

CHAPTER 231D

ADULT DAY SERVICES

[SP]

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated by the former department of elder affairs under prior law, and validity of licenses, certifications, and permits issued by the department of elder affairs; schedule for updating Iowa administrative code to correspond to administration of chapter by department of inspections and appeals; 2007 Acts, ch 215, §206

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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 program providing a variety of health-related care, social services, and other related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.
2. “*Contractual agreement*” means a written agreement entered into between an adult day services program and a participant that clearly describes the rights and responsibilities of the adult day services program and the participant, and other information required by rule.
3. “*Department*” means the department of inspections and appeals.
4. “*Functional impairment*” means a psychological, cognitive, or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.
5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.
6. “*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.
7. “*Medication setup*” means assistance with various steps of medication administration to support a participant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the participant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.
8. “*Participant*” means an individual who is the recipient of services provided by an adult day services program.
9. “*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.
10. “*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 a participant.
11. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that

the department recognizes as having specific adult day services program standards equivalent to the standards established by the department for adult day services.

12. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to participating in an adult day services program, and minimizing the stress arising from that circumstance.

13. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2003 Acts, ch 165, §1; 2005 Acts, ch 61, §1, 17; 2007 Acts, ch 215, §184

231D.2 Purpose — rules.

1. The purpose of this chapter is to promote and encourage adequate and safe care for adults with functional impairments.

2. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing minimum standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recognized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules shall include a requirement that sufficient staffing be available at all times to fully meet a participant’s identified needs. The rules shall include a requirement that no fewer than two staff persons who monitor participants as indicated in each participant’s service plan shall be awake and on duty during the hours of operation when two or more participants are present. The rules and minimum standards adopted shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

3. The department may establish by administrative rule, in accordance with chapter 17A, specific rules related to minimum standards for dementia-specific adult day services programs. The rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups.

2003 Acts, ch 165, §2; 2005 Acts, ch 61, §2, 17; 2007 Acts, ch 215, §185, 186

231D.3 Certification required.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department for an adult day services program.

2. An adult day services program may provide any type of adult day services for which the program is certified. An adult day services program shall provide services and supervision commensurate with the needs of the participants. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

3. An adult day services program that has been certified by the department shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department. The department shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective participant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services

program is provided, if the business or activity serves persons who are not participants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

6. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of adult day services programs.

7. Certification of an adult day services program shall be for two years unless revoked for good cause by the department.

2003 Acts, ch 165, §3; 2005 Acts, ch 61, §3, 4, 17; 2007 Acts, ch 215, §187

231D.4 Application and fees.

1. Certificates for adult day services programs shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee.

2. a. The department shall collect adult day services certification fees. The fees shall be deposited in the general fund of the state.

b. The following certification and related fees shall apply to adult day services programs:

- (1) For a two-year initial certification, seven hundred fifty dollars.
- (2) For a two-year recertification, one thousand dollars.
- (3) For a blueprint review, nine hundred dollars.
- (4) For an optional preliminary plan review, five hundred dollars.
- (5) For certification via a national body of accreditation, one hundred twenty-five dollars.

2003 Acts, ch 165, §4; 2005 Acts, ch 61, §5, 17; 2007 Acts, ch 215, §188, 189

231D.5 Denial, suspension, or revocation.

1. The department may deny, suspend, or revoke certification if the department finds that there has been a substantial or repeated failure on the part of the adult day services program to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter, or for any of the following reasons:

a. Appropriation or conversion of the property of a participant without the participant's written consent or the written consent of the participant's legal representative.

b. Permitting, aiding, or abetting the commission of any illegal act in the adult day services program.

c. Obtaining or attempting to obtain or retain certification by fraudulent means, misrepresentation, or by submitting false information.

d. Habitual intoxication or addiction to the use of drugs by the applicant, owner, manager, or supervisor of the adult day services program.

e. Securing the devise or bequest of the property of a participant by undue influence.

f. Failure or neglect to maintain a required continuing education and training program for all personnel employed in the adult day services program.

g. Founded dependent adult abuse as defined in section 235B.2.

h. 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 five percent equity interest in the program, having or having had an ownership interest in an adult day services program, assisted living 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 having been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

i. 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. In the case of an application by an existing certificate holder for a new or newly

acquired adult day services program, the department may deny certification on the basis of continuing or repeated failure of the certificate holder to operate any previously certified adult day services program in compliance with this chapter or of the rules adopted pursuant to this chapter.

k. For any other reason as provided by law or administrative rule.

2. In the case of a certificate applicant or existing certificate holder which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any individual who is in a position of control or is an officer of the entity engages in any act or omission proscribed by this section.

2003 Acts, ch 165, §5; 2005 Acts, ch 61, §6, 17; 2006 Acts, ch 1030, §25; 2007 Acts, ch 215, §190, 191; 2008 Acts, ch 1031, § 41; 2008 Acts, ch 1032, §37

231D.6 Notice — appeal — emergency provisions.

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within the thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an immediate danger to the health or safety of participants in an adult day services program exists which requires action on an emergency basis, the department may direct the removal of all participants in the adult day services program and suspend the certificate prior to a hearing.

2003 Acts, ch 165, §6; 2005 Acts, ch 61, §7, 17; 2007 Acts, ch 215, §192

231D.7 Conditional operation.

The department may, as an alternative to denial, suspension, or revocation of certification under section 231D.5, conditionally issue or continue certification dependent upon the performance by the adult day services program of reasonable conditions within a reasonable period of time as prescribed by the department so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the adult day services program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An adult day services program shall not be operated under conditional certification for more than one year.

2003 Acts, ch 165, §7; 2007 Acts, ch 215, §193

231D.8 Department notified of casualties.

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death, and any substantial fire or natural or other disaster occurring at or near an adult day services program.

2003 Acts, ch 165, §8; 2007 Acts, ch 215, §194

231D.9 Complaints and confidentiality.

1. A person with concerns regarding the operations or service delivery of an adult day services program may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any participant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department involved in the investigation of the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2003 Acts, ch 165, §9; 2005 Acts, ch 61, §8, 17; 2007 Acts, ch 215, §195

231D.9A Informal review.

1. If an adult day services program contests the findings of 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, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm, modify, or dismiss the regulatory insufficiencies. The department 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 shall also notify the complainant, if known, of the decision and the reasons for the decision.

2005 Acts, ch 61, §9, 17; 2007 Acts, ch 215, §196

231D.10 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department pursuant to this chapter, including the conclusion of informal review, the department's final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2003 Acts, ch 165, §10; 2005 Acts, ch 61, §10, 17; 2007 Acts, ch 215, §197; 2008 Acts, ch 1048, §3, 4

231D.11 Penalties.

1. A person establishing, conducting, managing, or operating an adult day services program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an adult day services 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 civil penalty, as established by rule, may apply in any of the following situations:

a. Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a participant.

b. Program failure or refusal to comply with regulatory requirements within prescribed time frames.

c. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "lawful enforcement" includes but is not limited to:

(1) Contacting or interviewing any participant in an adult day services program in private at any reasonable hour and without advance notice.

(2) Examining any relevant records of an adult day services program.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2003 Acts, ch 165, §11; 2005 Acts, ch 61, §11, 17; 2007 Acts, ch 215, §198, 199

231D.12 Retaliation by adult day services program prohibited.

1. An adult day services program shall not discriminate or retaliate in any way against a participant, participant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An adult day services program

that violates this section is subject to a penalty as established by administrative rule, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2. Any attempt to discharge a participant from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department under section 231D.9, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the program in retaliation for the filing of the complaint, except in situations in which the participant is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

2003 Acts, ch 165, §12; 2005 Acts, ch 61, §12, 17; 2006 Acts, ch 1010, §74; 2007 Acts, ch 215, §200

231D.13 Nursing assistant and medication aide — certification.

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within adult day services programs as credit toward sustaining the nursing assistant's or medication aide's certification.

2003 Acts, ch 165, §13; 2007 Acts, ch 215, §201

231D.13A Medication setup — administration and storage of medications.

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

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

a. If administration of medications is delegated to the program by the participant or the participant'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 participant 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 participant.

e. Medications shall be stored in their originally received containers.

f. If medication setup is provided by the program at the request of the participant or the participant's legal representative, or if medication administration is delegated to the program by the participant or the participant's legal representative, appropriate staff of the program may transfer the medications in the participant'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 contractual agreement shall not require the program to provide assistance with the storage of medications.

2005 Acts, ch 61, §13, 17

231D.14 Criminal records investigation check.

An adult day services program shall comply with section 135C.33.

2003 Acts, ch 165, §14

231D.15 Fire and safety standards.

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification and monitoring of the fire and safety standards of adult day services programs.

2003 Acts, ch 165, §15; 2007 Acts, ch 215, §202

231D.16 Transition provision.

1. Adult day services programs that are serving at least two but not more than five persons and that are not voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2005.

2. A hospital licensed pursuant to chapter 135B, a health care facility licensed pursuant to chapter 135C, or an assisted living program certified pursuant to chapter 231C may operate an adult day services program if the adult day services program is certified pursuant to this chapter.

3. A certified adult day services program that complies with the requirements of this chapter shall not be required to be licensed or certified as another type of facility, unless the facility is represented to the public as another type of facility.

2003 Acts, ch 165, §16; 2005 Acts, ch 61, §14, 17

231D.17 Written contractual agreement required.

1. An adult day services program shall not operate in this state unless a written contractual agreement is executed between the adult day services program and each participant or the participant's legal representative prior to the participant's admission to the program, and unless the adult day services program operates in accordance with the terms of the written contractual agreement. The adult day services program shall deliver to the participant or the participant's legal representative a complete copy of the written contractual agreement and all supporting documents and attachments, prior to the participant's admission to the program, and shall also deliver a written copy of changes to the written contractual agreement, if any changes to the copy originally delivered are subsequently made, at least thirty days prior to any changes, unless otherwise provided in this section.

2. An adult day services program written contractual agreement shall clearly describe the rights and responsibilities of the participant and the program. The written contractual 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 admission 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 adult day services program.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the participant's legal representative, if any.

e. The term of the written contractual agreement.

f. A statement that the adult day services program shall notify the participant or the participant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the written contractual agreement, with the following exceptions:

(1) When the participant's health status or behavior constitutes a substantial threat to the health or safety of the participant, other participants, or others, including when the participant refuses to consent to discharge.

(2) When an emergency or a significant change in the participant's condition results in the need for the provision of services that exceed the type or level of services included in the written contractual agreement and the necessary services cannot be safely provided by the adult day services program.

g. A statement that all participant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Discharge, 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 adult day services program and the participants, including grievances relating to transfer and occupancy.

k. A statement of the prohibition against retaliation as prescribed in section 231D.12.

l. The emergency response policy.

m. The staffing policy which specifies staff is available during all times of program operation, if nurse delegation will be used, and how staffing will be adapted to meet changing participant needs.

n. In dementia-specific adult day services programs, a description of the services and programming provided to meet the life skills and social activities of participants.

o. The refund policy.

p. A statement regarding billing and payment procedures.

3. Written contractual agreements and related documents executed by each participant or participant's legal representative shall be maintained by the adult day services program in program files from the date of execution until three years from the date the written contractual agreement is terminated. A copy of the most current written contractual agreement shall be provided to members of the general public, upon request. Written contractual agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2005 Acts, ch 61, §15, 17; 2007 Acts, ch 215, §203

231D.18 Involuntary transfer.

1. If an adult day services program initiates the involuntary transfer of a participant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the participant or participant's legal representative contests the transfer, the following procedure shall apply:

a. The adult day services program shall notify the participant or participant's legal representative, in accordance with the written contractual agreement, of the need to transfer and the reason for the transfer.

b. If, following the internal appeals process, the adult day services program upholds the transfer decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a participant results from a monitoring evaluation or complaint investigation conducted by the department.

2005 Acts, ch 61, §16, 17; 2007 Acts, ch 215, §204, 205