

CHAPTER 60

ASSISTED LIVING PROGRAMS

H.F. 585

AN ACT relating to assisted living programs, providing for a fee, providing penalties, and providing an effective date.

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

Section 1. Section 231C.1, subsection 1, Code 2005, is amended to read as follows:

1. The general assembly finds that assisted living is an important part of the long-term care system continua in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

Sec. 2. Section 231C.1, subsection 2, paragraphs b and c, Code 2005, are amended to read as follows:

b. To establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on individual independence, individual needs and desires, and consumer-driven quality of service.

c. To encourage general public participation in the development of assisted living programs for individuals of all income levels.

Sec. 3. Section 231C.2, subsections 2, 5, and 9, Code 2005, are amended to read as follows:

2. "Assisted living" means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to three or more tenants in a physical structure which provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. "Assisted living" includes twenty-four-hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

5. "Health-related care" means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis, ~~as defined by rule.~~

9. "Personal care" means assistance with the essential activities of daily living, which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping, that are essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.¹

Sec. 4. Section 231C.2, subsection 7, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

7. "Medication setup" means assistance with various steps of medication administration to support a tenant's autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

Sec. 5. Section 231C.2, subsection 13, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

13. "Tenant's legal representative" means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney.

¹ See chapter 179, §121 herein

Sec. 6. Section 231C.3, subsection 1, unnumbered paragraph 1, Code 2005, is amended to read as follows:

The department shall establish by rule in accordance with chapter 17A, ~~a program~~ minimum standards for certification and monitoring of assisted living programs. The department may adopt by reference with or without amendment, nationally recognized standards and rules for assisted living programs. The rules shall include specification of recognized accrediting entities and provisions related to dementia-specific programs. The standards and rules shall be formulated in consultation with the department of inspections and appeals, and affected industry, professional, and consumer groups and shall be designed to accomplish the purposes of this chapter and shall include but are not limited to rules relating to all of the following:

Sec. 7. Section 231C.3, subsection 1, paragraph b, Code 2005, is amended to read as follows:

b. Requirements that assisted living programs furnish the department of elder affairs and the department of inspections and appeals with specified information necessary to administer this chapter. All information related to a provider application for an assisted living program submitted to either the department of elder affairs or the department of inspections and appeals shall be considered a public record pursuant to chapter 22.

Sec. 8. Section 231C.3, subsection 2, Code 2005, is amended by striking the subsection.

Sec. 9. Section 231C.3, subsection 7, Code 2005, is amended to read as follows:

7. The department may also establish by rule in accordance with chapter 17A ~~a special classification~~ minimum standards for ~~affordable subsidized and dementia-specific~~ assisted living programs. The rules shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

Sec. 10. Section 231C.3, Code 2005, is amended by adding the following new subsections:
NEW SUBSECTION. 11. The department of elder affairs and the department of inspections and appeals shall conduct joint training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of assisted living programs.

NEW SUBSECTION. 12. Certification of an assisted living program shall be for two years unless certification is revoked for good cause by the department of inspections and appeals.

Sec. 11. Section 231C.5, Code 2005, is amended to read as follows:

231C.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or the tenant's legal representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
- e. The term of the occupancy agreement.
- f. A statement that the assisted living program shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:
 - (1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.
 - (2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.
- g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.
- h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.
 - i. The internal appeals process provided relative to an involuntary transfer.
 - j. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.
 - k. A statement of the prohibition against retaliation as prescribed in section 231C.13.
 - l. The emergency response policy.
 - m. The staffing policy which specifies ~~if the staff is available twenty-four hours per day,~~ if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.
 - ~~n.~~ n. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.
 - ~~o.~~ o. The refund policy.
 - ~~p.~~ p. A statement regarding billing and payment procedures.
- 3. Occupancy agreements and related documents executed by each tenant or the tenant's legal representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department of inspections and appeals upon request and at reasonable times.

Sec. 12. Section 231C.6, subsection 1, Code 2005, is amended to read as follows:

- 1. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department of inspections and appeals, and if the tenant or the tenant's legal representative contests the transfer, the following procedure shall apply:
 - a. The assisted living program shall notify the tenant or the tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.
 - b. The assisted living program shall provide the tenant advocate with a copy of the notification to the tenant.
 - c. The tenant advocate shall offer the notified tenant or the tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.
 - d. If, following the internal appeals process, the assisted living program upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

Sec. 13. Section 231C.8, Code 2005, is amended to read as follows:

231C.8 INFORMAL REVIEW.

1. If an assisted living program contests the regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, in support of the contesting of the regulatory insufficiencies, to the department of inspections and appeals for review.

2. The department of inspections and appeals shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department of inspections and appeals may affirm, modify, or dismiss the regulatory insufficiencies. The department of inspections and appeals shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department of inspections and appeals shall also notify the complainant, if known, of the decision and the reasons for the decision.

Sec. 14. Section 231C.9, Code 2005, is amended to read as follows:

231C.9 PUBLIC DISCLOSURE OF FINDINGS.

Following Upon completion of a monitoring evaluation or complaint investigation of an assisted living program by the department of inspections and appeals pursuant to this chapter, including the conclusion of all administrative appeals processes, the department of inspections and appeals' final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department of inspections and appeals which does not constitute the department of inspections and appeals' final findings from a monitoring evaluation or complaint investigation of the assisted living program shall be made available to the department of elder affairs upon request in order to facilitate policy decisions, but shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 15. Section 231C.10, subsection 1, Code 2005, is amended to read as follows:

1. The department of inspections and appeals may deny, suspend, or revoke a certificate in any case where the department of inspections and appeals finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules, or minimum standards adopted under this chapter, or for any of the following reasons:

- a. ~~Cruelty or indifference to assisted living program tenants.~~
- b. a. Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian representative.
- c. b. Permitting, aiding, or abetting the commission of any illegal act in the assisted living program.
- d. c. Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.
- e. d. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the assisted living program.
- f. e. Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.
- g. f. Founded dependent adult abuse as defined in section 235B.2.
- h. g. In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a ten five percent equity interest in the program, who has or has had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal

of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or who has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

i. ~~h.~~ In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

j. ~~i.~~ For any other reason as provided by law or administrative rule.

Sec. 16. Section 231C.14, Code 2005, is amended by adding the following new subsection: NEW SUBSECTION. 3. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this subsection, "lawful enforcement" includes but is not limited to:

- a. Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.
- b. Examining any relevant records of an assisted living program.
- c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 17. Section 231C.15, Code 2005, is amended to read as follows:
231C.15 CRIMINAL PENALTIES AND INJUNCTIVE RELIEF.

1. A person establishing, conducting, managing, or operating any assisted living program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department of inspections and appeals by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an assisted living program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

~~2. A person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:~~

- ~~a. Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.~~
- ~~b. Examining any relevant records of an assisted living program.~~
- ~~c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.~~

Sec. 18. NEW SECTION. 231C.16A MEDICATION SETUP — ADMINISTRATION AND STORAGE OF MEDICATIONS.

1. An assisted living program may provide for medication setup if requested by a tenant or the tenant's legal representative. If medication setup is provided following such request, the program shall be responsible for the specific task requested and the tenant shall retain responsibility for those tasks not requested to be provided.

2. If medications are administered or stored by an assisted living program, or if the assisted living program provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the program by the tenant or tenant's legal representative, the medications shall be administered by a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed or registered in Iowa or by the individual to whom such licensed or registered individuals may properly delegate administration of medications.

b. Medications, other than those self-administered by the tenant or provided through medication setup, shall be stored in locked storage that is not accessible to persons other than employees responsible for administration or storage of medications.

- c. Medications shall be labeled and maintained in compliance with label instructions and state and federal law.
- d. A person, other than a person authorized to prescribe prescription drugs under state and federal law, shall not alter the prescription of a tenant.
- e. Medications shall be stored in their originally received containers.
- f. If medication setup is provided by the program at the request of the tenant or tenant's legal representative, or if medication administration is delegated to the program by the tenant or tenant's legal representative, appropriate staff of the program may transfer the medications in the tenant's presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.
- g. Program assistance with medication administration as specified in the occupancy agreement shall not require the program to provide assistance with the storage of medications.

Sec. 19. Section 231C.17, subsections 1 and 3, Code 2005, are amended to read as follows:

1. A hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, or an adult day services program certified pursuant to chapter 231D may operate an assisted living program, ~~located in a distinct part of or separate structure under the control of the hospital or health care facility, if the assisted living program is certified pursuant to this chapter.~~

3. A certified assisted living program that complies with the requirements of this chapter shall not be required to be licensed or certified as a health care different type of facility pursuant to chapter 135C, unless the facility is represented to the public as a ~~licensed health care another type of facility.~~

Sec. 20. Section 231C.18, subsection 2, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. For accreditation via a national body of accreditation, one hundred twenty-five dollars.

Sec. 21. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 27, 2005

CHAPTER 61

REGULATION OF ADULT DAY SERVICES

H.F. 587

AN ACT relating to adult day services regulation, providing penalties, and providing an effective date.

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

Section 1. Section 231D.1, Code 2005, is amended to read as follows:

231D.1 DEFINITIONS.

For the purposes of this chapter, unless the context otherwise requires:

1. "Adult day services", "adult day services program", or "program" means an organized