



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
L O C A L

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 "Thomas J. Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





HOUSE FILE 710

AN ACT

RELATING TO THE REGULATION OF ELDER GROUP HOMES AND PROVIDING PENALTIES.

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

Section 1. Section 231B.1, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

231B.1 DEFINITIONS.

1. "Department" means the department of elder affairs or the department's designee.
2. "Elder" means a person sixty years of age or older.
3. "Elder group home" means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity, and which is staffed by an on-site manager twenty-four hours per day, seven days per week.
4. "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.
5. "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.
6. "Medication setup" means assistance with various steps of medication administration to support a tenant's autonomy,

which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

7. "Occupancy agreement" means a written agreement entered into between an elder group home and a tenant that clearly describes the rights and responsibilities of the elder group home and the tenant, and other information required by rule. "Occupancy agreement" may include a separate signed lease and signed service agreement.

8. "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 tenant.

9. "Tenant" means an individual who receives elder group home services through a certified elder group home.

10. "Tenant advocate" means the office of the long-term care resident's advocate established in section 231.42.

11. "Tenant's legal representative" means a person appointed by the court to act on behalf of a tenant, or a person acting pursuant to a power of attorney.

Sec. 2. NEW SECTION. 231B.1A FINDINGS, PURPOSE, AND INTENT.

1. The general assembly finds that elder group homes are an important part of the long-term care continua in this state. Elder group homes emphasize the independence and dignity of the individual while providing housing in a cost-effective manner.

2. The purposes of establishing and regulating elder group homes 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 with personal care to live independently but who require health-related care only on a part-time or intermittent basis.

b. To establish standards for elder group homes that allow flexibility in design, which promotes a model of service delivery by focusing on individual independence, needs and desires, and consumer-driven quality of service.

c. To encourage public participation in the development of elder group home 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 elder group homes and that the department of inspections and appeals enforce this chapter.

Sec. 3. Section 231B.2, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

231B.2 CERTIFICATION OF ELDER GROUP HOMES -- RULES.

1. The department shall establish by rule, in accordance with chapter 17A, minimum standards for certification and monitoring of elder group homes. The department may adopt by reference, with or without amendment, nationally recognized standards and rules for elder group homes. 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 not be limited to rules relating to all of the following:

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

b. Requirements that elder group homes furnish the department of elder affairs and the department of inspections and appeals with specified information necessary to administer this chapter. All information related to the provider application for an elder group home presented to either the department of inspections and appeals or the department of elder affairs shall be considered a public record pursuant to chapter 22.

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. Each elder group home operating in this state shall be certified by the department of inspections and appeals.

3. The owner or manager of a certified elder group home shall comply with the rules adopted by the department for an elder group home. A person, including a governmental unit,

shall not represent an elder group home to the public as an elder group home or as a certified elder group home unless and until the program is certified pursuant to this chapter.

4. a. Services provided by a certified elder group home may be provided directly by staff of the elder group home, by individuals contracting with the elder group home 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 elder group home and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

5. The department of inspections and appeals may enter into contracts to provide certification and monitoring of elder group homes. 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.

6. 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 elder group home 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.

7. 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 elder group home is operated, if the business or activity serves persons who are not tenants. The rules shall be developed in

consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

8. An elder group home shall comply with section 135C.33.

9. 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 elder group homes.

10. Certification shall be for two years unless revoked for good cause by the department of inspections and appeals.

Sec. 4. Section 231B.4, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

231B.4 ZONING -- FIRE AND SAFETY STANDARDS.

An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to section 103A.7 and the rules adopted for the special classification by the state fire marshal. The rules adopted for the special classification by the state fire marshal regarding second floor occupancy shall be adopted in consultation with the department of elder affairs and shall take into consideration the mobility of the tenants.

Sec. 5. NEW SECTION. 231B.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

1. An elder group home shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the elder group home and each tenant or the tenant's legal representative prior to the tenant's occupancy, and unless the elder group home operates in accordance with the terms of the occupancy agreement. The elder group home shall deliver to the tenant or the tenant's legal 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, unless otherwise provided in this section.

2. An elder group home occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the elder group home. 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 elder group home.

c. The procedure followed for nonpayment of fees.

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

e. The term of the occupancy agreement.

f. A statement that the elder group home shall notify the tenant or the tenant's legal 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 elder group home.

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.

i. The internal appeals process provided relative to an involuntary transfer.

j. The program's policies and procedures for addressing grievances between the elder group home and the tenants, including grievances relating to transfer and occupancy.

k. A statement of the prohibition against retaliation as prescribed in section 231B.13.

l. The emergency response policy.

m. The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

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 legal representative shall be maintained by the elder group home 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. 6. NEW SECTION. 231B.6 INVOLUNTARY TRANSFER.

1. If an elder group home 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 legal representative contests the transfer, the following procedure shall apply:

a. The elder group home shall notify the tenant or tenant's legal 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 elder group home 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 legal 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 elder group home upholds the transfer decision, the tenant or the tenant'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 tenant results from a monitoring evaluation or complaint investigation conducted by the department of inspections and appeals.

Sec. 7. NEW SECTION. 231B.7 COMPLAINTS.

1. Any person with concerns regarding the operations or service delivery of an elder group home 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. 8. NEW SECTION. 231B.8 INFORMAL REVIEW.

1. If an elder group home 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 of the regulatory insufficiencies, 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. 9. NEW SECTION. 231B.9 PUBLIC DISCLOSURE OF FINDINGS.

Upon completion of a monitoring evaluation or complaint investigation of an elder group home by the department of inspections and appeals pursuant to this chapter, including the conclusion of all administrative appeals processes, the department of inspections and appeals' final findings with respect to compliance by the elder group home with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an elder group home 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 elder group home shall be made available to the department of elder affairs 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. 10. NEW SECTION. 231B.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 elder group home to comply with this chapter or minimum standards adopted under this chapter or for any of the following reasons:

a. Appropriation or conversion of the property of an elder group home tenant without the tenant's written consent or the written consent of the tenant's legal representative.

b. Permitting, aiding, or abetting the commission of any illegal act in the elder group home.

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

d. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the elder group home.

e. Securing the devise or bequest of the property of a tenant of an elder group home by undue influence.

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

g. In the case of any officer, member of the board of directors, trustee, or designated manager of the elder group home or any stockholder, partner, or individual who has greater than a five percent equity interest in the elder group home, who has or has had an ownership interest in an elder group home, assisted living or adult day services program, home health agency, residential care facility, or licensed nursing facility in this or 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.

h. 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. 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 elder group home 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 elder group home pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the elder group home 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, deny, suspend, or revoke the certificate. An elder group home shall not be operated on a conditional certificate for more than one year.

Sec. 11. NEW SECTION. 231B.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 a tenant of an elder group home exists which requires action on an emergency basis, the department of inspections and appeals may direct removal of all tenants of the elder group home and suspend the certificate prior to a hearing.

Sec. 12. NEW SECTION. 231B.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 to a tenant, and any substantial fire or natural or other disaster occurring at or near an elder group home.

Sec. 13. NEW SECTION. 231B.13 RETALIATION BY ELDER GROUP HOME PROHIBITED.

An elder group home shall not discriminate or retaliate in any way against a tenant, a tenant's family, or an employee of the elder group home who has initiated or participated in any proceeding authorized by this chapter. An elder group home 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. 14. NEW SECTION. 231B.14 CIVIL PENALTIES.

The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an elder group home:

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 elder group home tenants.

3. 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 subsection, "lawful enforcement" includes but is not limited to:

a. Contacting or interviewing any tenant of an elder group home in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an elder group home.

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

Sec. 15. NEW SECTION. 231B.15 CRIMINAL PENALTIES AND INJUNCTIVE RELIEF.

A person establishing, conducting, managing, or operating an elder group home 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. A person establishing, conducting, managing, or operating an elder group home 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.

Sec. 16. NEW SECTION. 231B.16 COORDINATION OF THE LONG-TERM CARE SYSTEM -- TRANSITIONAL PROVISIONS.

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

3. A certified elder group home that complies with the requirements of this chapter shall not be required to be licensed or certified as a different type of facility, unless the elder group home is represented to the public as another type of facility.

Sec. 17. NEW SECTION. 231B.17 IOWA ELDER GROUP HOME FEES.

1. The department of inspections and appeals shall collect elder group home certification and related fees. 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 elder group homes:

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. 18. NEW SECTION. 231B.18 APPLICATION OF LANDLORD AND TENANT ACT.

Chapter 562A, the uniform residential landlord and tenant Act, shall apply to elder group homes under this chapter.

Sec. 19. NEW SECTION. 231B.19 RESIDENT ADVOCATE COMMITTEES.

The commission of elder affairs shall adopt by rule procedures for appointing members of resident advocate committees for elder group homes.

Sec. 20. NEW SECTION. 231B.20 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 elder group home as credit toward sustaining the nursing assistant's or medication aide's certification.

Sec. 21. NEW SECTION. 231B.21 MEDICATION SETUP -- ADMINISTRATION AND STORAGE OF MEDICATIONS.

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

2. If medications are administered or stored by an elder group home, or if the elder group home provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the elder group home by the tenant or tenant'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 tenant 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 tenant.

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

f. If medication setup is provided by the elder group home at the request of the tenant or tenant's legal representative, or if medication administration is delegated to the elder group home by the tenant or tenant's legal representative, appropriate staff of the elder group home may transfer the medications in the tenant's presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.

g. Elder group home assistance with medication administration as specified in the occupancy agreement shall not require the elder group home to provide assistance with the storage of medications.

Sec. 22. Section 335.33, Code 2005, is amended to read as follows:

335.33 ELDER GROUP HOMES.

A county board of supervisors or county zoning commission shall consider an elder group home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section ~~231B.2~~ 231B.4, and may establish limitations regarding the proximity of one proposed elder group home to another.

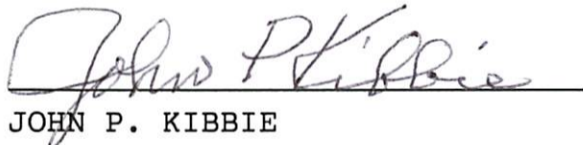
Sec. 23. Section 414.31, Code 2005, is amended to read as follows:

414.31 ELDER GROUP HOMES.

A city council or city zoning commission shall consider an elder family group home a family home, as defined in section 414.22, for purposes of zoning, in accordance with section ~~231B.2~~ 231B.4, and may establish limitations regarding the proximity of one proposed elder group home to another.



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 710, Eighty-first General Assembly.



MARGARET THOMSON
Chief Clerk of the House

Approved April 27, 2005



THOMAS J. VILSACK
Governor