

House File 2463

H-8170

1 Amend House File 2463 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <Section 1. Section 231C.3, subsection 4, paragraph  
5 a, Code Supplement 2009, is amended by striking the  
6 paragraph and inserting in lieu thereof the following:

7 a. For the purposes of determining whether a  
8 housing provider is an assisted living program  
9 regulated by this chapter, services are provided with  
10 housing if the services are provided directly by the  
11 housing provider, through a contractual relationship  
12 between the housing provider and a third party, or by  
13 a third party that controls, is controlled by, or is  
14 under common control with the housing provider.

15 Sec. 2. Section 231C.4, Code 2009, is amended to  
16 read as follows:

17 **231C.4 Fire and safety standards.**

18 1. The state fire marshal shall adopt rules, in  
19 coordination with the department, relating to the  
20 certification and monitoring of the fire and safety  
21 standards of certified assisted living programs.

22 2. A certified assisted living program that does  
23 not comply with the fire and safety standards in effect  
24 on July 1, 2009, regarding a working sprinkler system,  
25 shall comply with such requirements no later than July  
26 1, 2013.

27 Sec. 3. Section 231C.7, subsection 1, Code 2009, is  
28 amended to read as follows:

29 1. Any person with concerns regarding  
30 the operations or service delivery of ~~an a~~  
31 certified assisted living program or the alleged  
32 operations of an uncertified program in violation  
33 of this chapter or rules adopted pursuant to this  
34 chapter may file a complaint with the department. The  
35 name of the person who files a complaint with the  
36 department and any personal identifying information of  
37 the person or any tenant identified in the complaint  
38 shall be kept confidential and shall not be subject to  
39 discovery, subpoena, or other means of legal compulsion  
40 for its release to a person other than department  
41 employees involved with the complaint.

42 Sec. 4. Section 231C.7, Code 2009, is amended by  
43 adding the following new subsection:

44 NEW SUBSECTION. 3. The department may initiate  
45 proceedings under this chapter upon complaint or on its  
46 own initiative upon receipt of information suggesting  
47 a violation of this chapter, rules adopted pursuant  
48 to this chapter, or administrative or judicial orders  
49 issued under this chapter. The department may conduct  
50 investigations as necessary to determine whether

1 probable cause exists to initiate administrative or  
2 other proceedings under this chapter.

3 Sec. 5. Section 231C.9, Code 2009, is amended to  
4 read as follows:

5 **231C.9 Public disclosure of findings.**

6 Upon completion of a monitoring evaluation or  
7 complaint investigation of an assisted living program  
8 certified under this chapter or an investigation of  
9 an uncertified program alleged to be operating in  
10 violation of this chapter by the department pursuant  
11 to this chapter, including the conclusion of informal  
12 review, the department's final findings with respect  
13 to compliance by the assisted living program with  
14 requirements for certification or the uncertified  
15 program's compliance with this chapter shall be made  
16 available to the public in a readily available form  
17 and place. Other information relating to an assisted  
18 living program certified under this chapter or an  
19 uncertified program that is obtained by the department  
20 which does not constitute the department's final  
21 findings from a monitoring evaluation or complaint  
22 investigation of the certified assisted living program  
23 or an investigation of an uncertified program shall not  
24 be made available to the public except in proceedings  
25 involving the denial, suspension, or revocation of  
26 a certificate under this chapter; the issuance of a  
27 cease and desist order or an administrative proceeding  
28 under section 231C.13A; or a proceeding under section  
29 231C.13B or 231C.15.

30 Sec. 6. **NEW SECTION. 231C.13A Uncertified or**  
31 **decertifying program — cease and desist orders —**  
32 **injunctive and other relief.**

33 1. If, as a result of an investigation of an  
34 uncertified program or a program in the process of  
35 decertifying, including an investigation under section  
36 231C.7, the department or the attorney general believes  
37 that a person has engaged in or is about to engage in  
38 an act or practice which constitutes or will constitute  
39 a violation of this chapter, rules adopted pursuant to  
40 this chapter, or orders issued under this chapter, the  
41 department or the attorney general may petition the  
42 district court for injunctive relief to enjoin such act  
43 or practice by the person and, if necessary to assure  
44 effective relief, by the person's employees, owners,  
45 managers, officers, directors, or other agents, and  
46 those related to or affiliated with the person. Upon  
47 a proper showing by the department or the attorney  
48 general that such person has engaged in or is about  
49 to engage in any such act or practice, the district  
50 court shall grant an injunction, restraining order, or

1 other appropriate injunctive relief. The department or  
2 the attorney general shall not be required to post a  
3 bond to obtain injunctive relief under this subsection.  
4 In addition, the court may order equitable relief as  
5 necessary to protect the health, safety, and welfare of  
6 tenants, including the appointment of a receiver.

7 2. a. In addition to or as an alternative to  
8 seeking injunctive relief under subsection 1 or  
9 injunctive relief or a criminal penalty under section  
10 231C.15, the department may issue an administrative  
11 order to any person the department believes has engaged  
12 in or is about to engage in an act or practice which  
13 constitutes or will constitute a violation of this  
14 chapter, rules adopted pursuant to this chapter, or  
15 orders issued under this chapter, requiring the person  
16 to cease and desist from engaging in such act or  
17 practice.

18 b. The cease and desist order may be served by  
19 restricted certified mail, return receipt requested,  
20 by personal service as provided under the Iowa rules  
21 of civil procedure, or by acceptance of service by the  
22 person or the person's counsel.

23 c. The order shall be effective from the date of  
24 service if grounds for an emergency order exist under  
25 section 17A.18A.

26 d. A person aggrieved by the order who wishes  
27 to challenge the terms of the order shall request a  
28 hearing within thirty days of service of the order.  
29 The order shall describe the person's right to request  
30 such a hearing.

31 e. If a hearing is not timely requested, the person  
32 shall be deemed to have exhausted all administrative  
33 remedies, and the order shall be the department's final  
34 agency action by operation of law.

35 f. If a hearing is timely requested, the department  
36 shall issue separate notice of hearing for a contested  
37 case consistent with the provisions of chapter 17A.

38 g. A person aggrieved by the department's final  
39 agency decision following a contested case may seek  
40 judicial review under chapter 17A.

41 h. (1) If a person does not comply with a cease  
42 and desist order, the department may petition the  
43 district court in Polk County or in the county where  
44 the person may be located, to enforce the order.

45 (2) The court shall not require the department  
46 to post a bond in an action or proceeding under this  
47 paragraph "h".

48 (3) If the court finds, after notice and  
49 opportunity for hearing, that the person is not in  
50 compliance with an order, the court may hold the person

1 in civil contempt of the order. The court may impose  
2 a civil penalty against the person for contempt in an  
3 amount not less than three thousand dollars but not to  
4 exceed ten thousand dollars for each violation and may  
5 grant any other relief the court determines just and  
6 proper in the circumstances.

7 Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being  
8 deemed of immediate importance, takes effect upon  
9 enactment.>

10 2. Title page, by striking lines 1 through 3 and  
11 inserting <An Act relating to assisted living programs,  
12 providing penalties, and including effective date  
13 provisions.>

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ISENHART of Dubuque