

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 231B.2, 231C.3 and 231D.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Iowa Administrative Code.

The amendments implement changes to Iowa Code chapter 231B, “Elder Group Homes,” chapter 231C, “Assisted Living Programs,” and chapter 231D, “Adult Day Services,” resulting from legislation in 2015 Iowa Acts, House File 579. The legislation permits programs to request a contested case hearing pursuant to Iowa Code chapter 17A without first pursuing the informal conference process.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 11, 2015. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 231B.2, 231C.3, and 231D.2 and 2015 Iowa Acts, House File 579.

The following amendments are proposed.

ITEM 1. Amend subrule 67.14(2) as follows:

67.14(2) *Informal conference* ~~If contesting the final report.~~ If the program desires to contest the final report and civil penalty, if assessed, ~~and request an informal conference,~~ the program shall notify the department of inspections and appeals in writing that it desires to contest the final report and civil penalty and ~~request in writing an informal conference with an independent reviewer.~~ shall do one of the following:

~~a. Request for informal conference. The request for an informal conference must be in writing and include the following:~~

- ~~(1) Identification of the regulatory insufficiency(ies) being disputed;~~
- ~~(2) The type of informal conference requested: face-to-face or telephone conference; and~~
- ~~(3) A request for monitor’s notes for the regulatory insufficiencies being disputed, if desired.~~

~~b. Submission of documentation. The program shall submit the following within 10 working days from the date of the program’s written request for an informal conference:~~

- ~~(1) The names of those who will be attending the informal conference, including legal counsel; and~~
- ~~(2) Documentation supporting the program’s position. The program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. “Good cause” means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the program has shown good cause, the independent reviewer shall consider what circumstances kept the program from submitting the supporting documentation within the required time frame.~~

~~c. *Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).~~

~~(1) Failure to submit supporting documentation will not delay scheduling.~~

~~(2) The conference will be scheduled for one hour. The program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the program's presentation. Due to the confidential nature of the conference, attendance may be limited.~~

~~(3) If additional information is requested by the independent reviewer during the informal conference, the program will have 2 working days to deliver the additional materials to the independent reviewer.~~

~~(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the program may be given one opportunity to reschedule the face-to-face conference.~~

~~d. *Results.* The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.~~

~~(1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.~~

~~(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.~~

~~(3) The program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.~~

~~(4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.~~

~~a. Request an informal conference with an independent reviewer pursuant to subrule 67.14(3); or~~

~~b. Request a contested case hearing in the manner provided by Iowa Code chapter 17A for contested cases.~~

ITEM 2. Renumber subrules **67.14(3)** and **67.14(4)** as **67.14(4)** and **67.14(5)**.

ITEM 3. Adopt the following **new** subrule 67.14(3):

67.14(3) Informal conference.

a. *Request for informal conference.* The request for an informal conference must be in writing and include the following:

- (1) Identification of the regulatory insufficiency(ies) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for monitor's notes for the regulatory insufficiencies being disputed, if desired.

b. *Submission of documentation.* The program shall submit the following within 10 working days from the date of the program's written request for an informal conference:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the program's position. The program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the program has shown good cause, the independent reviewer shall consider what circumstances kept the program from submitting the supporting documentation within the required time frame.

c. *Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).

- (1) Failure to submit supporting documentation will not delay scheduling.
 - (2) The conference will be scheduled for one hour. The program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the program's presentation. Due to the confidential nature of the conference, attendance may be limited.
 - (3) If additional information is requested by the independent reviewer during the informal conference, the program will have 2 working days to deliver the additional materials to the independent reviewer.
 - (4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the program may be given one opportunity to reschedule the face-to-face conference.
- d. Results.* The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.
- (1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.
 - (2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.
 - (3) The program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.
 - (4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.

ITEM 4. Amend renumbered subrule 67.14(5) as follows:

67.14(5) *Appeals Contested case hearings.* ~~Formal~~ Contested case hearings shall be conducted by the department's administrative hearings division pursuant to Iowa Code chapter 17A and 481—Chapter 10.