the members appointed shall be appointed on the basis of knowledge and skill related to expertise in the area of dependent adult abuse including professionals practicing in the disciplines of medicine, public health, mental health, long-term care, social work, law, and law enforcement. Two of the members appointed shall be members of the general public with an interest in the area of dependent adult abuse and two of the members appointed shall be members of the Iowa caregivers association. In addition, the membership of the council shall include the director or the director's designee of the department of human services, the department of elder affairs, the Iowa department of public health, and the department of inspections and appeals.

(2) The members of the advisory council shall be appointed to terms of four years beginning May 1. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled in the same manner as the original appointment.

(3) Members shall receive actual expenses incurred while serving in their official capacity.

(4) The advisory council shall select a chairperson, annually, from its membership.

Dependent Adult Protective Advisory Council Members, 11 - 08

Dr. Thomas Carlstrom
The Iowa Clinic
1215 Pleasant St., # 608
Des Moines, IA 50309
515-241-5760
tcarlstrom@iowaclinic.com
Term expires 4/30/11

Penny Westfall, Director
IA Law Enforcement Academy
PO Box 130
515-242-5214 Johnston, IA 50131
Penny.Westfall@ilea.state.ia.us
Term expires 4-30-09

Melvin Clothier,
1508 Cyclone Ave., Box 128
Harlan, IA 51537
melcloth@aol.com
Linda Dearing
Term expires 4-30-09

Heritage Area Agency on Aging
6301 Kirkwood Blvd. SW
PO Box 2068
Cedar Rapids, IA 52406
319-398-5559
FAX 319-398-5533
ldearin@kirkwood.cc.ia.us
Term expires 4-30-09

Maribel Slinde, Director,
Wesley Community Services
944 18th St., Box 7192
Des Moines, IA 50314
515-699-3366/FAX 288-4740
mslinde@wesleyservices.org
Term expires 4-30-09

Paul Vanderburgh
897 High Avenue
Newton, IA 50208
641-792-0070
vander20@netins.net
Term expires 4-30-11

Sandi Koll, Adult Protective Services
DHS, Hoover Bldg., 5th Floor, CFS
Des Moines, IA 50319
515-242-6021 FAX 515-281-7194
skoll@dhs.state.ia.us

Diana Nicholls Blomme
IA Dept. of Public Health
Des Moines, IA 50319-0075
515-242-6333
FAX: 515-242-6013
dnicholl@idph.state.ia.us

John McCalley, Director
Department of Elder Affairs
Jessie Parker Bldg, 510 E. 12th St., Suite 2
Des Moines, Iowa 50309
515-725-4646
John.McCalley@iowa.gov

Dean Lerner, Interim Director
Dept. of Inspections and Appeals
Lucas Bldg., 3rd Floor
Des Moines, IA 50319 Fax: 242-6863
515-281-5457,
dlerner@dia.state.ia.us

Tom Newton, Director
Dept. of Public Health
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Des Moines, IA 50319
515-281-8474

Eugene I. Gessow, Director
Dept. of Human Services
Hoover Bldg., 5th Floor
Des Moines, IA 50319
515-281-5452

Julie Allison, Bureau Chief
DHS, Hoover Bldg., 5th Fl. CFS
Des Moines, IA 50319
15-281-6802

Linda Hildreth
Dept. of Elder Affairs
Jessie Parker Bldg., 510 E. 12th St., Suite 2
Des Moines, IA 50309
515-725-3321, Fax: 515-725-3300
Linda.Hildreth@iowa.gov

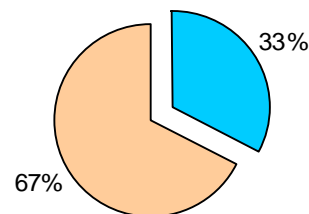
Wendy Dishman
Dept. of Inspections & Appeals
Health Facilities, Lucas Bldg.
Des Moines, IA 50310
515-281-5990/Fax: 515-242-5022
Wendy.Dishman@dia.iowa.gov

Adult Iowans with MR/DD

According to the U.S. Census Bureau, Iowa had a total population of 3,002,555 in 2008, which includes 2,221,891 adults. It is estimated that 1.58% of the U.S. population, adults and children, has mental retardation or a developmental disability. This indicates that there are approximately 35,106 adults with MR/DD living in Iowa today. These statistics are based on the data found by the American Network of Community Options and Resources. Only a small portion of this population receives services from the state. The following graphs and data analyze this population and the care they receive.

The pie chart to the right illustrates the number of Iowans with MR/DD that receive services. This shows that possibly 67% (23,691 persons) of the adults in Iowa with MR/DD do not live in a facility providing services or receive other home-based services.

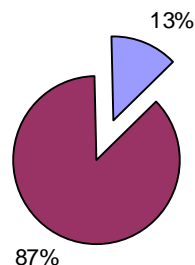
Iowans with MR/DD



■ Total with services ■ Total without services

A total of 12,472 adults live in a facility or receive waiver services that provide safety monitoring (as of 3/3/09). Of this total, 3,481 live in a regulated health care facility. The remaining adult Iowans with MR/DD (7,934) live with families, independently, or some type of supervised setting.

Living Arrangements of Adult Iowans with MR/DD



■ Licensed Health Care Facility ■ Other Settings

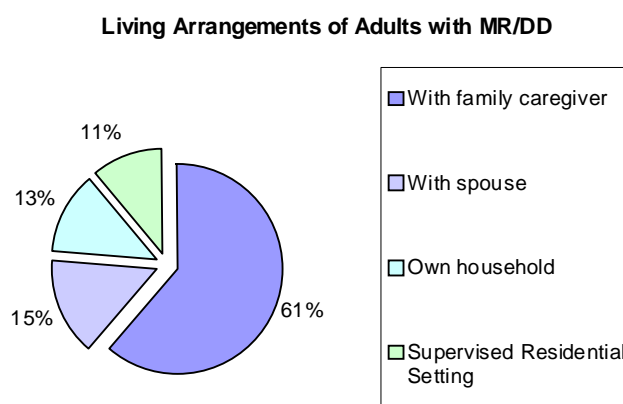
A breakdown of adult individuals with MR/DD that receive services or live in a facility shows that:

- 7,934(as of 3/3/09) receive the HCBS/ MR waiver and have a Targeted Case Manager

-Services available include:

- Adult day care
 - Nursing
 - Transportation
 - Day habilitation
 - Respite
 - Home health aide
 - Supported employment
 - Interim medical monitoring/ treatment
 - Supported community living
 - Consumer-directed attendant care
 - Home/vehicle modifications
 - Prevocational services
 - Emergency responses
- 2,596 receive ICF (Intermediate Care Facilities)/MR or RCF (Residential Care Facilities) and do not have a Targeted Case Manager (IME data 3/3/09).
- 885 adults with MR/DD live in nursing facilities that have on site staff (Broddock 2006).

National data on living arrangements indicates that an estimated 87% of adults with MR/DD in the U.S. live in non- institutional households. The graph below shows that in Iowa 89% of adults with MR/DD live in a non-institutional household.



Over half of adults with MR/DD live with family members. A small fraction live with a spouse (15%), have their own household (13%), or live in a supervised residential setting (11%) based on a study conducted in 2004.

Source: From *Policy Research Brief, Family Support Service in the United States* published by the Research and Training Center on Community Living, Institute on Community Integration (UCEDD) University of Minnesota, Vol. 17, no. 1, February 2006

Observations about the data of adults.

Iowans value freedom of choice for individuals with retardation and have been deliberately moving to a focus of developing institutional care alternatives. All services are to be provided in a way that values the choices the individual with mental retardation makes.

Iowans also value the safety of its citizens. This value points to the need to provide necessary protections, should the community and family supports fail to provide for the safety of the individual.

Because the preponderance of individuals with mental retardation live in the community with family members, or in community settings, there is a need for a clear and universal message to all citizens that identifies:

1. Situations and concerns that should be brought to the attention of the protective system.
2. The way in which these concerns can be made known.
3. Services that are available to assist the family

Some options are:

- Public campaign educating citizens and concerns about indicators of safety concerns and how to report concerns.
- Focused discussions with other supports and resources in the community coming into contact with the adult individual with mental retardation. This could include churches, those who practice medicine, police etc.
- Work with individuals with mental retardation on how to bring their own safety concerns to a person who could assist them in making a report.

Department of Human Services Recommendations for Programs and Actions to Enhance the State of Iowa Dependent Adult Abuse Protection System March 11, 2009

The Department of Human Services conducted a review of how other states¹ address dependent adult abuse. In general, we found that the **definition of a dependent adult varies from state to state**. Consequently, **efforts to address the issue vary as well**.

After reviewing information from other states and reviewing material produced by the National Protective Services Association², however, we identified **the following elements geared toward successful systemic practice** as common among many:

Performance Based Outcomes:

To ensure accountability for performance, standards should be geared toward achieving positive outcomes for clients. Performance should be monitored on an ongoing basis to ensure desired program outcomes are being achieved. Client outcomes should be agreed upon and there should be an emphasis on performance management from a systemic standpoint.

RECOMMENDATIONS:

- Engage the community in a conversation about the definition of dependent adult abuse so there is a common understanding of who is served in our communities and how they are served. These conversations will include a discussion about the desired outcomes for dependent adults, including safety, maximum independence, choice and healthy living situations.
- As a result of the conversation we would identify outcomes to measure and the process for measuring performance of the desired outcomes.

Model of Practice:

States that are able to develop a shared focus on how to address protective issues with the dependent adult population are more successful. A model of practice provides a conceptual framework to guide the work being performed toward positive outcomes. "Best practice" concepts lay the foundation.

RECOMMENDATIONS:

- Use our community and interagency conversations to develop a Dependent Adult model of practice.

Community Partnership

Communities who work collaboratively to ensure there is a system to align planning and service provision for dependent adults as well as to fill gaps in service array are more successful. Those

¹ States reviewed included Texas, Oregon, New York, Texas, Arizona, Delaware, Louisiana, Florida, Minnesota, Colorado and Nebraska

² National Protective Services Association is a national non-profit organization with members in all fifty states. It was formed in 1989 to provide state Adult Protective Services (APS) with a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult abuse.

who have a commitment for change beginning at a grass roots level also experience more success. Community partnerships are designed to strengthen community response to supports and protect dependent adults.

RECOMMENDATIONS:

- Implement the proposed Community Partnerships for Dependent Adults strategy³ (see cost estimate detail, “Community Partnerships for Dependent Adults”)

Emphasis on training state staff, providers of service and mandatory reporters

State workers, community providers, and other interested stakeholders who are well informed and trained on all the issues around adult dependency are stronger more competent advocates for this fragile population.

RECOMMENDATIONS:

- Develop advanced skills training curriculum for DHS staff inclusive of, but not limited to, training on special populations and different types of abuse/neglect (e.g. self-neglect, financial exploitation). Advanced training would also include how to take action to protect a dependent adult when necessary by evaluating the safety and risk to the dependent adult. Special populations would include dependent adults who have mental retardation. To extent possible, coordinate this with the Department of Inspection and Appeals.
- Collaborate with Iowa Department of Public Health in regards to mandatory reporting training curriculums.
- Provide training to all intake staff regarding intake definitions and responsibilities³.
- Provide training to all DHS staff on what to do when they receive a call relating to potential dependent adult abuse³.

Technology

There is a focus on the use of technology to share information between involved parties/providers, and to allow protective workers immediate documentation capabilities.

RECOMMENDATIONS:

- Establish and maintain an internal dependent adult statewide data management system³. The data system will ensure caseworkers have access to timely and accurate historical data, have the capability to produce relevant reports including, but not limited to, number of accepted intakes, rejected intakes, findings of reports and categories of abuse types and support dependent adult casework activities.
- Develop and implement the Medicaid incident reporting system to maintain incident reports filed by various Medicaid providers³.
- Expand the design of the dependent adult statewide data management system and the Medicaid incident reporting system so that information can be exchanged. Explore whether this system could be further expanded to allow other state agencies (Department of Inspection and Appeals, and Department of Aging) access to this information.

(See cost estimate “Enhanced Management Information System”)

³ Program or Action recommendation was included in document titled, Iowa’s Dependent Adult Protective System, which was previously submitted to Task Force members.

Structured Decision Making Tool and/or other standardized tools to support practice

A focus on the use of a structured decision making tool and/or standardized tools to assist protective staff during the course of a “dependent adult” abuse assessment strengthens the quality and consistency of practice.

RECOMMENDATIONS:

- Identify, develop and implement a standardized tool and/or structured decision making tool to assist staff in determining if an adult is “dependent”³.
- Identify, develop and implement a standardized tool or structured decision-making tool to assess risk.
- Implement a quality assurance system to ensure decisions are being made consistently³.

Service Delivery Component with Case Manager Responsibility

A focus on a designated professional who is assigned the responsibility of shepherding the effort to keep an adult safe in a permanent way (i.e. a program matching adults with potential approved guardians, etc) ensures that the dependent adult is safe and receives services needed after a dependent adult abuse evaluation or assessment has occurred.

RECOMMENDATIONS:

- Implement dependent adult safety and transitional case management services³. Dependent adult safety and transitional case management would include the provision of short-term emergency services and ensuring service delivery is targeted towards the prevention of further abuse. (see cost estimate for “Proposal for Transitional Case Management and Safety Services).

³ Program or Action recommendation was included in document titled, Iowa’s Dependent Adult Protective System, which was previously submitted to Task Force members.

CHESTER J. CULVER
GOVERNOR

DEAN A. LERNER, DIRECTOR

PATTY JUDGE
LT. GOVERNOR

The Department of Inspections and Appeals sought input from other State Survey Agencies around the country regarding unlicensed health care facilities. The inquiry posed, and responses, are below:

Inquiry:

The Iowa SA is reviewing State law and regulations related to receiving reports and conducting investigations into allegations that an unlicensed health care facility is being operated. We are also reviewing ways that we might discover the existence of these unlicensed facilities, in the absence of a complaint or other notification.

We are interested in other State statutes and administrative rules in this regard. If your State has law, rules, reporting requirements or any other mechanisms that assist in discovering and monitoring such entities, we would appreciate knowing and being directed to the appropriate e-mail links.

Responses:

Alaska:

Alaska has statutory authority to investigate entities that are believed to be operating without a license under AS 47.32.030(a)(4)(C).

Sec. 47.32.030. Powers of the department; delegation to municipality.

(a) The department may

(4) investigate

(C) other persons that the department has reason to believe are operating an entity required to be licensed under this chapter, or are residing or working in an entity for which licensure has been sought under this chapter; this subparagraph does not apply to persons receiving services from an entity for which licensure has been sought under this chapter;

The link to our statute is <http://www.legis.state.ak.us/basis/folio.asp> click on 2008 Alaska Statutes then move to title 47, section 32.

Regulations further describe the Department's ability.

7 AAC 12.610. Licensure

(a) Unless exempt under 7 AAC 12.611, before an individual or entity may operate a facility subject to AS 47.32 and this chapter, the individual or entity must obtain a license from the department under AS 47.32 and this section. The department may bring an action to enjoin the operation of a facility that has failed to obtain a license as required under AS 47.32 and this chapter.

Link to regulation.

[http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=\[jump!3A!277+aac+12!2E610!27\]/doc/%7B@33157%7D?](http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=[jump!3A!277+aac+12!2E610!27]/doc/%7B@33157%7D?)

Arkansas:

A problem with which we have struggled. There is no “mandated reporting” of such facilities, and no mechanisms for the discovery of them in Arkansas. We investigate complaints of unlicensed facilities and if substantiated we advise them to cease and desist or a TRO will be sought. We do have a law that requires the “facility” to allow our surveyors to enter.

Florida:

For Florida statutory provisions, here is the link to Chapter 408 Part II and below I have cut/paste the specific language regarding unlicensed activity.....

http://www.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&URL=Ch0408/part02.htm&StatuteYear=2008&Title=%2D%3E2008%2D%3EChapter%20408%2D%3EPart%20II

408.812 Unlicensed Activity

- (1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A license holder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.
- (2) The operation or maintenance of an unlicensed provider or the performance of any services that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.
- (3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.
- (4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.

Kansas:

I am replying to your question about unlicensed facilities and how states handle them. Basically our laws define each type of facility and require anyone operating same needs to be licensed, plus they give authority to the Secretary to conduct investigations. The issue rarely comes up, but whenever we hear of the possibility of someone operating illegally, we will send a surveyor out to determine as much as they can, interviewing the person(s) operating the establishment, identifying if there are residents and speaking to them, etc. We may involve legal if we run into problems or "stonewalling".

If we determine someone is operating illegally, the legal staff would likely send a cease and desist order. We may give the establishment a chance to file an application, depending upon the circumstances. There is not a real formal process in place other than what I have described, but it rarely happens. I think the last one I was involved with was several years ago. And, when there is a case, it typically is something that is reported to us. The link following takes you to our statutes and the sections on definitions, inspections, and authority highlight the issues I have described:
[http://www.aging.state.ks.us/PolicyInfo and Regs/ACH Current Regs/ACH Statutes/Complete Statues Set.pdf](http://www.aging.state.ks.us/PolicyInfo%20and%20Regs/ACH%20Current%20Regs/ACH%20Statutes/Complete%20Statutes%20Set.pdf)

Kentucky:

Kentucky relies solely on complaints or media reports (advertising, newspapers, tv, etc) to alert us about illegals.

Missouri:

Attached is a reference sheet our surveyors use to investigate and then write a report for us regarding unlicensed facilities. If we receive a complaint regarding an unlicensed facility, we are required to investigate within 30 days. If the allegation includes abuse/neglect- we are to respond within 24 hours.

I have not really gone out searching for any unlicensed facilities- they seem to find me themselves. We currently have 5 open investigations- the hard part is they are getting trickier as disguising services through onsite- home health agencies, etc.

Our Secretary of State maintains a list of all businesses in the state. We will routinely send out letters to the unlicensed healthcare facilities on this list to inquire on their practice levels and to determine if their business has met or surpassed a licensure threshold. We don't license physician offices, clinics etc., so we would have no authority when it comes to investigating complaints against those types of facilities.

Montana:

Montana doesn't have any laws or rules that would help uncover unlicensed facilities, but that state is sufficiently small (population wise, not size wise) that I believe we'd find out pretty quickly.

Nevada:

In Nevada we have penalties for unlicensed operation of a medical facility or facility for the dependent. I have included a few of the pertinent Nevada Revised Statutes and the link for your perusal: <http://www.leg.state.nv.us/NRS/NRS-449.html#NRS449Sec210>

NRS 449.210 Penalties for unlicensed operation: Medical facility or facility for dependent; residential facility for groups.

1. Except as otherwise provided in subsections 2 and 3, a person who operates a medical facility or facility for the dependent without a license issued by the Health Division is guilty of a misdemeanor.

2. A person who operates a residential facility for groups without a license issued by the Health Division:

(a) Is liable for a civil penalty to be recovered by the Attorney General in the name of the Health Division for the first offense of not more than \$10,000 and for a second or subsequent offense of not less than \$10,000 nor more than \$20,000;

(b) Shall be required to move all of the persons who are receiving services in the residential facility for groups to a residential facility for groups that is licensed at his own expense; and

(c) May not apply for a license to operate a residential facility for groups for a period of 6 months after he is punished pursuant to this section.

3. Unless otherwise required by federal law, the Health Division shall deposit all civil penalties collected pursuant to this section into a separate account in the State General Fund to be used for the protection of the health, safety and well-being of patients, including residents of residential facilities for groups.

NRS 449.220 Action to enjoin violations.

1. The Health Division may bring an action in the name of the State to enjoin any person, state or local government unit or agency thereof from operating or maintaining any facility within the meaning of NRS 449.001 to 449.240, inclusive:

(a) Without first obtaining a license therefor; or

(b) After his license has been revoked or suspended by the Health Division.

2. It is sufficient in such action to allege that the defendant did, on a certain date and in a certain place, operate and maintain such facility without a license.

[Part 6:336:1951]—(NRS A 1963, 961; 1971, 937; 1973, 1285)

NRS 449.230 Entry and inspection of building and premises.

1. Any authorized member or employee of the Health Division may enter and inspect any building or premises at any time to secure compliance with or prevent a violation of any provision of NRS 449.001 to 449.245, inclusive.

2. The State Fire Marshal or his designee shall, upon receiving a request from the Health Division or a written complaint concerning compliance with the plans and requirements to respond to an emergency adopted pursuant to subsection 9 of NRS 449.037:

(a) Enter and inspect a residential facility for groups; and

(b) Make recommendations regarding the adoption of plans and requirements pursuant to subsection 9 of NRS 449.037, to ensure the safety of the residents of the facility in an emergency.

3. The State Health Officer or his designee shall enter and inspect at least annually each building or the premises of a residential facility for groups to ensure compliance with standards for health and sanitation.

4. An authorized member or employee of the Health Division shall enter and inspect any building or premises operated by a residential facility for groups within 72 hours after the Health Division is notified that a residential facility for groups is operating without a license.

NRS 449.235 Inspection of medical facility and facility for dependent by Health Division and Aging Services Division. Every medical facility or facility for the dependent may be inspected at any time, with or without notice, as often as is necessary by:

1. The Health Division to ensure compliance with all applicable regulations and standards; and

2. Any person designated by the Aging Services Division of the Department of Health and Human Services to investigate complaints made against the facility.

North Carolina:

- North Carolina usually learns of unlicensed health care entities through word of mouth or by people filing complaints.
- For residential facilities, we conduct on-site visits and if it looks like they are operating a licensed facility without a license we send a cease and desist letter to the facility. We also file papers with the local district attorney to file an injunction against the facility barring them from operating until they obtain a valid license.
- For non-residential services, i.e. home care agencies, we usually send a cease and desist letter instructing the provider to cease all services until they obtain a valid license.
- Each provider type we license has its own statutory language regarding operating without a license but the language is similar from program to program. Below is language from our home care statute regarding providing services without a license.

N.C. Home Care Licensing Statutes regarding operating a facility without a license

§ 131E-141.1. Penalties for violation.

Any person who knowingly and willfully establishes, conducts, manages or operates any home care agency without a license is guilty of a Class 3 misdemeanor and upon conviction is liable only for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. (1991, c. 59, s. 1, c. 761, s. 34; 1993, c. 539, s. 961; 1994, Ex. Sess., c. 24, s. 14(c).)

<>§ 131E-142. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department shall, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home care agency without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1983, c. 775, s. 1; 1991, c. 59, s. 1, c. 761, s. 34.)

Oklahoma:

This can be a big problem. Oklahoma has not found a successful solution. Our survey division will go to a location based on complaints and reports of services being rendered. If substantiated, we make a referral to legal for a cease and desist. Entity will lawyer up and it goes on for 2-3 years. In the mean time, we have just acquired another workload as we have to keep going back at every turn in the hearing process to reestablish non-compliance. I do not work these currently due to the strain on resources they create. I have tried to involve APS more as I feel if residents are in a bad situation, it is more their turf and they can get court orders to move folks if they need intervention. If you get some successful solutions to this problem, please share.

Texas:

An unlicensed location is not discovered unless we receive a complaint or other notifications from the community. In Texas we do have a statute that requires that an unlicensed registry be maintained and reported quarterly. The report is ultimately submitted to the substantive committee of each house of the legislature with jurisdiction over the regulation of assisted living facilities.

The link below will direct you to the Texas Health and Safety Code Chapter 247 which is the statute that governs assisted living facilities.

The Section that covers reporting and monitoring of unlicensed facilities is 247.050.

<http://tlo2.tlc.state.tx.us/statutes/docs/HS/content/pdf/hs.004.00.000247.00.pdf>

Labor Commissioner

As part of a listserve for ILSA---Interstate Labor Standards Association---the Labor Commissioner posed the question to all states as to what do they have for statutes and rules governing the employment of dependent adults. Below are the answers received:

- 1) Alaska – Alaska’s laws are patterned after federal laws. 8AAC 15.120 Minimum Wage Exemption for Handicapped Persons
An application can be filed with the Alaska Department of Labor or with the US DOL. If an application is filed with the Alaska DOL, it must set out the facts showing that the person’s productive capacity to do the work to be performed is impaired by physical or mental deficiency, age, or injury. A medical certificate is required if the handicap is not clearly obvious. The rate will not be less than 50% of minimum wage.
- 2) Maine—Maine would cover these employees for minimum wage and overtime. They do have a section that allows them to set a lower rate based upon the degree of handicap for the work being performed. (Title 26 Chapter 7 Sec. 666) They can issue either an individual certificate for the employer to pay one individual at a subminimum wage rate or can issue a group certificate similar to a sheltered workshop certificate that the USDOL issues. They currently do not have any active certificates to pay subminimum wage in Maine. Website is www.maine.gov/labor/bls/
- 1) New Jersey—Website is www.nj.gov/labor They have special permit regulations, but they are rarely used. (NJSA 34:11-56a17 and NJAC 12:56-9.1-5) The department issues permits and use to inspect sheltered workshops every year, but now inspections are only made on the initial application unless there is a complaint. The workers are paid subminimum wage based upon time studies of the work performed.
- 2) New Mexico—Section 50-4-23 NMSA Handicapped persons; minimum wage.
- 3) North Carolina—NC 95-25.3(c)and 13 NCAC 12.0202
- 4) Oklahoma—There are no special rules for mentally handicapped individuals under the wage laws except when they fall under the statutory age limit.
- 5) Wisconsin—utilizes a special minimum wage licensing program similar to the USDOL program. The primary purpose of the program is twofold: 1) to ensure that employment opportunities are not denied workers solely because the worker’s disability makes it impossible for the worker to produce sufficient work to pay the person the full minimum wage rate and 2) to ensure that employers do not economically exploit the workers. In operating the special minimum wage program the biggest hurdle that faces the department is the need to provide necessary and periodic inspection of the licensing. Without oversight and periodic audits of work sites it is inevitable that a small percentage of employers will exploit these vulnerable workers. They have 85 licensed sheltered workshops but due to budget constraints, inspect about 4 a year. Website: http://dwd.wisconsin.gov/er/labor_standards_bureau/mimum_wage.htm

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 20

WAGE AND HOUR

Subchapter 5 Employment of Handicapped Persons

- §12-20-91 Definitions
- §12-20-92 Application for certificate
- §12-20-93 Issuance of certificate
- §12-20-94 Renewal of certificate
- §12-20-95 Record keeping requirements
- §12-20-96 Revocation and cancellation
- §12-20-97 Reconsideration
- §§12-20-98 to 12-20-100 (Reserved)

Subchapter 5 Employment of Handicapped Persons

Historical Note: Subchapter 5, chapter 20 of title 12 is based substantially upon "Regulation XXVIII, Relating to Employment of Handicapped Persons" of the Department of Labor and Industrial Relations. [Eff. 9/1/63; R Oct. 2, 1981]

§12-20-91 Definitions. As used in this subchapter:

"Handicapped trainee" or "trainee" means an individual whose employability is impaired by age, physical or mental deficiency, or injury, and who is receiving or is to receive on-the-job training in industry under vocational rehabilitation programs administered by any governmental agency.

"Handicapped worker" or "worker" means an individual whose employability is impaired by age, physical or mental deficiency, or injury. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-92 Application for certificate. Application for the employment of handicapped workers and handicapped trainees under special certificates authorizing employment at wages lower than the minimum wage under section 387-2, Hawaii Revised Statutes, shall be made by the employer to the director on forms furnished by the department.

(1) The application for a handicapped worker certificate must be complete and be signed by the employer and the handicapped worker or guardian.

(2) The application for a handicapped trainee certificate must be complete and be signed by the employer, the handicapped trainee or guardian, and a representative of the governmental agency. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-93 Issuance of certificate. Upon receipt of an application for employment of a handicapped worker or handicapped trainee, the director may issue a special certificate to the employer under the following terms and conditions:

- (1) The special certificate shall be valid under the terms set forth in the certificate for a period of not more than twelve months from the date of issue as specified in the certificate;
- (2) The special certificate shall have no retroactive effect, but shall operate as an exception subsequent to the date of issue only;
- (3) The subminimum wage shall not be less than the wage specified in the certificate by the director;
- (4) The handicapped worker or handicapped trainee shall be paid at the hourly rate specified in the certificate, or not less than the piece rates paid non-handicapped workers employed in the same occupation, whichever is greater;
- (5) The handicapped worker or handicapped trainee shall be paid not less than one and one-half times the regular rate for all hours worked in excess of the maximum workweek under section 387-3, Hawaii Revised Statutes;
- (6) Money paid the handicapped trainee by any governmental agency for maintenance or other expenses shall not be considered as offsetting any part of the wage or other remuneration due the handicapped trainee by the employer; and
- (7) The terms of any special certificate may be amended for cause upon written request to the director by the parties concerned. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-94 Renewal of certificate. (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Handicapped workers and handicapped trainees may be paid a subminimum wage after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-97; provided that if the denial is affirmed on review, the employer shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date on which the renewal of the certificate was denied. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-95 Record keeping requirements. In addition to records required by section 12-20-8 and chapter 387, Hawaii Revised Statutes, the employer's records shall identify each handicapped worker or handicapped trainee. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-96 Revocation and cancellation. (a) Any special certificate may be revoked or cancelled for cause at any time by the director after affording all interested parties an opportunity for a hearing. Cause shall mean violation of this subchapter or any applicable provision of chapters 387 or 388, Hawaii Revised Statutes, or a finding by the director that fraud has been exercised in obtaining the special certificate or in permitting a handicapped employee to work thereunder.

(b) Except in cases of wilful violations or those in which the public interest requires otherwise, before any special certificate is revoked or cancelled, facts or conduct which may warrant that action shall be called to the attention of the employer in writing and the employer shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-97 Reconsideration. (a) Any person aggrieved by the director's action in denying, granting, revoking, or cancelling a special certificate may, within ten days after that action, file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§§12-20-98 to 12-20-100 (Reserved)

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 20

WAGE AND HOUR

Subchapter 3 Employment of Handicapped Clients in Sheltered Workshops

- §12-20-61 Definitions
- §12-20-62 Application for certificate
- §12-20-63 Factors for consideration
- §12-20-64 Issuance of certificate
- §12-20-65 Terms of certificate
- §12-20-66 Renewal of Certificate
- §12-20-67 Non-handicapped clients in sheltered workshops
- §12-20-68 Record keeping requirements
- §12-20-69 Revocation and cancellation
- §12-20-70 Reconsideration
- §12-20-71 Submission of information; investigation; hearings
- §12-20-72 to 12-20-80 (Reserved)

Subchapter 3 Employment of Handicapped Clients in Sheltered Workshops

Historical Note: Subchapter 3, chapter 20 of title 12 is based substantially upon "Rule XXIV, Relating to Employment of Handicapped Clients in Sheltered Workshops" of the Department of Labor and Industrial Relations. [Eff. 10/24/59; R Oct. 2, 1981]

§12-20-61 Definitions. As used in this subchapter:

"Handicapped client" or "client" means an individual whose employability is impaired by age, physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of that agency or in or about the home of a client.

"Sheltered workshop" or "workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose employability is impaired by age, physical or mental deficiency or injury, and of providing these individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-62 Application for certificate. (a) Application for a special certificate may be made by a sheltered workshop to the director permitting the payment of wages lower than the minimum wage required under section 387-2, Hawaii Revised Statutes, to handicapped clients.

(b) The application shall be signed by an authorized official of the workshop and shall include the following:

- (1) A description of the types of handicapped clients accepted by the sheltered workshop;

- (2) A description of the types of work and the rehabilitation services offered by the workshop;
and
- (3) The estimated earnings of each handicapped client who is unable to earn the minimum wage required under section 387-2, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-63 Factors for consideration. The following factors may be considered by the director or authorized departmental representative in determining the necessity of issuing a special certificate and the conditions to be specified therein:

- (1) The present and previous earnings of handicapped clients of the workshop;
- (2) The general nature and extent of the handicaps of clients served by the workshop;
- (3) The wages of non-handicapped employees employed in private industry engaged in work comparable to that performed in the workshop;
- (4) The cost, value, duration, and types of rehabilitative, medical, educational, therapeutic, and social work services given to handicapped clients;
- (5) The tuition, fees, or other charges made by agencies other than workshops for similar types of services;
- (6) The extent to which handicapped clients, other individuals, governmental agencies, or other organizations may pay dues, fees, or other monies to the workshop;
- (7) The extent to which clients share, through services or wages, in the receipts for work done in the workshop;
- (8) The extent to which the handicapped clients may also be learners or otherwise inexperienced;
and
- (9) Whether there exists any workshop-customer arrangement which constitutes an unfair method of competition and which tends to spread or perpetuate substandard wage levels. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: §387-9)

§12-20-64 Issuance of certificate. (a) If the application and other available information indicate that the applicant is a sheltered workshop and that the clients of the workshop are paid commensurate with their productivity at the prevailing rates in the vicinity in regular commercial industry maintaining approved labor standards for the type of work being performed, the director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall issue a special certificate authorizing the employment of handicapped clients under the terms and conditions set forth therein, at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. Otherwise the director shall deny a special certificate.

(b) A special certificate may be issued for an individual handicapped client, a division of the workshop, the entire workshop, or any combination thereof. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-65 Terms of certificate. (a) The special certificate shall:

- (1) Specify the terms and conditions under which it is granted; and
 - (2) Be effective for a period to be designated by the director. The special minimum wage rates may be paid only during the effective period of the certificate.
- (b) The special certificate may provide the following rates:
- (1) A special minimum wage rate which may be paid during a specified period or periods, designated as "training periods", to allow for evaluation of the client's capacities and for job-training. The rate may apply during the specified training periods to a client who has never previously worked in the workshop, or to a client who is transferred to a job in the workshop at which the client has never previously worked, or to a client who has returned to the workshop after a period of separation and who would require retraining; and
 - (2) A special minimum wage rate for the workshop or for divisions of the workshop which may be paid to a client following completion of the specified training periods, unless a lower

special individual wage rate has been authorized in the special certificate for a client who is unable to earn the workshop or applicable division minimum wage rate.

(c) The wage rates paid clients working at piece rates shall not be less than the piece rates paid non-handicapped employees performing the same work in the vicinity in a regular commercial industry maintaining approved labor standards. The wage rates paid clients working at time rates shall be based on the prevailing rates in the vicinity in a regular commercial industry maintaining approved labor standards, taking into account the type, quality, and quantity of work produced by the client. In no instance shall wage rates be less than the minimum rates specified in the special certificate as provided in subsection (b)(1) and (2).

(d) Clients of the workshop shall be paid not less than one and one-half times the regular rate for all hours over forty worked in the workweek, as provided in section 387-3, Hawaii Revised Statutes.

(e) The terms of any special certificate may be amended upon request of the sheltered workshop or handicapped client or by the director. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-66 Renewal of certificate (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Handicapped clients may be paid subminimum wages after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-70; provided that if the denial is affirmed on review, the sheltered workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date as of which the renewal of the special certificate was denied. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: §387-9)

§12-20-67 Non-handicapped clients in sheltered workshops. No individual who is not a handicapped client shall be employed under any special certificate issued pursuant to this subchapter at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §§387-2, 387-9)

§12-20-68 Record keeping requirements. Every sheltered workshop at all times shall keep, maintain, and have available for inspection by the director or an authorized departmental representative a record of the nature of each client's handicap in addition to the records required under section 12-2-8. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: 387-6, 387-9)

§12-20-69 Revocation and cancellation. (a) The director may revoke or cancel any special certificate for cause. A special certificate may be cancelled:

- (1) As of the date of issue, if it is found that fraud has been exercised in obtaining the special certificate or in permitting a handicapped client to work thereunder; or
- (2) As of the date of violation, if it is found that any of the provisions of chapter 387, Hawaii Revised Statutes, or of the terms of the special certificate have been violated; or
- (3) As of the date of notice of revocation or cancellation, if it is found that the special certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this subchapter have not been complied with.

(b) Except in cases of wilful violations or those in which the public interest requires otherwise, before any special certificate is revoked or cancelled, facts or conduct which may warrant that action shall be called to the attention of the sheltered workshop in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-70 Reconsideration. (a) Within thirty days after mailing or delivery of notice of decision made pursuant to sections 12-20-64, 12-20-66, and 12-20-69 to the party entitled thereto, the director, upon application of any interested party, may reconsider the decision.

(b) If an application for reconsideration is made, the cancellation shall be postponed until action is taken thereon; provided that if the revocation or cancellation order is affirmed on review, the workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date on which the special certificate was revoked or cancelled. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-71 Submission of information; investigations; hearings. The director may require at any time the submission of information other than that specified elsewhere in this subchapter as is appropriate or may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this subchapter. To the extent the director deems appropriate, all interested parties may be provided an opportunity to present data and views. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§§12-20-72 to 12-20-80 (Reserved)

Senate Concurrent Resolution 3 - Introduced

PAG LIN

S.C.R. _____ H.C.R. _____

1 1 SENATE CONCURRENT RESOLUTION NO.
1 2 BY BOLKCOM
1 3 A Concurrent Resolution requesting the legislative
1 4 council to establish a multigenerational and
1 5 sustainable housing task force to address the
1 6 barriers to citizens aging=in=place and to
1 7 facilitate multigenerational or sustainable
1 8 living arrangements in communities across the
1 9 state.
1 10 WHEREAS, "aging=in=place" means a person's ability
1 11 to grow older without having to move from the person's
1 12 home; and
1 13 WHEREAS, 14.7 percent of Iowa's population is age
1 14 65 or older, the fifth highest percentage in the
1 15 United States, and 2.6 percent of Iowa's population is
1 16 age 85 or older, the third highest percentage in the
1 17 United States; and
1 18 WHEREAS, it is projected that by the year 2030,
1 19 22.4 percent of Iowa's population will be age 65 or
1 20 older and the growing proportion of older adults will
1 21 pose significant challenges to Iowa's economic,
1 22 physical, and social infrastructures; and
1 23 WHEREAS, the pleasure of living as independently as
1 24 possible in a familiar environment throughout one's
1 25 lifetime is an important quality of life component for
1 26 Iowans who are aging or who have disabilities, and
1 27 should be supported by the development of explicit
1 28 public policy; and
1 29 WHEREAS, multigenerational or sustainable housing
1 30 serves the dual purpose of facilitating the provision
2 1 of support services to older adults and children and
2 2 adults with disabilities by family caregivers while
2 3 additionally providing shelter for families struggling
2 4 with the scarcity of accessible and affordable
2 5 housing; and
2 6 WHEREAS, it is important to identify structural
2 7 modifications to housing and other infrastructure that
2 8 will accommodate the physical, sensory, and functional
2 9 limitations and needs of older adults and persons with
2 10 disabilities; and
2 11 WHEREAS, modifications to existing structures will
2 12 require individualized assessments by architectural,
2 13 medical, and construction professionals properly
2 14 trained to identify barriers for and medical
2 15 conditions of older adults and persons with
2 16 disabilities and suggest viable modifications to
2 17 accommodate these needs; and
2 18 WHEREAS, if new construction projects and
2 19 renovations to existing structures incorporate
2 20 principles of universal design, energy efficiency, and
2 21 renewable resources which will foster environments
2 22 that are usable by all people without the need for

2 23 adaptation or specialized design, the projects and
2 24 renovations will facilitate future multigenerational
2 25 or sustainable living and improve the likelihood that
2 26 older adults and persons with disabilities can
2 27 age=in=place or remain in their own homes with a high
2 28 quality of life and independence; and

2 29 WHEREAS, the public should continue to be educated
2 30 about the benefits of universal design, energy
3 1 efficiency, and renewable resources and the use of
3 2 those principles to facilitate multigenerational or
3 3 sustainable living and allow older adults and persons
3 4 with disabilities to age=in=place or remain in their
3 5 own homes; NOW THEREFORE,

3 6 BE IT RESOLVED BY THE SENATE, THE HOUSE OF
3 7 REPRESENTATIVES CONCURRING, That the legislative
3 8 council is requested to establish a multigenerational
3 9 or sustainable living task force for the 2009 and 2010
3 10 interims to address the barriers to older Iowans and
3 11 persons with disabilities aging=in=place and to
3 12 facilitate multigenerational or sustainable living
3 13 arrangements in communities; and

3 14 BE IT FURTHER RESOLVED, That the task force should
3 15 consult with, or include as members, representatives
3 16 of older Iowans and persons with disabilities,
3 17 community developers, architects, or planners who have
3 18 expertise in universal design or are designated as
3 19 certified aging=in=place specialists, contractors with
3 20 experience developing multigenerational or sustainable
3 21 homes, contractors with experience renovating existing
3 22 homes to facilitate aging=in=place, trade or
3 23 professional organizations involved in developing
3 24 housing, representatives of the Iowa department of
3 25 economic development, the Iowa finance authority, and
3 26 the university of Iowa clinical law programs, and
3 27 others with expertise in design or construction and
3 28 services targeted to the needs of older persons and
3 29 persons with disabilities; and

3 30 BE IT FURTHER RESOLVED, That the task force shall
4 1 be directed to do all of the following during the 2009
4 2 interim:

4 3 1. Examine building and zoning codes at the local
4 4 and state levels that present barriers to building a
4 5 new home or modifying an existing dwelling into a
4 6 multigenerational or sustainable home.

4 7 2. Identify any previous or ongoing state
4 8 legislative or local initiatives to facilitate the
4 9 creation of multigenerational or sustainable homes.

4 10 3. Examine policies, funding mechanisms, and tax
4 11 incentives to encourage and support multigenerational
4 12 or sustainable housing.

4 13 4. Review and propose amendments to Iowa's
4 14 consolidated plan outlining initiatives for the
4 15 federal community development block grant to maximize
4 16 opportunities to fund the creation of
4 17 multigenerational or sustainable homes.

4 18 5. Identify skills, credentials, and training
4 19 needed to certify and inspect existing structures and
4 20 new construction for the use of universal design and
4 21 sustainable principles, methods, and materials.

4 22 6. Compile examples of best practice in design,

4 23 features, products, and materials and their associated
4 24 costs to share with architectural and building
4 25 professionals and the general public.
4 26 7. Explore the implementation of an Iowa living
4 27 laboratory to construct new housing in five regions of
4 28 the state through a design competition utilizing best
4 29 practices in universal design and sustainability to
4 30 construct single-family, duplex, condominium,
5 1 free-standing multiapartment, or rehabilitated
5 2 dwellings funded with federal community development or
5 3 housing funding or other funds, programs, or
5 4 incentives available at the state or local level.
5 5 8. Examine the creation of a state housing
5 6 authority to centralize planning and funding of
5 7 government housing initiatives to ensure a better
5 8 coordinated and cost-effective system; and
5 9 BE IT FURTHER RESOLVED, That the task force shall
5 10 be directed to develop recommendations regarding the
5 11 following during the 2010 interim:
5 12 1. The establishment of a statewide residential
5 13 building code that incorporates at least minimum
5 14 universal design, energy efficiency, and
5 15 sustainability standards for new construction or for
5 16 modifications to an existing structure when state or
5 17 federal funding is utilized for new construction or
5 18 modifications to housing.
5 19 2. The identification of a minimum set of skills,
5 20 credentials, and training needed to implement a
5 21 voluntary assessment and certification program on
5 22 universal design or sustainable housing construction
5 23 and modification.
5 24 3. The funding and implementation of an Iowa
5 25 living laboratory on universal design and sustainable
5 26 housing to be showcased through local housing shows or
5 27 similar events or demonstration projects in each
5 28 region in the state.
5 29 4. The preparation and dissemination of
5 30 educational materials relating to best practices in
6 1 design, features, products, materials, and costs
6 2 regarding universal design and sustainable housing to
6 3 architects, developers, contractors, other building
6 4 professionals, and the general public using all
6 5 available media, technologies, and alternate formats.
6 6 5. The establishment of an Iowa housing authority
6 7 within state government.
6 8 LSB 2289SS 83
6 9 jp/nh/14

Glossary of Terms and Acronyms

2-1-1 – Information and referral database for health and human services

ADA – Americans with Disabilities Act

AFSCME – American Federation of State, County and Municipal Employees

ARRA – American Recovery and Reinvestment Act

CDAC – Consumer Directed Attendant Care

CMS – Centers for Medicare and Medicaid Services

COMPASS – Information and referral database for people with disabilities

CPC – Central Point of Coordination

DAPAC – Dependent Adult Protective Advisory Council

DCI – Division of Criminal Investigations

DEA – Department of Elder Affairs (Effective July 1, 2009 IDA – Iowa Department on Aging)

DHS – Department of Human Services

DIA – Department of Inspections and Appeals

DOL – U.S. Department of Labor

DPS – Department of Public Safety

EAI – Elder Abuse Initiative

Governor's DD Council – Governor's Developmental Disabilities Council

HCBS – Home and Community Based Services

ICRC – Iowa Civil Rights Commission

ID Action – Iowans with Disabilities in Action

IDPH – Iowa Department of Public Health

ISU – Iowa State University

IWD – Iowa Workforce Development

MFCU – Medicaid Fraud Control Units

MH/MR/DD/BI Commission – The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission

NAMFCU – National Association of Medicaid Fraud Control Units

NAMI – National Alliance on Mental Illness

NASW – National Association of Social Workers

OSDM – Office of Substitute Decision Maker

PSA – Public Service Announcement

RCF – Residential Care Facility

SILC – Statewide Independent Living Council

SEIU – Service Employees International Union

SFM – State Fire Marshall

SSA – Social Security Administration

U of I CDD – University of Iowa Center for Developmental Disabilities

VISTA – Volunteers in Service to America

WIPA – Iowa Work Incentive Planning and Assistance (Appendix A53)

Iowa Code Definitions:

4. "*Dependent adult*" means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. a. "*Dependent adult abuse*" means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
(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.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including

theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) 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 health.

(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(3) Sexual exploitation of a dependent adult by a caretaker.

"*Sexual exploitation*" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. 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.

b. "*Dependent adult abuse*" does not include any of the following:

(1) 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.

(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, 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.

(3) 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 pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.



**GOVERNOR'S TASK FORCE ON
DEPENDENT ADULTS WITH MENTAL RETARDATION**

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