



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 27, 2005

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

House File 585, an Act relating to assisted living programs, providing for a fee, providing penalties, and providing an effective date.

House File 587, an Act relating to adult day services regulation, providing penalties, and providing an effective date.

House File 710, an Act relating to the regulation of elder group homes and providing penalties.

The above House Files are hereby approved this date.

Sincerely,

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

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





HOUSE FILE 587

AN ACT

RELATING TO ADULT DAY SERVICES REGULATION, PROVIDING
PENALTIES, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 231D.1, Code 2005, is amended to read
as follows:

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 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.

~~2.~~ 3. "Department" means the department of elder affairs
created in chapter 231.

~~3.~~ 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.

~~4.~~ 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.

~~5~~ 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.

~~6~~ 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.

~~7~~ 13. "Supervision" means direct oversight and inspection of the act of accomplishing a function or activity.

Sec. 2. Section 231D.2, Code 2005, is amended to read as follows:

231D.2 PURPOSE -- INTENT -- RULES ---SPECIAL
CLASSIFICATIONS.

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

2. It is the intent of the general assembly that the department of elder affairs establish policy for adult day services programs and that the department of inspections and appeals enforce this chapter.

3. 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 the department of inspections and appeals and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

~~4.--In-addition-to-the-adoption-of-standards-and-rules-for adult-day-services-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 adult day services programs in complying with certification requirements.~~

5. 4. The department may establish by administrative rule, special classifications for adult day services providers.--The department of inspections and appeals shall issue separate certificates for each special classification for which a provider is certified. 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 the department of inspections and appeals and affected industry, professional, and consumer groups.

Sec. 3. Section 231D.3, subsections 2, 4, and 5, Code 2005, are amended to read as follows:

2. An adult day services program may provide any type of adult day services for which the program is certified, ~~including any special classification of adult day services.~~ An adult day services program shall provide services and supervision commensurate with the needs of the ~~recipients~~ 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.

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 ~~recipient~~ participant, unless the program holds a current certificate issued by the department of inspections and appeals 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 ~~nonrecipients of adult day services~~ persons who are not participants. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

Sec. 4. Section 231D.3, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 6. The department of elder affairs and the department of inspections and appeals shall conduct joint training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of adult day services programs.

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

Sec. 5. Section 231D.4, subsection 2, paragraph b, Code 2005, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (5) For certification via a national body of accreditation, one hundred twenty-five dollars.

Sec. 6. Section 231D.5, subsection 1, Code 2005, is amended to read as follows:

1. The department of inspections and appeals may deny, suspend, or revoke certification if the department of inspections and appeals 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:

~~e. Cruelty or indifference to adult day services program service recipients.~~

~~b. a.~~ Appropriation or conversion of the property of an ~~adult day services programs service recipient~~ a participant without the ~~recipient's~~ participant's written consent or the written consent of the ~~service recipient's~~ participant's legal guardian representative.

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

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

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

~~f. e.~~ Securing the devise or bequest of the property of a ~~recipient of services of an adult day services program~~ participant by undue influence.

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

~~h. 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, who has or has 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 who has 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.

~~i.~~ j. For any other reason as provided by law or administrative rule.

Sec. 7. Section 231D.6, subsection 3, Code 2005, is amended to read as follows:

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

Sec. 8. Section 231D.9, subsection 1, Code 2005, is amended to read as follows:

1. A person with concerns regarding the operations or service delivery of an adult day services 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 ~~recipient-of-program-services~~ 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 of inspections and appeals involved in the investigation of the complaint.

Sec. 9. NEW SECTION. 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 of inspections and appeals for review.

2. 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.

3. 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. 10. Section 231D.10, Code 2005, is amended to read as follows:

231D.10 PUBLIC DISCLOSURE OF FINDINGS.

~~Following~~ Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department of inspections and appeals pursuant to this chapter, including the conclusion of all administrative appeals processes, 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 of inspections and appeals which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall be made available to the department upon request to facilitate policy decisions, but shall not be

made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

Sec. 11. Section 231D.11, Code 2005, is amended to read as follows:

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 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 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 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 participant of an adult day services program in private at any reasonable hour and without advance notice.~~

~~b. Examining any relevant records of an adult day services program.~~

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

3. 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 recipient of program services 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 of inspections and appeals 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.

Sec. 12. Section 231D.12, Code 2005, is amended to read as follows:

231D.12 RETALIATION BY AN ADULT DAY SERVICES PROGRAM PROHIBITED.

1. An adult day services program shall not discriminate or retaliate in any way against a recipient participant, ~~recipient's~~ 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 of inspections and appeals and paid into the state treasury to be credited to the general fund of the state.

2. Any attempt to discharge a recipient participant from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department of inspections and appeals 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 recipient 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.

Sec. 13. NEW SECTION. 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.

Sec. 14. Section 231D.16, Code 2005, is amended to read as follows:

231D.16 TRANSITION PROVISIONS PROVISION.

~~1. --Adult day services programs voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2004.~~

2. 1. Adult day services programs that are serving at least two but not more than five persons 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.

Sec. 15. NEW SECTION. 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 of inspections and appeals upon request and at reasonable times.

Sec. 16. NEW SECTION. 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 of inspections and appeals, 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.

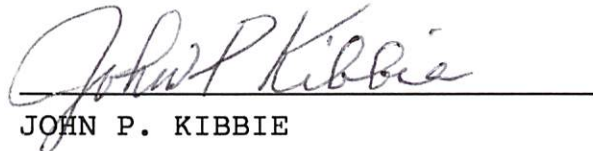
b. If, following the internal appeals process, the adult day services program upholds the transfer decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the transfer.

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

Sec. 17. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.



CHRISTOPHER C. RANTS
Speaker of the House



JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 587, Eighty-first General Assembly.



MARGARET THOMSON
Chief Clerk of the House

Approved April 27, 2005



THOMAS J. WILSACK
Governor