

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

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

These rules are adopted pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop new Chapter 67. The work with stakeholder groups has included written comments on two draft versions of the proposed rules, collaboration sessions across Iowa with over 200 participants, and presentations on the draft rules to industry groups. The Department is also adopting herein specific provisions for elder group homes (**ARC 8175B**), assisted living programs (**ARC 8176B**), and adult day services (**ARC 8177B**). The rules in Chapter 67 include provisions common to the three entities. Chapter 67 will supersede the Department of Elder Affairs’ (now the Department on Aging) current chapter containing general provisions for elder group homes, assisted living programs, and adult day services, 321—Chapter 26.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7877B** on June 17, 2009.

Comments on proposed Chapter 67 were generally positive. Several comments suggesting clarification have been incorporated.

The following changes have been incorporated into the chapter as the result of comments:

- Added language to the definition of “human service professional” to further clarify the definition;
- Revised the definition of “nurse-delegated assistance” to incorporate suggestions from the Board of Nursing;
- Added a definition for “nurse delegation” to incorporate suggestions from the Board of Nursing;
- Added a definition for “physician extender” to incorporate the suggestions of several commenters;
- Clarified rule 481—67.5(231B,231C,231D) regarding medications;
- Clarified rule 481—67.12(17A,231B,231C,231D) regarding enforcement action at the suggestion of industry groups; and
- Added new rule 481—67.18(231B,231C,231D), which stipulates that once administrative rules are adopted by the Iowa Department on Aging related to Alzheimer’s and dementia education, or effective July 1, 2010, whichever is later, programs must comply with the rules, as was suggested by the Alzheimer’s Association of Iowa and the Iowa Department on Aging.

These rules are intended to implement Iowa Code chapters 231B, 231C, and 231D.

These rules will become effective January 1, 2010.

The following amendment is adopted.

Adopt the following **new** 481—Chapter 67:

**CHAPTER 67**

**GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS,  
AND ADULT DAY SERVICES**

**481—67.1(231B,231C,231D) Definitions.** The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

“*Activities of daily living*” means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

“*Ambulatory*” or “*ambulation*” means physically and cognitively able to walk without aid of another person.

*“Applicable requirements”* means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

*“Applicant or certificate holder”* means the owner and operator of a program. If a program is operated under an operating agreement, both the owner and the operator are the applicant or certificate holder. If a program is leased, the lessee is the applicant or certificate holder.

*“Assistance”* means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

*“Blueprint”* means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

*“Dementia”* means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and includes memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

*“Department”* means the department of inspections and appeals.

*“Director”* means the director of the department of inspections and appeals.

*“Elope”* means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

*“Global Deterioration Scale”* or *“GDS”* means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

*“Health care professional”* means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

*“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. “Health-related care” includes nurse-delegated assistance.

*“Human service professional”* means an individual with a bachelor’s degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years of the required education. For example, an individual with an associate’s degree in a human service field and two years of experience in a human service field is a human service professional.

*“Impaired decision-making ability”* means a lack of capacity to make safe and prudent decisions regarding one’s own routine safety as determined by the program manager or nurse or means having a GDS score of four or above.

*“Instrumental activities of daily living”* means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

*“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 containers into suitable medication dispensing containers, reminder containers, or medication cups.

*“Modification”* means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program’s facility.

*“Monitoring”* means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

*“Nurse-delegated assistance”* means delegation of tasks or activities by a registered nurse or licensed practical nurse. The nurse retains accountability for the delegation process and the decision to delegate. Licensed practical nurses are allowed to delegate within the scope of their license (655—subrule 6.2(5), paragraph “c”) with the supervision of a registered nurse.

*“Nurse delegation”* means the action of a nurse to direct competent individuals to perform selected nursing tasks in selected situations pursuant to 655—subrule 6.2(5), paragraph “c.” The decision of a nurse to delegate is based on the delegation process, including assessment, planning, implementation, supervision, and evaluation of the tenant, nursing tasks, personnel, and the situation. The nurse retains accountability for the delegation process and the decision to delegate. A licensed practical nurse is allowed to delegate within the scope of the nurse’s license with the supervision of a registered nurse.

*“Occupancy agreement”* or *“contractual agreement”* means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

*“Part-time or intermittent care”* means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for a temporary period of time with a predictable end within 21 days; or licensed nursing services and professional therapies that do not exceed 28 hours per week or, for adult day services, 4 hours per day and are provided in combination with nurse-delegated assistance with medications or activities of daily living.

*“Personal care”* means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, and grooming that are essential to the health and welfare of a tenant.

*“Physician extender”* means nurse practitioners, clinical nurse specialists, and physician assistants.

*“Preponderance of the evidence”* means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

*“Program”* means one or more of the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

*“Qualified professional”* means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

*“Recognized accrediting entity”* means a nationally recognized accrediting entity that the department recognizes as having specific program standards equivalent to the program standards established by the department.

*“Regulatory insufficiency”* means a violation of an applicable requirement.

*“Remodeling”* means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

*“Routine”* means more often than not or on a regular customary basis.

*“Self-administration”* means a tenant’s taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant’s use of an automatic pill dispenser.

*“Service plan”* means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

*“Significant change”* means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

*“Substantial compliance”* means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

*“Tenant”* means an individual who receives services through a program. In the context of adult day services, “tenant” means a participant as defined in 481—Chapter 70.

“*Tenant advocate*” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“*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. In the context of adult day services, “tenant’s legal representative” means a participant’s legal representative as defined in 481—Chapter 70.

“*Waiver*” means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

**481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports.** A program’s policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

**67.2(1)** The program’s policies and procedures on incident reports, at a minimum, shall include the following:

- a. The program shall have available incident report forms for use by program staff.
- b. An incident report shall be in detail and shall be provided on an incident report form.
- c. The person in charge at the time of the incident shall prepare and sign the report.
- d. The incident report shall include statements from individuals, if any, who witnessed the incident.
- e. All accidents or unusual occurrences within the program’s building or on the premises that affect tenants shall be reported as incidents.
- f. A copy of the completed incident report shall be kept on file on the program’s premises for a minimum of three years.

**67.2(2)** The program’s policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

- a. Reporting requirements for staff and employees, and
- b. Requirements that the victim and alleged abuser be separated.

**481—67.3(231B,231C,231D) Tenant rights.** All tenants have the following rights:

**67.3(1)** To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

**67.3(2)** To receive care, treatment and services which are adequate and appropriate.

**67.3(3)** To receive respect and privacy in the tenant’s medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for the records’ release to any individual, including family members, except as needed in case of the tenant’s transfer to a health care facility or as required by law or a third-party payment contract.

**67.3(4)** To be free from mental and physical abuse.

**67.3(5)** To receive from the manager and staff of the program a reasonable response to all requests.

**67.3(6)** To associate and communicate privately and without restriction with persons and groups of the tenant’s choice, including the tenant advocate, on the tenant’s initiative or on the initiative of the persons or groups at any reasonable hour.

**67.3(7)** To manage the tenant’s own financial affairs unless a tenant’s legal representative has been appointed for the purpose of managing the tenant’s financial affairs.

**67.3(8)** To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program’s staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

**481—67.4(231B,231C,231D) Program notification to the department.** The director or the director’s designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

**67.4(1)** Of any accident causing major injury. For the purposes of this rule, “major injury” shall also mean a substantial injury.

*a.* “Major injury” shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a “major injury” based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant’s prognosis.

*b.* The following are not reportable accidents:

- (1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

**67.4(2)** When damage to the program is caused by a natural or other disaster.

**67.4(3)** When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, “pattern” means two or more times within a 30-day period.

**67.4(4)** When a tenant elopes from a program.

**67.4(5)** When a tenant attempts suicide, regardless of injury.

**67.4(6)** When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

**67.4(7)** When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.

**481—67.5(231B,231C,231D) Medications.** Each program shall follow its own written medication policy, which shall include the following:

**67.5(1)** The program shall not prohibit a tenant from self-administering medications.

**67.5(2)** A tenant shall self-administer medications unless:

*a.* The tenant or the tenant’s legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

*b.* The tenant delegates medication setup to someone other than the program.

*c.* The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program’s registered nurse deems it appropriate under applicable requirements, including those in 655—Chapter 6 governing nurse delegation. The program’s registered nurse must agree to the medication plan.

**67.5(3)** A tenant shall keep medications in the tenant’s possession unless the tenant or the tenant’s legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant’s choice related to storage.

**67.5(4)** When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant’s medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant’s apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

**67.5(5)** When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

**67.5(6)** When medications are administered traditionally by the program:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by unlicensed assistive personnel in accordance with requirements in 655—Chapter 6 governing nurse delegation.

b. Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

c. The program shall maintain a list of each tenant's medications and document the medications administered.

**67.5(7)** Narcotics protocol shall be determined by the program's registered nurse.

**481—67.6(231B,231C,231D) Another business or activity located in a program.**

**67.6(1)** A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

**67.6(2)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

**67.6(3)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.

**481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.**

**67.7(1)** *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

**67.7(2)** *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

a. A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

b. The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

c. The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

**67.7(3)** *Factors for consideration for waiver of criteria for retention of a tenant.* In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

a. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

b. The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

c. The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

d. The tenant has been diagnosed with a terminal illness and has been admitted to hospice, and the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

**67.7(4)** *Conditional waiver.* A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

a. If a waiver has been in effect for six months, a monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

b. The department may seek additional information during the period to determine if a waiver should be granted.

**481—67.8(231B,231C,231D) All other waiver requests.** Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.

**481—67.9(231B,231C,231D) Staffing.**

**67.9(1)** A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

**67.9(2)** All staff shall be able to implement the accident, fire safety, and emergency procedures.

**67.9(3)** Pursuant to Iowa Code section 135C.33, a prospective employee of a program shall have a criminal history check, dependent adult abuse check, and child abuse check performed before the prospective employee begins work. If a prospective employee has a criminal history or an abuse history, the prospective employee shall not be employed by the program unless the department of human services has performed an evaluation and determined that the record does not warrant the employment prohibition. Proof of the preemployment background check shall be maintained in the program's employee file. The program must meet all requirements of Iowa Code section 135C.33 and administrative rules adopted pursuant to Iowa Code section 135C.33.

**67.9(4)** The program shall have training and staffing plans on file and shall maintain documentation of training received by program staff.

**67.9(5)** Any nursing services shall be provided in accordance with Iowa Code chapter 152 and 655—Chapter 6.

**67.9(6)** A staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the staff member is related to the tenant by blood, marriage, or adoption.

**481—67.10(17A,231B,231C,231D) Monitoring, plans of correction, and requests for reconsideration.**

**67.10(1)** *Frequency of monitoring.* The department shall monitor a certified program at least once during the program's certification period.

**67.10(2)** *Accessibility of records and program areas.* All records and areas of the program deemed necessary to determine compliance with the applicable requirements for certification shall be accessible to the department for purposes of monitoring.

**67.10(3)** *Standard for determining whether a regulatory insufficiency exists.* The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

**67.10(4)** *Preliminary report.* When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the program within 20 working days. The department shall send the report by certified mail.

**67.10(5)** *Plan of correction.* Within 10 working days following receipt of the preliminary report, the program shall submit a plan of correction to the department.

a. *Contents of plan.* The plan of correction shall include: elements detailing how the program will correct each regulatory insufficiency, what measures will be taken to ensure the problem does not recur, how the program plans to monitor performance to ensure compliance, and any other required information.

b. *Review of plan.* The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

**67.10(6) Request for reconsideration.** Within 10 working days of receiving the preliminary report, the program may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

*a.* The request may include additional information to support the request for reconsideration.

*b.* The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

*c.* The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

*d.* The department's decision regarding a request for reconsideration shall be reflected in the final report.

**67.10(7) Final report.** The final report issued after the plan of correction and request for reconsideration have been considered may be appealed in accordance with the department's appeal procedures in rule 481—67.13(17A,231B,231C,231D). The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

**67.10(8) Monitoring revisit.** The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

#### **481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.**

**67.11(1) Complaints.** The process for filing a complaint is as follows:

*a.* Any person with concerns regarding the operation or service delivery of a program may file a complaint with the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address: [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do).

*b.* When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

*c.* The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

**67.11(2) Program-reported incident reports.** When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

*a.* The Web-based reporting tool accessible from the following Internet site, [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the "Complaints" tab;

*b.* Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

*c.* The complaint hotline, 1-877-686-0027; or

*d.* Facsimile sent to (515)281-7106.

**67.11(3) Time frames for investigation of complaints or program-reported incident reports.** Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.



**67.11(4) Standard for determining whether a complaint is substantiated.** The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

**67.11(5) Notification of program and complainant.** The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).

**67.11(6) Notification of accrediting entity.** In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

**67.11(7) Notification of complainant when complaint not investigated.** The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

**481—67.12(17A,231B,231C,231D) Enforcement action.** In all cases, if a regulatory insufficiency has been identified, the program shall comply with the plan of correction requirements in subrule 67.10(5). In addition, the department may take enforcement actions pursuant to this rule as a result of the program's noncompliance with applicable requirements.

**67.12(1) Types of enforcement action.** The department's enforcement action may include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

**67.12(2) Conditional certification.** In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certification for a period of up to one year. A conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

- a. The department shall specify the regulatory insufficiency in the notice of enforcement action.
- b. The department shall notify the tenant advocate when a conditional certificate is issued and when a conditional certification is lifted.
- c. During the period of a conditional certification, the department shall conduct a monitoring to verify compliance prior to making the final certification decision.
- d. The department shall issue reports pursuant to rule 481—67.10(17A,231B,231C,231D).
- e. Failure by the program to adhere to the plan of correction may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.
- f. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

**67.12(3) Civil penalties.**

a. *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

(1) Noncompliance results in imminent danger or substantial probability of resultant death or physical harm. A program that is in noncompliance with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

(2) A program has failed to comply, and the noncompliance has a direct relationship to the health, safety, or security of tenants. Following receipt of a final report from the department, a program which continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

(3) The program prevents or interferes with enforcement. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

*b. Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

(1) The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

(2) The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediate previous certification period);

(3) The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

(4) The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

(5) The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

(6) The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

(7) The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

(8) The rights of tenants to make informed decisions;

(9) Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

*c. Civil penalties due.* The department may assess a civil penalty, which shall be paid to the department within 30 days following the program's receipt of the final notice of the enforcement action. The program may appeal the decision in accordance with rule 481—67.13(17A,231B,231C,231D).

*d. Automatic reduction of civil penalty if paid timely and no hearing is requested or request for hearing is withdrawn.* If a program has been assessed a civil penalty, does not request a formal hearing pursuant to rule 481—67.13(17A,231B,231C,231D) or has withdrawn the request for a formal hearing within 30 days of the notice or service, and the civil penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent. The notice of civil penalty shall include a statement to this effect.

*e. Suspension of civil penalty pending hearing.* If the program appeals the civil penalty, the civil penalty shall be deemed suspended until a final agency decision is reached in accordance with rule 481—67.13(17A,231B,231C,231D) and 481—Chapter 10.

*f. Duplicate penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

**67.12(4) Immediate suspension of certificate.** When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

**67.12(5) Immediate imposition of enforcement action.** When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing pursuant to rule 481—67.13(17A,231B,231C,231D) on the immediate enforcement action, but the immediate enforcement action remains in effect regardless of the request for hearing.

#### **481—67.13(17A,231B,231C,231D) Notice, hearings, and appeals.**

**67.13(1)** Effective date and status of enforcement action if a hearing is requested. An enforcement action described in rule 481—67.12(17A,231B,231C,231D) shall be effected by delivery of a notice of enforcement action setting forth the particular reasons for such action to the applicant or certificate

holder by restricted certified mail, return receipt requested, or by personal service. The enforcement action shall become effective 30 days after the mailing or service of the notice unless the applicant or certificate holder, within such 30-day period, gives the department written notice requesting a hearing, in which case the notice shall be deemed to be suspended. If, however, an enforcement action has been implemented immediately in accordance with subrule 67.12(4) or 67.12(5), the enforcement action remains in effect regardless of a request for hearing.

**67.13(2)** Final report containing a finding of a regulatory insufficiency. A final report issued pursuant to rule 481—67.10(17A,231B,231C,231D) shall be delivered to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. If a regulatory insufficiency is noted, the final report shall include particular reasons for the finding that a regulatory insufficiency exists.

**67.13(3)** Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**67.13(4)** At any time during or prior to a hearing, the department may rescind or modify the notice of enforcement action or final report.

**67.13(5)** Appeals. All appeals authorized under applicable requirements shall be conducted pursuant to 481—Chapter 10.

**481—67.14(17A,231B,231C,231D) Judicial review.** Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

**481—67.15(17A,231C,231D) Emergency removal of tenants.** If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

**67.15(1)** The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

- a. To alert them to the need to transfer tenants from a program;
- b. To request assistance in identifying alternative programs or other appropriate settings; and
- c. To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

**67.15(2)** The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.15(1).

**67.15(3)** The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

**481—67.16(231C) Nursing assistant work credit.**

**67.16(1)** A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(2)** A program shall complete and submit to the department a direct care worker registry application for each certified nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(3)** A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**481—67.17(231B,231C,231D) Public or confidential information.**

**67.17(1) Public information.**

*a. Public disclosure of findings.* The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department's Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do). The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

*b. Open records.* The following records are open records available for inspection:

- (1) Certification applications, certification status, and accompanying materials;
- (2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;
- (3) Reports from the state fire marshal;
- (4) Plans of correction submitted by a program;
- (5) Official notices of certification sanctions, including enforcement actions;
- (6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B,231C,231D);
- (7) Waivers, including the department's approval and denial letter and any letter requesting the waiver.

**67.17(2) Confidential information.** Confidential information includes the following:

*a.* Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;

*b.* Names of all complainants;

*c.* Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and

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

**67.17(3) Redaction of confidential information.** If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

**481—67.18(231B,231C,231D) Training related to Alzheimer's disease and similar forms of irreversible dementia.** Effective July 1, 2010, or when administrative rules are adopted pursuant to Iowa Code section 231.62, whichever is later, all programs shall comply with the requirements set forth in administrative rule to implement Iowa Code section 231.62 for Alzheimer's disease and dementia education.

These rules are intended to implement Iowa Code chapters 231B, 231C and 231D.

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