



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

May 30, 2003

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby transmit:

House File 675, an Act relating to the regulation of elder family homes, elder group homes, and assisted living programs, providing for fees, and providing penalties.

The above House File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





HOUSE FILE 675

AN ACT

RELATING TO THE REGULATION OF ELDER FAMILY HOMES, ELDER GROUP HOMES, AND ASSISTED LIVING PROGRAMS, PROVIDING FOR FEES, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 100.1, subsection 6, Code 2003, is amended to read as follows:

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required ~~as-a-condition-of-licensure~~ by law. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

Sec. 2. Section 135C.33, subsection 5, paragraph e, Code 2003, is amended to read as follows:

e. An employee of an assisted living ~~facility~~ program certified ~~or-voluntarily-accredited~~ under chapter 231C, if the employee provides direct services to consumers.

Sec. 3. Section 231B.1, subsection 4, Code 2003, is amended to read as follows:

4. "Elder group home" means a single-family residence that is ~~a-residence-of~~ operated by a person who is providing room, board, and personal care to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

Sec. 4. Section 231B.2, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. An elder group home shall be ~~owner-occupied, or owned by a nonprofit corporation and occupied by a resident manager~~ staffed by an on-site manager twenty-four hours per day, seven days per week. ~~A resident manager shall reside in and provide services for no more than one elder group home.~~

Sec. 5. Section 231B.2, subsections 3 and 5, Code 2003, are amended to read as follows:

3. An elder group home established pursuant to this chapter shall be certified by the department of inspections and appeals.

5. Inspections and certification services shall be provided by the department of inspections and appeals. ~~However, beginning July 1, 1994, the department may enter into contracts with the area agencies on aging to provide these services.~~

Sec. 6. Section 231B.3, subsection 2, Code 2003, is amended to read as follows:

2. A person who has knowledge that an elder group home is operating without certification shall report the name and address of the home to the department of inspections and appeals. The department of inspections and appeals shall investigate a report made pursuant to this section.

Sec. 7. Section 231C.1, Code 2003, is amended to read as follows:

231C.1 FINDINGS, AND PURPOSE, AND INTENT.

1. The general assembly finds that assisted living is an important part of the long-term care system in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

2. The purposes of establishing an assisted living program include all of the following:

a. To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four hour per day basis.

b. To establish standards for assisted living programs that allow flexibility in design which promotes a social model

of service delivery by focusing on individual independence, individual needs and desires, and consumer-driven quality of service.

c. To encourage general public participation in the development of assisted living programs for individuals of all income levels.

3. It is the intent of the general assembly that the department of elder affairs establish policy for assisted living programs and that the department of inspections and appeals enforce this chapter.

Sec. 8. Section 231C.2, subsections 1 and 6, Code 2003, are amended to read as follows:

1. "Assisted living" means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to ~~six~~ three or more tenants in a physical structure which provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

6. "Tenant" means an individual who receives assisted living services through a certified ~~or-accredited~~ assisted living program.

Sec. 9. Section 231C.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. "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.

NEW SUBSECTION. 4A. "Legal representative" means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

NEW SUBSECTION. 4B. "Occupancy agreement" means a written agreement entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and a tenant, and other information required by rule. "Occupancy agreement"

may include a separate signed lease and signed service agreement.

NEW SUBSECTION. 5A. "Recognized accrediting entity" means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department for assisted living programs.

NEW SUBSECTION. 6A. "Tenant advocate" means the office of long-term care resident's advocate established in section 231.42.

NEW SUBSECTION. 7. "Tenant's representative" means a tenant's legal representative or any representative authorized by the tenant to act on behalf of the tenant.

Sec. 10. Section 231C.3, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

231C.3 CERTIFICATION OF ASSISTED LIVING PROGRAMS.

1. The department shall establish by rule in accordance with chapter 17A, a program for certification and monitoring of assisted living programs. The department may adopt by reference with or without amendment, nationally recognized standards and rules for assisted living programs. The rules shall include specification of recognized accrediting entities and provisions related to dementia-specific programs. The standards and rules shall be formulated in consultation with the department of inspections and appeals, and affected industry, professional, and consumer groups and shall be designed to accomplish the purposes of this chapter and shall include but are not limited to rules relating to all of the following:

a. Provisions to ensure, to the greatest extent possible, the health, safety, and well-being and appropriate treatment of tenants.

b. Requirements that assisted living programs furnish the department of elder affairs and the department of inspections and appeals with specified information necessary to administer this chapter.

c. Standards for tenant evaluation or assessment, which may vary in accordance with the nature of the services provided or the status of the tenant.

d. Provisions for granting short-term waivers for tenants who exceed occupancy criteria.

2. In addition to the adoption of standards and rules for assisted living programs, the department in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall issue interpretive guidelines, including the expectations of program certification monitors, to provide direction to assisted living programs in complying with certification requirements.

3. Each assisted living program operating in this state shall be certified by the department of inspections and appeals. If an assisted living program is voluntarily accredited by a recognized accrediting entity, the department of inspections and appeals shall certify the assisted living program on the basis of the voluntary accreditation. An assisted living program that is certified by the department of inspections and appeals on the basis of voluntary accreditation shall not be subject to payment of the certification fee prescribed in section 231C.18, but shall be subject to an administrative fee as prescribed by rule. An assisted living program certified under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

4. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person including a governmental unit shall not represent an assisted living program to the public as an assisted living program or as a certified assisted living program unless and until the program is certified pursuant to this chapter.

5. a. Services provided by a certified assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

b. If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the assisted living program and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

6. The department of inspections and appeals may enter into contracts to provide certification and monitoring of assisted living programs. The department of inspections and appeals shall:

a. Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

b. With the consent of the tenant, visit the tenant's unit.

c. Require that the recognized accrediting entity providing accreditation for a program provide copies to the department of all materials related to the accreditation, monitoring, and complaint process.

7. The department may also establish by rule in accordance with chapter 17A a special classification for affordable assisted living programs. The rules shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

8. 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 assisted living program for an actual or prospective tenant, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

9. 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 assisted living program is provided, if the business or activity serves nontenants. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

10. An assisted living program shall comply with section 135C.33.

Sec. 11. Section 231C.4, Code 2003, is amended to read as follows:

231C.4 FIRE AND SAFETY STANDARDS.

The state fire marshal shall adopt rules, in coordination with the department of elder affairs and the department of inspections and appeals, relating to the certification ~~or voluntary-accreditation~~ and monitoring of the fire and safety standards of certified ~~or-voluntarily-accredited~~ assisted living programs.

Sec. 12. Section 231C.5, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

231C.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or tenant's representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or tenant's representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy 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 tenancy 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 assisted living program.

c. The procedure followed for nonpayment of fees.

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

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's representative, as

applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

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

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

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

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

i. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

j. A statement of the prohibition against retaliation as prescribed in section 231C.13.

k. The emergency response policy.

l. The staffing policy which specifies if the staff is available twenty-four hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

n. The refund policy.

o. A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or tenant's representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public,

upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department of inspections and appeals upon request and at reasonable times.

Sec. 13. Section 231C.6, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

231C.6 INVOLUNTARY TRANSFER.

1. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department of inspections and appeals, and if the tenant or tenant's representative contests the transfer, the following procedure shall apply:

a. The assisted living program shall notify the tenant or tenant's representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

b. The assisted living program shall provide the tenant advocate with a copy of the notification to the tenant.

c. The tenant advocate shall offer the notified tenant or tenant's representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeals process, the assisted living program upholds the transfer decision, the tenant may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with the department of inspections and appeals 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 tenant results from a monitoring evaluation or complaint investigation conducted by the department of inspections and appeals.

Sec. 14. NEW SECTION. 231C.7 COMPLAINTS.

1. Any person with concerns regarding the operations or service delivery of an assisted living program may file a complaint with the department of inspections and appeals. The name of the person who files a complaint with the department of inspections and appeals and any personal identifying information of the person or any tenant 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 department of inspections and appeals' employees involved with the complaint.

2. The department, in cooperation with the department of inspections and appeals, shall establish procedures for the disposition of complaints received in accordance with this section.

Sec. 15. NEW SECTION. 231C.8 INFORMAL REVIEW.

If an assisted living program contests the 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, in support of the contesting of the regulatory insufficiencies, to the department of inspections and appeals for review. The department of inspections and appeals shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department of inspections and appeals may affirm, modify, or dismiss the regulatory insufficiencies. The department of inspections and appeals shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision. In the case of a complaint investigation, the department of inspections and appeals shall also notify the complainant, if known, of the decision and the reasons for the decision.

Sec. 16. NEW SECTION. 231C.9 PUBLIC DISCLOSURE OF FINDINGS.

Following a monitoring evaluation or complaint investigation of an assisted living program by the department of inspections and appeals pursuant to this chapter, the department of inspections and appeals' final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department of inspections and appeals which does not constitute the department of inspections and appeals' final findings from a monitoring evaluation or complaint

investigation of the assisted living program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 17. NEW SECTION. 231C.10 DENIAL, SUSPENSION, OR REVOCATION -- CONDITIONAL OPERATION.

1. The department of inspections and appeals may deny, suspend, or revoke a certificate in any case where the department of inspections and appeals finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules, or minimum standards adopted under this chapter, or for any of the following reasons:

a. Cruelty or indifference to assisted living program tenants.

b. Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian.

c. Permitting, aiding, or abetting the commission of any illegal act in the assisted living program.

d. Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

e. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the assisted living program.

f. Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

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 ten percent equity interest in the program, who has or has had an ownership interest in an assisted living program, 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 who has been found to have failed to provide adequate protection or services for tenants 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. For any other reason as provided by law or administrative rule.

2. The department of inspections and appeals may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the assisted living program of reasonable conditions within a reasonable period of time as set by the department of inspections and appeals 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 assisted living program does not make diligent efforts to comply with the conditions prescribed, the department of inspections and appeals may, under the proceedings prescribed by this chapter, suspend, or revoke the certificate. An assisted living program shall not be operated on a conditional certificate for more than one year.

Sec. 18. NEW SECTION. 231C.11 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 such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department of inspections and appeals, 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 of inspections and appeals in accordance with chapter 17A.

3. When the department of inspections and appeals finds that an imminent danger to the health or safety of tenants of an assisted living program exists which requires action on an emergency basis, the department of inspections and appeals may

direct removal of all tenants of an assisted living program and suspend the certificate prior to a hearing.

Sec. 19. NEW SECTION. 231C.12 DEPARTMENT NOTIFIED OF CASUALTIES.

The department of inspections and appeals 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 assisted living program.

Sec. 20. NEW SECTION. 231C.13 RETALIATION BY ASSISTED LIVING PROGRAM PROHIBITED.

An assisted living program shall not discriminate or retaliate in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An assisted living program that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A and to be assessed and collected by the department of inspections and appeals and paid into the state treasury to be credited to the general fund of the state.

Sec. 21. NEW SECTION. 231C.14 CIVIL PENALTIES.

The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an assisted living program:

1. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

2. Following receipt of notice from the department of inspections and appeals, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of program tenants.

Sec. 22. NEW SECTION. 231C.15 CRIMINAL PENALTIES AND INJUNCTIVE RELIEF.

1. A person establishing, conducting, managing, or operating any assisted living program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department of inspections and appeals by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an

assisted living 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 person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an assisted living program.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

Sec. 23. NEW SECTION. 231C.16 NURSING ASSISTANT AND MEDICATION AIDE -- CERTIFICATION.

The department of inspections and appeals, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an assisted living program as credit toward sustaining the nursing assistant's or medication aide's certification.

Sec. 24. NEW SECTION. 231C.17 COORDINATION OF THE LONG-TERM CARE SYSTEM -- TRANSITIONAL PROVISIONS.

1. A hospital licensed pursuant to chapter 135B or a health care facility licensed pursuant to chapter 135C may operate an assisted living program, located in a distinct part of or separate structure under the control of the hospital or health care facility, if certified pursuant to this chapter.

2. This chapter shall not be construed to require that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as a certified assisted living program.

3. A certified assisted living program that complies with the requirements of this chapter shall not be required to be licensed as a health care facility pursuant to chapter 135C, unless the facility is represented to the public as a licensed health care facility.

4. A continuing care retirement community that is in compliance with chapter 523D shall not be held in violation of this chapter if the continuing care retirement community provides services to its independent living residents.

Sec. 25. NEW SECTION. 231C.18 IOWA ASSISTED LIVING FEES.

1. The department of inspections and appeals shall collect assisted living program certification and related fees. An assisted living program that is certified by the department of inspections and appeals on the basis of voluntary accreditation by a recognized accrediting entity shall not be subject to payment of the certification fee, but shall be subject to an administrative fee as prescribed by rule. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to assisted living programs:

- a. For a two-year initial certification, seven hundred fifty dollars.
- b. For a two-year recertification, one thousand dollars.
- c. For a blueprint plan review, nine hundred dollars.
- d. For an optional preliminary plan review, five hundred dollars.

Sec. 26. NEW SECTION. 231C.19 APPLICATION OF LANDLORD AND TENANT ACT.

Chapter 562A, the uniform residential landlord and tenant Act, shall apply to assisted living programs under this chapter.

Sec. 27. Section 235B.3, subsection 2, paragraph d, Code 2003, is amended to read as follows:

d. A person who performs inspections of elder group homes for the department of ~~elder-affairs~~ inspections and appeals and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

Sec. 28. Chapter 231A, Code 2003, is repealed.

Sec. 29. TRANSITION OF STAFF. All employees of the department of elder affairs performing functions related to certification and monitoring of or complaint investigations related to assisted living programs as of June 30, 2003, shall become employees of the department of inspections and appeals without loss of classification, pay, or benefits, effective July 1, 2003. All employees of the department of elder

affairs performing functions related to affordable assisted living as of June 30, 2003, shall become employees of the Iowa finance authority without loss of classification, pay, or benefits, effective July 1, 2003.



CHRISTOPHER C. RANTS
Speaker of the House



MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 675, Eightieth General Assembly.



MARGARET THOMSON
Chief Clerk of the House

Approved May 30, 2003



THOMAS J. VILSACK
Governor