

## INSPECTIONS AND APPEALS DEPARTMENT[481]

### Notice of Intended Action

#### **Proposing rule making related to boarding homes and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 66, “Boarding Homes,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 135O.2.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 17A.7(2) and 135O.2.

#### *Purpose and Summary*

The Department completed a comprehensive review of Chapter 66 in accordance with the requirement in Iowa Code section 17A.7(2). This proposed rule making clarifies current practices, updates citations, and removes unnecessary text.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 14, 2023. Comments should be directed to:

Ashleigh Hackel  
Iowa Department of Inspections and Appeals  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [ashleigh.hackel@dia.iowa.gov](mailto:ashleigh.hackel@dia.iowa.gov)

#### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 481—66.1(83GA,SF484), parenthetical implementation statute, as follows:

**481—66.1(83GA,SF484 135O) Definitions.**

ITEM 2. Adopt the following new definition of “Assistance with activities of daily living” in rule **481—66.1(83GA,SF484)**:

*“Assistance with activities of daily living”* does not mean routine, total dependence on staff for the performance of activities of daily living or nursing care.

ITEM 3. Amend rule **481—66.1(83GA,SF484)**, definition of “Probable cause,” as follows:

*“Probable cause”* means a reasonable suspicion to believe that a boarding home is in violation of ~~2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], Iowa Code chapter 135O~~ or licensing or other regulatory requirements of the department of human services, department of inspections and appeals, or department of public health; or that dependent adult abuse of any individual living in the boarding home has occurred or is occurring.

ITEM 4. Amend rule 481—66.2(83GA,SF484) as follows:

**481—66.2(83GA,SF484 135O) Registration of boarding homes.**

**66.2(1)** A boarding home shall ~~file a statement of~~ complete and submit to the department the boarding home registration with the department form located on the department's website within 60 days of commencing operations.

*a.* ~~Boarding homes in operation on January 1, 2010, or after shall register with the department within 60 days of commencing operations.~~

*b.* ~~Boarding homes in operation prior to January 1, 2010, shall register with the department no later than March 1, 2010.~~

**66.2(2)** The ~~statement of~~ registration form may be submitted electronically via ~~an Internet-based system~~ the department's website; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

**66.2(3)** The registrant shall include, at a minimum, the following information on the statement of registration:

*a.* to *c.* No change.

*d.* Contact information for the owner, lessee, and manager, including telephone number, mailing address, and ~~E-mail~~ email address;

*e.* to *h.* No change.

**66.2(4)** and **66.2(5)** No change.

ITEM 5. Amend rule 481—66.3(83GA,SF484) as follows:

**481—66.3(83GA,SF484 135O) Occupancy reports.** ~~See rule 481—66.1(83GA,SF484) for the definition of “known.”~~

**66.3(1)** Each boarding home shall ~~file an occupancy report annually~~ update its boarding home registration form with the department annually between January 1 and January 31 in the same manner as provided in subrule 66.2(2).

*a.* ~~For new boarding home registrations, an occupancy report shall be filed along with the initial statement of registration. The occupancy report that accompanies the initial statement of registration shall provide information as of the last day of the preceding month.~~

*b.* ~~After the initial registration, registrants shall submit a completed occupancy report by January 31 of each year with information current as of December 31 of the preceding year.~~

**66.3(2)** The occupancy report may be submitted electronically via an Internet-based system; by mail to the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by fax to (515)242-5022.

**66.3(3)** ~~66.3(2)~~ The owner or lessee shall include, at a minimum, the following information on the occupancy report. If the owner or lessee is unable to answer the question because the owner or lessee does not have such information, the owner or lessee shall indicate such on the report.

*a. to j.* No change.

ITEM 6. Amend rule 481—66.4(83GA,SF484) as follows:

**481—66.4(83GA,SF484 135O) Complaints and investigations.**

**66.4(1) Complaints.**

*a.* The process for filing a complaint is as follows:

(1) Any person with a concern regarding the operation of a boarding home may file a complaint with the ~~Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by department in writing, by use of the complaint hotline, telephone at 1-877-686-0027 or through the department's website at dia.iowa.gov. The Web site address is [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do).~~

(2) When the nature of the complaint is outside the department's authority, the department shall forward the complaint to the appropriate investigatory entity.

(3) If other state agencies receive a complaint that relates to boarding homes, the agencies shall forward the complaint to the department.

*b.* The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the boarding home or is without a reasonable basis. If the department, upon preliminary review, determines that the complaint is intended to harass or is without a reasonable basis, the department may dismiss the complaint.

**66.4(2) Content of complaint reports.** The complaint shall include as much of the following information as possible: the complainant's name, address and telephone number; the complainant's relationship to the boarding home and tenant; and the reason for the complaint. The complainant's name and identifying information shall be confidential information and shall not be released by the department.

**66.4(3) Time frames** Initiation of investigations and time frames for investigation of complaints. ~~Upon receipt of a complaint made in accordance with this rule, the department shall make a preliminary review of the complaint to determine if probable cause exists to investigate the complaint. If probable cause exists, an~~ Investigations may be initiated because of a complaint or other information received by the department. If the department determines there is probable cause to believe that a boarding home is an unregistered boarding home or that a registered boarding home is not in compliance with applicable law, an investigation shall be initiated. The department shall evaluate whether other local, state, or federal agencies, including law enforcement, should be provided a referral or included in the investigation. An investigation of the boarding home shall be initiated, ~~as provided in rule 481—66.5(83GA,SF484),~~ within 45 working days. If there is the likelihood of immediate danger, the department shall initiate an investigation of the boarding home within 2 two working days of receipt of the complaint. If there is an allegation of harm, the department shall initiate an investigation of the boarding home within 20 working days of receipt of the complaint.

~~66.4(4) Submission of all complaints to core multidisciplinary team. A copy of all complaints and the department's initial determination whether to investigate the complaint shall be sent to the core multidisciplinary agencies: the department of human services, the state fire marshal of the department of public safety, and the department of justice. If the department has determined not to initiate an investigation, the members of the core multidisciplinary team may recommend the initiation of, and the department shall initiate, an investigation.~~

~~66.4(5) 66.4(4) Standard for determining whether a complaint is substantiated.~~ The department shall apply a preponderance of the evidence standard in determining whether a complaint is substantiated.

~~66.4(6) 66.4(5) Notification of the boarding home or alleged boarding home of results of investigation.~~ The department shall notify the boarding home or alleged boarding home, in writing, of the final report of the complaint investigation.

~~66.4(7) 66.4(6) Notification of the complainant of results of investigation.~~ The complainant, if known, shall be notified of the final findings of a complaint investigation. The complainant, if known, shall also be notified if the department determines not to investigate a complaint and shall receive an explanation of the department's decision.

ITEM 7. Rescind and reserve rule **481—66.5(83GA,SF484)**.

ITEM 8. Amend rule 481—66.6(83GA,SF484) as follows:

**481—66.6(83GA,SF484 135O) Penalties.** The director shall consider the following when determining whether to assess a penalty for violation of 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O], Iowa Code chapter 135O or rules adopted pursuant to 2009 Iowa Acts, Senate File 484, sections 3 to 6 [Iowa Code chapter 135O] thereunder, and when determining the amount of the penalty:

1. to 5. No change.

ITEM 9. Amend rule 481—66.7(83GA,SF484) as follows:

**481—66.7(83GA,SF484 135O) Public and confidential information.**

**66.7(1) Public disclosure.** The following records are open and available for inspection:

a. Registration forms and accompanying materials;

b. Final findings of investigations, unless otherwise confidential by law, such as investigative findings of the division of criminal investigation of the department of public safety or dependent adult abuse investigations; and

c. Official notices of penalties.

**66.7(2) Confidential information.** Confidential information includes the following:

a. Information that does not comprise a final finding ~~resulting from a complaint investigation or other investigation of the multidisciplinary team and its individual members;~~

b. Names and identifying information of all complainants;

c. Names of tenants of a boarding home, identifying personal or medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or lessee; and

d. Social security or employer identification numbers (EIN).

**66.7(3) Redaction of confidential information.** If a record normally open for inspection contains confidential information, the confidential information shall be redacted prior to an agency's providing the record for inspection.

**66.7(4) Searchable database of all registered boarding homes.** The department shall maintain a searchable database of all registered boarding homes on the health facilities division's ~~Web site~~ website at <https://dia-hfd.iowa.gov/DIA-HFD/Home.do> ~~dia-hfd.iowa.gov~~.

ITEM 10. Amend **481—Chapter 66**, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Acts, Senate File 484 Iowa Code chapter 135O.