

MAR 14 2003
APPROPRIATIONS

HOUSE FILE 582
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 233)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of elder family homes, elder
2 group homes, and assisted living programs, providing for
3 appropriation of fees, and providing penalties.

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

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HF 582

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

3 6. To adopt rules designating a fee to be assessed to each
4 building, structure, or facility for which a fire safety
5 inspection or plan review by the state fire marshal is
6 required ~~as-a-condition-of-licensure~~ by law. The fee
7 designated by rule shall be set in an amount that is
8 reasonably related to the costs of conducting the applicable
9 inspection or plan review. The fees collected by the state
10 fire marshal shall be retained by the state fire marshal and
11 deposited in the-general a separate fund of created in the
12 state treasury under the authority of the state fire marshal
13 and are appropriated to the state fire marshal to carry out
14 the purpose of this subsection. Amounts deposited in the fund
15 shall not be transferred, used, obligated, appropriated, or
16 otherwise encumbered, except as provided in this subsection.
17 Notwithstanding section 12C.7, subsection 2, interest or
18 earnings on moneys deposited in the fund shall be credited to
19 the fund. Notwithstanding section 8.33, amounts deposited in
20 the fund that remain unexpended or unencumbered at the close
21 of the fiscal year shall remain in the fund for utilization as
22 provided in this subsection for the following fiscal year.

23 Sec. 2. Section 135C.33, subsection 5, paragraph e, Code
24 2003, is amended to read as follows:

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

28 Sec. 3. Section 231B.1, subsection 2, Code 2003, is
29 amended by striking the subsection.

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

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

1 third degree of consanguinity or affinity.

2 Sec. 5. Section 231B.2, subsection 1, Code 2003, is
3 amended to read as follows:

4 1. The department of elder affairs, in cooperation with
5 the department of inspections and appeals, shall establish by
6 rule in accordance with chapter 17A a special classification
7 for elder group homes. An elder group home established
8 pursuant to this subsection is exempt from the requirements of
9 section 135.63.

10 Sec. 6. Section 231B.2, subsection 2, unnumbered paragraph
11 1, Code 2003, is amended to read as follows:

12 The department of elder affairs, in cooperation with the
13 department of inspections and appeals, shall adopt rules to
14 establish requirements for certification of elder group homes.
15 The requirements shall include but are not limited to all of
16 the following:

17 Sec. 7. Section 231B.2, subsection 2, paragraph c, Code
18 2003, is amended to read as follows:

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

24 Sec. 8. Section 231B.2, subsections 3 through 5, Code
25 2003, are amended to read as follows:

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

29 4. A provider under the special classification shall
30 comply with the rules adopted by the department of elder
31 affairs, in cooperation with the department of inspections and
32 appeals, for an elder group home.

33 5. Inspections and certification services shall be
34 provided by the department of inspections and appeals.

35 ~~However, beginning July 1, 1994, the department may enter into~~

1 ~~contracts-with-the-area-agencies-on-aging-to-provide-these~~
2 ~~services.~~

3 Sec. 9. Section 231B.3, subsection 2, Code 2003, is
4 amended to read as follows:

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

10 Sec. 10. Section 231B.4, Code 2003, is amended to read as
11 follows:

12 231B.4 APPLICABILITY.

13 1. This chapter shall not be construed to require that a
14 facility, currently licensed or licensed as a different type
15 of facility and serving persons sixty years of age or older,
16 also comply with the requirements of this chapter.

17 2. This chapter shall apply only to those elder group
18 homes certified by the department of elder affairs prior to
19 July 1, 2003. Applications for certification as an elder
20 group home shall not be accepted or approved on or after July
21 1, 2003.

22 Sec. 11. Section 231C.2, subsections 1 and 6, Code 2003,
23 are amended to read as follows:

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

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

4 Sec. 12. Section 231C.2, subsection 2, Code 2003, is
5 amended by striking the subsection.

6 Sec. 13. Section 231C.2, Code 2003, is amended by adding
7 the following new subsections:

8 NEW SUBSECTION. 2A. "Governmental unit" means the state,
9 or any county, municipality, or other political subdivision or
10 any department, division, board, or other agency of any of
11 these entities.

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

15 NEW SUBSECTION. 5A. "Recognized accrediting entity" means
16 a nationally recognized accrediting entity that the department
17 of elder affairs, in cooperation with the department of
18 inspections and appeals, recognizes as having specific
19 assisted living program standards equivalent to the standards
20 established by the department of elder affairs, in cooperation
21 with the department of inspections and appeals, for assisted
22 living programs.

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

26 Sec. 14. Section 231C.3, Code 2003, is amended by striking
27 the section and inserting in lieu thereof the following:

28 231C.3 CERTIFICATION OF ASSISTED LIVING PROGRAMS.
29 1. The department of elder affairs, in cooperation with
30 the department of inspections and appeals, shall establish, by
31 rule in accordance with chapter 17A, a program for
32 certification and monitoring of assisted living programs. The
33 department of elder affairs, in cooperation with the
34 department of inspections and appeals, may adopt by reference
35 with or without amendment, nationally recognized standards and

1 rules for assisted living programs. The rules shall include
2 specification of recognized accrediting entities and
3 provisions related to dementia-specific programs. The
4 standards and rules shall be formulated in consultation with
5 affected industry, professional, and consumer groups and shall
6 be designed to accomplish the purposes of this chapter and
7 shall include but are not limited to rules relating to all of
8 the following:

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

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

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

19 2. In addition to the adoption of standards and rules for
20 assisted living programs, the department of elder affairs, in
21 cooperation with the department of inspections and appeals,
22 and in consultation with affected industry, professional, and
23 consumer groups, shall issue interpretive guidelines,
24 including the expectations of program certification monitors,
25 to provide direction to assisted living programs in complying
26 with certification requirements.

27 3. Each assisted living program operating in this state
28 shall be certified by the department of inspections and
29 appeals. If an assisted living program is voluntarily
30 accredited by a recognized accrediting entity, the department
31 of inspections and appeals shall certify the assisted living
32 program on the basis of the voluntary accreditation. An
33 assisted living program that is certified by the department on
34 the basis of voluntary accreditation shall not be subject to
35 payment of the certification fee prescribed in section

1 231C.19, but shall be subject to an administrative fee as
2 prescribed by rule. An assisted living program certified
3 under this section is exempt from the requirements of section
4 135.63 relating to certificate of need requirements.

5 4. The owner or manager of a certified assisted living
6 program shall comply with the rules adopted by the department
7 of elder affairs, in cooperation with the department of
8 inspections and appeals, for an assisted living program. A
9 person including a governmental unit shall not represent an
10 assisted living program to the public as an assisted living
11 program or as a certified assisted living program unless and
12 until the program is certified pursuant to this chapter.

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

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

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

31 a. Have full access at reasonable times to all records,
32 materials, and common areas pertaining to the provision of
33 services and care to the tenants of a program during
34 certification and monitoring of programs seeking
35 certification, currently certified, or claiming to be

1 certified.

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

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

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

14 8. A department, agency, or officer of this state or of
15 any political subdivision shall not pay or approve for payment
16 from public funds any amount to an assisted living program for
17 an actual or prospective tenant, unless the program holds a
18 current certificate issued by the department of inspections
19 and appeals and meets all current requirements for
20 certification.

21 9. The department of elder affairs, in cooperation with
22 the department of inspections and appeals, shall adopt rules
23 regarding the conducting or operating of another business or
24 activity in the same physical structure in which the assisted
25 living program is provided, if the business or activity serves
26 nontenants. The rules shall be developed in consultation with
27 affected industry, professional, and consumer groups.

28 10. An assisted living program shall comply with section
29 135C.33.

30 Sec. 15. Section 231C.4, Code 2003, is amended to read as
31 follows:

32 231C.4 FIRE AND SAFETY STANDARDS.

33 The state fire marshal shall adopt rules, in coordination
34 with the department of elder affairs and the department of
35 inspections and appeals, relating to the certification or

1 ~~voluntary-accreditation~~ and monitoring of the fire and safety
2 standards of certified ~~or-voluntarily-accredited~~ assisted
3 living programs.

4 Sec. 16. Section 231C.5, Code 2003, is amended by striking
5 the section and inserting in lieu thereof the following:

6 231C.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

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

20 2. An assisted living program occupancy agreement shall
21 clearly describe the rights and responsibilities of the tenant
22 and the program. The occupancy agreement shall also include
23 but is not limited to inclusion of all of the following
24 information in the body of the agreement or in the supporting
25 documents and attachments:

26 a. A description of all fees, charges, and rates
27 describing tenancy and basic services covered, and any
28 additional and optional services and their related costs.

29 b. A statement regarding the impact of the fee structure
30 on third-party payments, and whether third-party payments and
31 resources are accepted by the assisted living program.

32 c. The procedure followed for nonpayment of fees.

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

1 e. The term of the occupancy agreement.

2 f. A statement that the assisted living program will
3 notify the tenant or the tenant's representative, as
4 applicable, in writing at least thirty days prior to any
5 change being made in the occupancy agreement with the
6 following exceptions:

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

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

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

19 h. Occupancy, involuntary transfer, and transfer criteria
20 and procedures.

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

25 j. A statement of the prohibition against retaliation as
26 prescribed in section 231C.14.

27 k. The emergency response policy.

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

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

35 3. Occupancy agreements and related documents executed by

1 each tenant or tenant's representative shall be maintained by
2 the assisted living program in program files from the date of
3 execution until three years from the date the occupancy
4 agreement is terminated. Occupancy agreements and related
5 documents shall be made available for on-site inspection to
6 the department of inspections and appeals upon request and at
7 reasonable times.

8 Sec. 17. Section 231C.6, Code 2003, is amended by striking
9 the section and inserting in lieu thereof the following:

10 231C.6 RETENTION IN AN ASSISTED LIVING PROGRAM.

11 1. The department of inspections and appeals shall not
12 require the removal and relocation of a tenant of an assisted
13 living program if, based upon an assessment by the department
14 of inspections and appeals, the department of inspections and
15 appeals determines that the tenant's presence in the program
16 does not endanger the tenant or other tenants and the tenant
17 is able to receive necessary care through services provided by
18 the program in accordance with the program's certification or
19 through services obtained by the tenant from providers other
20 than the program. In assessing whether it is possible for the
21 tenant to be provided or to obtain necessary care without
22 relocating, the department of inspections and appeals shall
23 consider all relevant factors, including placement preference
24 expressed by the tenant, the tenant's representative, or
25 others, and the approval of the program.

26 2. Notwithstanding a determination by the department of
27 inspections and appeals that a tenant's needs exceed occupancy
28 criteria as established in this chapter or rules adopted
29 pursuant to this chapter, the department of inspections and
30 appeals may grant a waiver to the assisted living program to
31 allow the tenant to remain in the program if, not later than
32 ten business days after the date the program is informed of
33 the specific basis of the department of inspections and
34 appeals' determination, the department of inspections and
35 appeals receives all of the following obtained by the assisted

1 living program:

2 a. A written assessment from the tenant's primary care
3 provider that the tenant is appropriately placed.

4 b. A written statement from the tenant, or from the
5 tenant's legal representative if the tenant lacks capacity to
6 provide a written statement, that the tenant wishes to remain
7 in the program.

8 c. A written statement from the program that the program
9 approves of the tenant remaining in the program.

10 3. If the department of inspections and appeals grants a
11 waiver pursuant to subsection 2, the waiver shall be valid for
12 a period of six months, unless the tenant's medical and
13 functional status otherwise requires. The department of
14 inspections and appeals may continue an existing waiver for
15 any subsequent period of six months each, upon request of the
16 program. The department of elder affairs, in cooperation with
17 the department of inspections and appeals, shall adopt rules
18 regarding administration of the waivers.

19 4. An assisted living program that has been granted a
20 waiver for a tenant under subsection 2 shall not be found in
21 noncompliance of occupancy criteria if the program complies
22 with the requirements of the waiver.

23 5. a. If the department of inspections and appeals
24 determines that a tenant is inappropriately placed in the
25 assisted living program or that a tenant's needs exceed
26 occupancy criteria and a waiver is not requested and obtained
27 in accordance with the requirements of subsection 2, the
28 program shall transfer the tenant.

29 b. The tenant shall be provided a transition period of
30 thirty days following the date of receipt of the notice of the
31 transfer to relinquish tenancy in the program.

32 c. Notwithstanding paragraph "b", if the tenant's
33 continued tenancy in the assisted living program following
34 provision of notice would present a danger to the safety or
35 well-being of the tenant, other tenants, or employees of the

1 assisted living program, the transition period of thirty days
2 is waived and the transition provisions relating to an
3 involuntary transfer as provided in the occupancy agreement
4 shall instead apply.

5 Sec. 18. NEW SECTION. 231C.8 COMPLAINTS.

6 1. Any person with concerns regarding the operations or
7 service delivery of an assisted living program may file a
8 complaint with the department of inspections and appeals. The
9 name of the person who files a complaint with the department
10 of inspections and appeals and any personal identifying
11 information of the person or any tenant identified in the
12 complaint shall be kept confidential and shall not be subject
13 to discovery, subpoena, or other means of legal compulsion for
14 its release to a person other than department of inspections
15 and appeals' employees involved with the complaint.

16 2. The department of elder affairs, in cooperation with
17 the department of inspections and appeals, shall establish
18 procedures for the disposition of complaints received in
19 accordance with this section.

20 Sec. 19. NEW SECTION. 231C.9 INFORMAL REVIEW.

21 If an assisted living program contests the regulatory
22 insufficiencies of a monitoring evaluation or complaint
23 investigation, the program shall submit written information,
24 demonstrating that the program was in compliance with the
25 applicable requirement at the time of the monitoring
26 evaluation or complaint investigation, in support of the
27 contesting of the regulatory insufficiencies, to the
28 department of inspections and appeals for review. The
29 department of inspections and appeals shall review the written
30 information submitted within ten working days of the receipt
31 of the information. At the conclusion of the review, the
32 department of inspections and appeals may affirm, modify, or
33 dismiss the regulatory insufficiencies. If the regulatory
34 insufficiencies are modified or dismissed, the department of
35 inspections and appeals shall notify the program in writing of

1 the reasons for the modification or dismissal and in the case
2 of a complaint investigation, shall notify the complainant, if
3 known, of the reasons for the modification or dismissal.

4 Sec. 20. NEW SECTION. 231C.10 PUBLIC DISCLOSURE OF
5 FINDINGS.

6 Following a monitoring evaluation or complaint
7 investigation of an assisted living program by the department
8 of inspections and appeals pursuant to this chapter, the
9 department of inspections and appeals' final findings with
10 respect to compliance by the assisted living program with
11 requirements for certification shall be made available to the
12 public in a readily available form and place. Other
13 information relating to an assisted living program that is
14 obtained by the department of inspections and appeals which
15 does not constitute the department's final findings from a
16 monitoring evaluation or complaint investigation of the
17 assisted living program shall not be made available to the
18 public except in proceedings involving the denial, suspension,
19 or revocation of a certificate under this chapter.

20 Sec. 21. NEW SECTION. 231C.11 DENIAL, SUSPENSION, OR
21 REVOCATION -- CONDITIONAL OPERATION.

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

29 a. Cruelty or indifference to assisted living program
30 tenants.

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

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

- 1 d. Obtaining or attempting to obtain or retain a
2 certificate by fraudulent means, misrepresentation, or by
3 submitting false information.
- 4 e. Habitual intoxication or addiction to the use of drugs
5 by the applicant, administrator, executive director, manager,
6 or supervisor of the assisted living program.
- 7 f. Securing the devise or bequest of the property of a
8 tenant of an assisted living program by undue influence.
- 9 g. Failure or neglect to maintain a continuing education
10 and training program for all personnel employed in the
11 assisted living program.
- 12 h. Founded dependent adult abuse as defined in section
13 235B.2.
- 14 i. In the case of any officer, member of the board of
15 directors, trustee, or designated manager of the program or
16 any stockholder, partner, or individual who has greater than a
17 ten percent equity interest in the program, who has or has had
18 an ownership interest in an assisted living program, home
19 health agency, residential care facility, or licensed nursing
20 facility in any state which has been closed due to removal of
21 program, agency, or facility licensure or certification or
22 involuntary termination from participation in either the
23 medical assistance or Medicare programs, or who has been found
24 to have failed to provide adequate protection or services for
25 tenants to prevent abuse or neglect.
- 26 j. In the case of a certificate applicant or an existing
27 certified owner or operator who is an entity other than an
28 individual, the person is in a position of control or is an
29 officer of the entity and engages in any act or omission
30 proscribed by this chapter.
- 31 k. For any other reason as provided by law or
32 administrative rule.
- 33 2. The department of inspections and appeals may as an
34 alternative to denial, suspension, or revocation conditionally
35 issue or continue a certificate dependent upon the performance

1 by the assisted living program of reasonable conditions within
2 a reasonable period of time as set by the department of
3 inspections and appeals so as to permit the program to
4 commence or continue the operation of the program pending full
5 compliance with this chapter or the rules adopted pursuant to
6 this chapter. If the assisted living program does not make
7 diligent efforts to comply with the conditions prescribed, the
8 department of inspections and appeals may, under the
9 proceedings prescribed by this chapter, suspend, or revoke the
10 certificate. An assisted living program shall not be operated
11 on a conditional certificate for more than one year.

12 Sec. 22. NEW SECTION. 231C.12 NOTICE -- HEARINGS.

13 1. The denial, suspension, or revocation of a certificate
14 shall be effected by delivering to the applicant or
15 certificate holder by restricted certified mail or by personal
16 service a notice setting forth the particular reasons for such
17 action. Such denial, suspension, or revocation shall become
18 effective thirty days after the mailing or service of the
19 notice, unless the applicant or certificate holder, within
20 such thirty-day period, requests a hearing, in writing, of the
21 department of inspections and appeals, in which case the
22 notice shall be deemed to be suspended.

23 2. The denial, suspension, or revocation of a certificate
24 may be appealed in accordance with rules adopted by the
25 department of inspections and appeals in accordance with
26 chapter 17A.

27 3. When the department of inspections and appeals finds
28 that an imminent danger to the health or safety of tenants of
29 an assisted living program exists which requires action on an
30 emergency basis, the department of inspections and appeals may
31 direct removal of all tenants of an assisted living program
32 and suspend the certificate prior to a hearing.

33 Sec. 23. NEW SECTION. 231C.13 DEPARTMENT NOTIFIED OF
34 CASUALTIES.

35 The department of inspections and appeals shall be notified

1 within twenty-four hours, by the most expeditious means
2 available, of any accident causing substantial injury or
3 death, and any substantial fire or natural or other disaster
4 occurring at or near an assisted living program.

5 Sec. 24. NEW SECTION. 231C.14 RETALIATION BY ASSISTED
6 LIVING PROGRAM PROHIBITED.

7 1. An assisted living program shall not discriminate or
8 retaliate in any way against a tenant, tenant's family, or an
9 employee of the program who has initiated or participated in
10 any proceeding authorized by this chapter. An assisted living
11 program that violates this section is subject to a penalty as
12 established by administrative rule in accordance with chapter
13 17A and to be assessed and collected by the department of
14 inspections and appeals and paid into the state treasury to be
15 credited to the general fund of the state, or to immediate
16 revocation of the program's certificate.

17 2. Any attempt to transfer, from an assisted living
18 program, a tenant by whom or upon whose behalf a complaint has
19 been submitted to the department under section 231C.8, within
20 ninety days after the filing of the complaint or the
21 conclusion of any proceeding resulting from the complaint,
22 raises a rebuttable presumption that the action was taken by
23 the program in retaliation for the filing of the complaint,
24 except in situations in which the tenant is transferred due to
25 occupancy and transfer criteria.

26 Sec. 25. NEW SECTION. 231C.15 CIVIL PENALTIES.

27 The department of elder affairs, in cooperation with the
28 department of inspections and appeals, may establish by rule,
29 in accordance with chapter 17A, civil penalties for the
30 following violations by an assisted living program:

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

34 2. Following receipt of notice from the department of
35 inspections and appeals, continued failure or refusal to

1 comply within a prescribed time frame with regulatory
2 requirements that have a direct relationship to the health,
3 safety, or security of program tenants.

4 Sec. 26. NEW SECTION. 231C.16 CRIMINAL PENALTIES.

5 1. A person establishing, conducting, managing, or
6 operating any assisted living program without a certificate is
7 guilty of a serious misdemeanor. Each day of continuing
8 violation after conviction or notice from the department of
9 inspections and appeals by certified mail of a violation shall
10 be considered a separate offense or chargeable offense. A
11 person establishing, conducting, managing, or operating an
12 assisted living program without a certificate may be
13 temporarily or permanently restrained by a court of competent
14 jurisdiction from such activity in an action brought by the
15 state.

16 2. A person who prevents or interferes with or attempts to
17 impede in any way any duly authorized representative of the
18 department of inspections and appeals in the lawful
19 enforcement of this chapter or of the rules adopted pursuant
20 to this chapter is guilty of a simple misdemeanor. As used in
21 this subsection, lawful enforcement includes but is not
22 limited to:

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

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

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

30 Sec. 27. NEW SECTION. 231C.17 NURSING ASSISTANT AND
31 MEDICATION AIDE -- CERTIFICATION.

32 The department of inspections and appeals, in cooperation
33 with other appropriate agencies, shall establish a procedure
34 to allow nursing assistants or medication aides to claim work
35 within an assisted living program as credit toward sustaining

1 the nursing assistant's or medication aide's certification.

2 Sec. 28. NEW SECTION. 231C.18 COORDINATION OF THE LONG-
3 TERM CARE SYSTEM -- TRANSITIONAL PROVISIONS.

4 1. An elder group home certified under chapter 231B prior
5 to July 1, 2003, shall be exempt from the requirements of this
6 chapter. If an elder group home certified under chapter 231B
7 prior to July 1, 2003, seeks certification as an assisted
8 living program on or after July 1, 2003, the elder group home
9 shall be granted a conditional assisted living program
10 certification by the department of inspections and appeals for
11 a period of one year from the date the conditional certificate
12 is issued. At the end of the one-year period, the elder group
13 home shall meet the requirements of this chapter to receive
14 subsequent certification as an assisted living program.

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

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

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

30 Sec. 29. NEW SECTION. 231C.19 IOWA ASSISTED LIVING FEES.

31 The department of inspections and appeals shall collect and
32 retain assisted living program certification and related fees
33 as established by rule in accordance with chapter 17A. An
34 assisted living program that is certified by the department of
35 inspections and appeals on the basis of voluntary

1 accreditation by a recognized accrediting entity shall not be
2 subject to payment of the certification fee, but shall be
3 subject to an administrative fee as prescribed by rule. Fees
4 collected and retained pursuant to this section shall be
5 deposited into an assisted living program fund created in the
6 state treasury under the authority of the department of
7 inspections and appeals and are appropriated to the department
8 of inspections and appeals to carry out the purposes of this
9 chapter. Amounts deposited in the fund shall not be
10 transferred, used, obligated, appropriated, or otherwise
11 encumbered except as provided in this section.

12 Notwithstanding section 12C.7, subsection 2, interest or
13 earnings on moneys deposited into the fund shall be credited
14 to the fund. Notwithstanding section 8.33, amounts deposited
15 in the fund that remain unexpended or unencumbered at the
16 close of the fiscal year shall remain in the fund for
17 utilization as provided in this section for the following
18 fiscal year.

19 Sec. 30. Section 235B.3, subsection 2, paragraph d, Code
20 2003, is amended to read as follows:

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

25 Sec. 31. Chapter 231A, Code 2003, is repealed.

26 Sec. 32. TRANSITION OF STAFF. All employees of the
27 department of elder affairs performing functions related to
28 certification and monitoring of or complaint investigations
29 related to assisted living programs as of June 30, 2003, shall
30 become employees of the department of inspections and appeals
31 without loss of classification, pay, or benefits, effective
32 July 1, 2003. All employees of the department of elder
33 affairs performing functions related to affordable assisted
34 living as of June 30, 2003, shall become employees of the Iowa
35 finance authority without loss of classification, pay, or

1 benefits, effective July 1, 2003.

2 EXPLANATION

3 This bill provides for regulation of elder group homes and
4 assisted living programs.

5 The bill provides for regulation of elder group homes by
6 the department of elder affairs in cooperation with the
7 department of inspections and appeals. The bill changes the
8 definition of elder group home to mean a single-family
9 residence operated by a person, rather than being the
10 residence of the person providing room, board, and personal
11 care to elders. The bill also provides that rather than being
12 owner-occupied or owned by a nonprofit corporation and
13 occupied by a resident manager, the elder group home is
14 required only to be staffed by an on-site manager 24 hours per
15 day, seven days per week. The bill also provides that the
16 provisions of the Code chapter apply only to elder group homes
17 certified by the department of elder affairs prior to July 1,
18 2003, and that applications for certification as an elder
19 group home are not to be accepted or approved on or after July
20 1, 2003.

21 The bill provides for regulation of assisted living
22 programs by directing the department of elder affairs, in
23 cooperation with the department of inspections and appeals, to
24 establish, by rule, a program for certification and monitoring
25 related to assisted living programs. The rules are to be
26 formulated in consultation with affected industry,
27 professional, and consumer groups. In addition to the rules,
28 interpretive guidelines are also to be issued. Each assisted
29 living program operating in the state is to be certified by
30 the department of inspections and appeals. If an assisted
31 living program is voluntarily accredited by a recognized
32 accrediting entity, the department of inspections and appeals
33 is to certify the program based upon the voluntary
34 accreditation. The bill provides specifically that if the
35 tenant is terminally ill and has elected to receive hospice

1 services under the federal Medicare program from a Medicare-
2 certified hospice program, the assisted living program and the
3 hospice program are to enter an agreement under which the
4 hospice program retains professional management responsibility
5 for those services.

6 The bill provides that the department of elder affairs in
7 cooperation with the department of inspections and appeals may
8 establish by administrative rule a special classification for
9 affordable assisted living programs. The bill also provides
10 that a department, agency, or officer of this state, or of any
11 political subdivision shall not pay or approve for payment
12 from public funds any amount to an assisted living program for
13 an actual or prospective tenant, unless the program holds a
14 current certificate and meets all requirements for
15 certification. The bill also directs the department of elder
16 affairs in cooperation with the department of inspections and
17 appeals to adopt rules regarding the conducting or operating
18 of another business or activity in the facility in which the
19 assisted living program is provided, if the business or
20 activity serves nontenants. The rules are to be developed in
21 consultation with affected industry, professional, and
22 consumer groups.

23 The bill specifies requirements for written occupancy
24 agreements and provides for retention of a tenant in an
25 assisted living facility, notwithstanding a determination by
26 the department of inspections and appeals that the tenant's
27 needs exceed the occupancy criteria established.

28 The bill provides for the filing and disposition of
29 complaints; provides for an informal review of contests to the
30 results of a monitoring evaluation or complaint investigation;
31 provides for public disclosure of the final findings with
32 respect to a monitoring evaluation or complaint investigation;
33 provides the bases for the denial, suspension, or revocation
34 of certification and for conditional operation of a program as
35 an alternative to denial, suspension, or revocation of

1 certification; provides for notice and hearings related to
2 denial, suspension, or revocation of certification; provides
3 for the notification of the department of inspections and
4 appeals of any casualties at an assisted living program;
5 prohibits retaliation by an assisted living program against a
6 tenant, tenant's family, or an employee of the program who has
7 initiated or participated in any proceeding under the Code
8 chapter; establishes civil and criminal penalties for certain
9 violations of the bill; provides for nursing assistants and
10 medication aides to claim work within assisted living programs
11 as credit toward their certification; provides transitional
12 provisions for long-term care providers including elder group
13 homes by making elder group homes exempt from the requirements
14 of the assisted living chapter and providing for conditional
15 certification of an elder group home as an assisted living
16 facility if the elder group home was certified as an elder
17 group home prior to July 1, 2003, and seeks certification as
18 an assisted living program on or after July 1, 2003. The bill
19 provides for collection and retaining of assisted living
20 program fees by the department of inspections and appeals and
21 provides that if an assisted living program is certified based
22 upon voluntary accreditation, the program is not subject to
23 payment of the certification fee but is subject to payment of
24 an administrative fee as prescribed by rule.

25 The bill provides for transition of staff used in the
26 regulation of assisted living programs by providing that
27 employees of the department of elder affairs who performed
28 functions related to certification and monitoring of or
29 complaint investigations related to assisted living programs
30 as of June 30, 2003, are to become employees of the department
31 of inspections and appeals without loss of classification,
32 pay, or benefits, effective July 1, 2003. Additionally, all
33 employees of the department of elder affairs performing
34 functions related to affordable assisted living as of June 30,
35 2003, are to become employees of the Iowa finance authority

1 without loss of classification, pay, or benefits, effective
2 July 1, 2003.

3 The bill also repeals Code chapter 231A, relating to elder
4 family homes.

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Upmeyer, Ch.
Boddicker
Murphy

Substituted By,
S: 0582

HSB 233
HUMAN RESOURCES

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON BODDICKER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of elder family homes, elder
2 group homes, and assisted living programs, providing for
3 appropriation of fees, and providing penalties.

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

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

3 6. To adopt rules designating a fee to be assessed to each
4 building, structure, or facility for which a fire safety
5 inspection or plan review by the state fire marshal is
6 required ~~as-a-condition-of-licensure~~ by law. The fee
7 designated by rule shall be set in an amount that is
8 reasonably related to the costs of conducting the applicable
9 inspection or plan review. The fees collected by the state
10 fire marshal shall be retained by the state fire marshal and
11 deposited in the-general a separate fund of created in the
12 state treasury under the authority of the state fire marshal
13 and are appropriated to the state fire marshal to carry out
14 the purpose of this subsection. Amounts deposited in the fund
15 shall not be transferred, used, obligated, appropriated, or
16 otherwise encumbered, except as provided in this subsection.
17 Notwithstanding section 12C.7, subsection 2, interest or
18 earnings on moneys deposited in the fund shall be credited to
19 the fund. Notwithstanding section 8.33, amounts deposited in
20 the fund that remain unexpended or unencumbered at the close
21 of the fiscal year shall remain in the fund for utilization as
22 provided in this subsection for the following fiscal year.

23 Sec. 2. Section 135C.33, subsection 5, paragraph e, Code
24 2003, is amended to read as follows:

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

28 Sec. 3. Section 231B.1, subsection 2, Code 2003, is
29 amended by striking the subsection.

30 Sec. 4. Section 231B.2, subsection 1, Code 2003, is
31 amended to read as follows:

32 1. The department of elder affairs, in cooperation with
33 the department of inspections and appeals, shall establish by
34 rule in accordance with chapter 17A a special classification
35 for elder group homes. An elder group home established

1 pursuant to this subsection is exempt from the requirements of
2 section 135.63.

3 Sec. 5. Section 231B.2, subsection 2, unnumbered paragraph
4 1, Code 2003, is amended to read as follows:

5 The department of elder affairs, in cooperation with the
6 department of inspections and appeals, shall adopt rules to
7 establish requirements for certification of elder group homes.
8 The requirements shall include but are not limited to all of
9 the following:

10 Sec. 6. Section 231B.2, subsections 3 through 5, Code
11 2003, are amended to read as follows:

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

15 4. A provider under the special classification shall
16 comply with the rules adopted by the department of elder
17 affairs, in cooperation with the department of inspections and
18 appeals, for an elder group home.

19 5. Inspections and certification services shall be
20 provided by the department of inspections and appeals.
21 ~~However, beginning July 17, 1994, the department may enter into~~
22 ~~contracts with the area agencies on aging to provide these~~
23 ~~services.~~

24 Sec. 7. Section 231B.3, subsection 2, Code 2003, is
25 amended to read as follows:

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

31 Sec. 8. Section 231B.4, Code 2003, is amended to read as
32 follows:

33 231B.4 APPLICABILITY.

34 1. This chapter shall not be construed to require that a
35 facility, currently licensed or licensed as a different type

1 of facility and serving persons sixty years of age or older,
2 also comply with the requirements of this chapter.

3 2. This chapter shall apply only to those elder group
4 homes certified by the department of elder affairs prior to
5 July 1, 2003. Applications for certification as an elder
6 group home shall not be accepted or approved on or after July
7 1, 2003.

8 Sec. 9. Section 231C.2, subsections 1 and 6, Code 2003,
9 are amended to read as follows:

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

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

25 Sec. 10. Section 231C.2, subsection 2, Code 2003, is
26 amended by striking the subsection.

27 Sec. 11. Section 231C.2, Code 2003, is amended by adding
28 the following new subsections:

29 NEW SUBSECTION. 2A. "Governmental unit" means the state,
30 or any county, municipality, or other political subdivision or
31 any department, division, board, or other agency of any of
32 these entities.

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

1 NEW SUBSECTION. 5A. "Recognized accrediting entity" means
2 a nationally recognized accrediting entity that the department
3 of elder affairs, in cooperation with the department of
4 inspections and appeals, recognizes as having specific
5 assisted living program standards equivalent to the standards
6 established by the department of elder affairs, in cooperation
7 with the department of inspections and appeals, for assisted
8 living programs.

9 NEW SUBSECTION. 7. "Tenant's representative" means a
10 tenant's legal representative or any representative authorized
11 by the tenant in the tenant's occupancy agreement to act on
12 behalf of the tenant.

13 Sec. 12. Section 231C.3, Code 2003, is amended by striking
14 the section and inserting in lieu thereof the following:

15 231C.3 CERTIFICATION OF ASSISTED LIVING PROGRAMS.

16 1. The department of elder affairs, in cooperation with
17 the department of inspections and appeals, shall establish, by
18 rule in accordance with chapter 17A, a program for
19 certification and monitoring of assisted living programs. The
20 department of elder affairs, in cooperation with the
21 department of inspections and appeals, may adopt by reference
22 with or without amendment, nationally recognized standards and
23 rules for assisted living programs. The rules shall include
24 specification of recognized accrediting entities. The
25 standards and rules shall be formulated in consultation with
26 affected industry, professional, and consumer groups and shall
27 be designed to accomplish the purposes of this chapter and
28 shall include but are not limited to rules relating to all of
29 the following:

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

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

1 this chapter.

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

5 2. Each assisted living program operating in this state
6 shall be certified by the department of inspections and
7 appeals. If an assisted living program is voluntarily
8 accredited by a recognized accrediting entity, the department
9 shall certify the assisted living program on the basis of the
10 voluntary accreditation. An assisted living program that is
11 certified by the department on the basis of voluntary
12 accreditation shall not be subject to payment of the
13 certification fees prescribed in section 231C.19. An assisted
14 living program certified under this section is exempt from the
15 requirements of section 135.63 relating to certificate of need
16 requirements.

17 3. The owner or manager of a certified assisted living
18 program shall comply with the rules adopted by the department
19 of elder affairs, in cooperation with the department of
20 inspections and appeals, for an assisted living program. A
21 person including a governmental unit shall not represent an
22 assisted living program to the public as a certified program
23 unless and until the program is certified pursuant to this
24 chapter.

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

32 b. If a tenant is terminally ill and has elected to
33 receive hospice services under the federal Medicare program
34 from a Medicare-certified hospice program, the assisted living
35 program and the Medicare-certified hospice program shall enter

1 into a written agreement under which the hospice program
2 retains professional management responsibility for those
3 services.

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

8 a. Have full access at reasonable times to all records and
9 common areas pertaining to the care provided to the tenants of
10 a program during certification and monitoring of programs
11 seeking certification or currently certified.

12 b. With the consent of the tenant, visit the assisted
13 living program.

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

18 6. The department of elder affairs, in cooperation with
19 the department of inspections and appeals, may also establish
20 by rule in accordance with chapter 17A a special
21 classification for affordable assisted living programs. The
22 rules shall be formulated in consultation with affected
23 industry, professional, and consumer groups.

24 7. A department, agency, or officer of this state or of
25 any political subdivision shall not pay or approve for payment
26 from public funds any amount to an assisted living program for
27 an actual or prospective tenant, unless the program holds a
28 current certificate issued by the department of inspections
29 and appeals and meets all current requirements for
30 certification.

31 8. The department of elder affairs, in cooperation with
32 the department of inspections and appeals, shall adopt rules
33 regarding the conducting or operating of another business or
34 activity in the same physical structure in which the assisted
35 living program is provided, if the business or activity serves

1 primarily nontenants. The rules shall be developed in
2 consultation with affected industry, professional, and
3 consumer groups.

4 9. An assisted living program shall comply with section
5 135C.33.

6 Sec. 13. Section 231C.4, Code 2003, is amended to read as
7 follows:

8 231C.4 FIRE AND SAFETY STANDARDS.

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

15 Sec. 14. Section 231C.5, Code 2003, is amended by striking
16 the section and inserting in lieu thereof the following:

17 231C.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

18 1. An assisted living program shall not operate in this
19 state unless a written occupancy agreement, as prescribed in
20 subsection 2, is executed between the assisted living program
21 and each tenant or tenant's representative, prior to the
22 tenant's occupancy, and unless the assisted living program
23 operates in accordance with the terms of the occupancy
24 agreement. The assisted living program shall deliver to the
25 tenant or tenant's representative a complete copy of the
26 occupancy agreement and all supporting documents and
27 attachments and shall deliver a written copy of changes to the
28 occupancy agreement if any changes to the copy originally
29 delivered are subsequently made.

30 2. An assisted living program occupancy agreement shall
31 clearly describe the rights and responsibilities of the tenant
32 and the program. The occupancy agreement shall also include
33 but is not limited to inclusion of all of the following
34 information in the body of the agreement or in the supporting
35 documents and attachments:

- 1 a. A description of all fees, charges, and rates
- 2 describing tenancy and basic services covered, and any
- 3 additional and optional services and their related costs.
- 4 b. A statement regarding the impact of the fee structure
- 5 on third-party payments, and whether third-party payments and
- 6 resources are accepted by the assisted living program.
- 7 c. The procedure followed for nonpayment of fees.
- 8 d. Identification of the party responsible for payment of
- 9 fees and identification of the tenant's representative, if
- 10 any.
- 11 e. The term of the occupancy agreement.
- 12 f. A guarantee that the assisted living program will
- 13 notify the tenant or the tenant's representative, as
- 14 applicable, in writing at least thirty days prior to any
- 15 change being made in the occupancy agreement with the
- 16 following exceptions:
 - 17 (1) When the tenant's health status or behavior
 - 18 constitutes a substantial threat to the health or safety of
 - 19 the tenant, other tenants, or others, including when the
 - 20 tenant refuses to consent to relocation.
 - 21 (2) When an emergency or a significant change in the
 - 22 tenant's condition results in the need for the provision of
 - 23 services that exceed the type or level of services included in
 - 24 the occupancy agreement and the necessary services cannot be
 - 25 safely provided by the assisted living program.
- 26 g. A guarantee that all tenant information will be
- 27 maintained in a confidential manner to the extent required
- 28 under state and federal law.
- 29 h. Occupancy, involuntary discharge, and transfer criteria
- 30 and procedures.
- 31 i. The program's policies and procedures for addressing
- 32 grievances between the assisted living program and the
- 33 tenants, including grievances relating to transfer and
- 34 occupancy.
- 35 j. The emergency response policy.

1 k. The staffing policy which specifies if the staff is
2 available twenty-four hours per day, if task delegation will
3 be used, and how staffing will be adapted to meet changing
4 tenant needs.

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

8 3. Occupancy agreements and related documents executed by
9 each tenant or tenant's representative shall be maintained by
10 the assisted living program in program files from the date of
11 execution until three years from the date the occupancy
12 agreement is terminated. Occupancy agreements and related
13 documents shall be made available for on-site inspection to
14 the department of inspections and appeals upon request and at
15 reasonable times.

16 Sec. 15. Section 231C.6, Code 2003, is amended by striking
17 the section and inserting in lieu thereof the following:

18 231C.6 RETENTION IN AN ASSISTED LIVING PROGRAM.

19 1. The department of inspections and appeals shall not
20 require the removal and relocation of a tenant of an assisted
21 living program if, based upon an assessment by the department,
22 the department determines that the tenant's presence in the
23 program does not endanger the tenant or other tenants and the
24 tenant is able to receive necessary care through services
25 provided by the program in accordance with the program's
26 certification or through services obtained by the tenant from
27 providers other than the program. In assessing whether it is
28 possible for the tenant to be provided or to obtain necessary
29 care without relocating, the department of inspections and
30 appeals shall consider all relevant factors, including
31 placement preference expressed by the tenant, the tenant's
32 representative, or others, and the approval of the program.

33 2. Notwithstanding a determination by the department of
34 inspections and appeals that a tenant's needs exceed occupancy
35 criteria as established in this chapter or rules adopted

1 pursuant to this chapter, the department may grant a waiver to
2 the assisted living program to allow the tenant to remain in
3 the program if, not later than ten business days after the
4 date the program is informed of the specific basis of the
5 department's determination, the department receives all of the
6 following obtained by the assisted living program:

7 a. A written assessment from the tenant's physician that
8 the tenant is appropriately placed.

9 b. A written statement from the tenant, or from the
10 tenant's legal representative if the tenant lacks capacity to
11 provide a written statement, that the tenant wishes to remain
12 in the program.

13 c. A written statement from the program that the program
14 approves of the tenant remaining in the program.

15 3. If a waiver is granted pursuant to subsection 2, the
16 department of inspections and appeals shall regularly monitor
17 the tenant's medical and functional information, for the
18 duration of the waiver, to determine the continued
19 appropriateness of the waiver. If the department of
20 inspections and appeals does not determine a waiver to be
21 inappropriate at any time prior to the completion of the six-
22 month period under the waiver, the waiver granted pursuant to
23 subsection 2 shall be valid for a six-month period. The
24 department may continue an existing waiver for any subsequent
25 periods of up to six months, upon request of the program, if
26 continuation is deemed appropriate by the department. At no
27 time shall ten percent or more of the program's tenancy be
28 based upon waivers. The department of elder affairs, in
29 cooperation with the department of inspections and appeals,
30 shall adopt rules regarding administration of the waivers.
31 4. An assisted living program that has been granted a
32 waiver for a tenant under subsection 2 shall not be found in
33 noncompliance of occupancy criteria if the program complies
34 with the requirements of the waiver.

35 5. a. If the department of inspections and appeals

1 determines that a tenant is inappropriately placed in the
2 assisted living program or that a tenant's needs exceed
3 occupancy criteria and a waiver is not requested and obtained
4 in accordance with the requirements of subsection 2, the
5 program shall discharge the tenant.

6 b. The tenant shall be provided a transition period of
7 thirty days following the date of notice of the discharge to
8 relinquish tenancy in the program.

9 c. Notwithstanding paragraph "b", if the tenant's
10 continued tenancy in the assisted living program following
11 provision of notice would present a danger to the safety or
12 well-being of the tenant, other tenants, or employees of the
13 assisted living program, the transition period of thirty days
14 is waived and the transition provisions relating to an
15 involuntary discharge as provided in the occupancy agreement
16 shall instead apply.

17 Sec. 16. NEW SECTION. 231C.7 TENANT'S BILL OF RIGHTS.

18 The department of elder affairs and the department of
19 inspections and appeals, in consultation with affected
20 industry, professional, and consumer groups shall develop a
21 tenant's bill of rights. An assisted living program certified
22 under this chapter shall provide a written copy of the
23 tenant's bill of rights to each tenant of the program.

24 Sec. 17. NEW SECTION. 231C.8 COMPLAINTS.

25 a. Any person with concerns regarding the operations or
26 service delivery of an assisted living program may file a
27 complaint with the department of inspections and appeals. The
28 name of the person who files a complaint with the department
29 of inspections and appeals and any personal identifying
30 information of the person or any tenant identified in the
31 complaint shall be kept confidential and shall not be subject
32 to discovery, subpoena, or other means of legal compulsion for
33 its release to a person other than department's employees
34 involved with the complaint.

35 2. The department of elder affairs, in cooperation with

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

4 Sec. 18. NEW SECTION. 231C.9 INFORMAL REVIEW.

5 If an assisted living program contests the results of a
6 monitoring evaluation or complaint investigation, the program
7 may submit written information in support of the contesting of
8 the results to the department of inspections and appeals for
9 review. The department of inspections and appeals shall
10 review the written information submitted within ten working
11 days of receipt of the information. At the conclusion of the
12 review, the department may affirm, modify, or dismiss the
13 results. If the results are modified or dismissed, the
14 department shall specify in writing the reasons for the
15 modification or dismissal and shall immediately transmit a
16 copy of the statement to the director of inspections and
17 appeals and to the program.

18 Sec. 19. NEW SECTION. 231C.10 PUBLIC DISCLOSURE OF
19 FINDINGS.

20 Following a monitoring evaluation or complaint
21 investigation of an assisted living program by the department
22 of inspections and appeals pursuant to this chapter, the
23 department's final findings with respect to compliance by the
24 assisted living program with requirements for certification
25 shall be made available to the public in a readily available
26 form and place. Other information relating to an assisted
27 living program that is obtained by the department of
28 inspections and appeals which does not constitute the
29 department's final findings from a monitoring evaluation or
30 complaint investigation of the assisted living program shall
31 not be made available to the public except in proceedings
32 involving the denial, suspension, or revocation of a
33 certificate under this chapter.

34 Sec. 20. NEW SECTION. 231C.11 DENIAL, SUSPENSION, OR
35 REVOCATION -- CONDITIONAL OPERATION.

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

8 a. Cruelty or indifference to assisted living program
9 tenants.

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

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

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

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

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

23 g. Failure or neglect to maintain a continuing education
24 and training program for all personnel employed in the
25 assisted living program.

26 h. Founded dependent adult abuse as defined in section
27 235B.2.

28 i. In the case of any officer, member of the board of
29 directors, trustee, or designated manager of the program or
30 any stockholder, partner, or individual who has greater than a
31 ten percent equity interest in the program, who has or has had
32 an ownership interest in an assisted living program, home
33 health agency, residential care facility, or licensed nursing
34 facility in any state which has been closed due to removal of
35 program, agency, or facility licensure or certification or

1 involuntary termination from participation in either the
2 medical assistance or Medicare programs, or who has been found
3 to have failed to provide adequate protection or services for
4 tenants to prevent abuse or neglect.

5 j. In the case of a certificate applicant or an existing
6 certified owner or operator who is an entity other than an
7 individual, the person is in a position of control or is an
8 officer of the entity and engages in any act or omission
9 proscribed by this chapter.

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

12 2. The department of inspections and appeals may as an
13 alternative to denial, suspension, or revocation conditionally
14 issue or continue a certificate dependent upon the performance
15 by the assisted living program of reasonable conditions within
16 a reasonable period of time as set by the department of
17 inspections and appeals so as to permit the program to
18 commence or continue the operation of the program pending full
19 compliance with this chapter or the rules adopted pursuant to
20 this chapter. If the assisted living program does not make
21 diligent efforts to comply with the conditions prescribed, the
22 department of inspections and appeals may, under the
23 proceedings prescribed by this chapter, suspend, or revoke the
24 certificate. An assisted living program shall not be operated
25 on a conditional certificate for more than one year.

26 Sec. 21. NEW SECTION. 231C.12 NOTICE -- HEARINGS.

27 1. The denial, suspension, or revocation of a certificate
28 shall be effected by delivering to the applicant or
29 certificate holder by restricted certified mail or by personal
30 service a notice setting forth the particular reasons for such
31 action. Such denial, suspension, or revocation shall become
32 effective thirty days after the mailing or service of the
33 notice, unless the applicant or certificate holder, within
34 such thirty-day period, requests a hearing, in writing, of the
35 department of inspections and appeals, in which case the

1 notice shall be deemed to be suspended.

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

6 3. When the department of inspections and appeals finds
7 that an imminent danger to the health or safety of tenants of
8 an assisted living program exists which requires action on an
9 emergency basis, the department of inspections and appeals may
10 direct removal of all tenants of an assisted living program
11 and suspend the certificate prior to a hearing.

12 **Sec. 22. NEW SECTION. 231C.13 DIRECTOR NOTIFIED OF**
13 **CASUALTIES.**

14 The director of inspections and appeals shall be notified
15 within twenty-four hours, by the most expeditious means
16 available, of any accident causing substantial injury or
17 death, and any substantial fire or natural or other disaster
18 occurring at or near an assisted living program.

19 **Sec. 23. NEW SECTION. 231C.14 RETALIATION BY ASSISTED**
20 **LIVING PROGRAM PROHIBITED.**

21 1. An assisted living program shall not discriminate or
22 retaliate in any way against a tenant, tenant's family, or an
23 employee of the program who has initiated or participated in
24 any proceeding authorized by this chapter. An assisted living
25 program that violates this section is subject to a penalty as
26 established by administrative rule in accordance with chapter
27 17A and to be assessed and collected by the department of
28 inspections and appeals and paid into the state treasury to be
29 credited to the general fund of the state, or to immediate
30 revocation of the program's certificate.

31 2. Any attempt to evict, from an assisted living program,
32 a tenant by whom or upon whose behalf a complaint has been
33 submitted to the department under section 231C.8, within
34 ninety days after the filing of the complaint or the
35 conclusion of any proceeding resulting from the complaint,

1 raises a rebuttable presumption that the action was taken by
2 the program in retaliation for the filing of the complaint,
3 except in situations in which the tenant is evicted due to
4 occupancy and transfer criteria.

5 Sec. 24. NEW SECTION. 231C.15 CIVIL PENALTIES.

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

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

12 2. Following receipt of notice from the department,
13 continued failure or refusal to comply within a prescribed
14 time frame with regulatory requirements that have a direct or
15 immediate relationship to the health, safety, or security of
16 program tenants.

17 Sec. 25. NEW SECTION. 231C.16 CRIMINAL PENALTIES.

18 1. A person establishing, conducting, managing, or
19 operating any assisted living program without a certificate is
20 guilty of a serious misdemeanor. Each day of continuing
21 violation after conviction or notice from the department of
22 inspections and appeals by certified mail of a violation shall
23 be considered a separate offense or chargeable offense. A
24 person establishing, conducting, managing, or operating an
25 assisted living program without a certificate may be
26 temporarily or permanently restrained by a court of competent
27 jurisdiction from such activity in an action brought by the
28 state.

29 2. A person who prevents or interferes with or attempts to
30 impede in any way any duly authorized representative of the
31 department of inspections and appeals in the lawful
32 enforcement of this chapter or of the rules adopted pursuant
33 to this chapter is guilty of a simple misdemeanor. As used in
34 this subsection, lawful enforcement includes but is not
35 limited to:

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

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

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

8 Sec. 26. NEW SECTION. 231C.17 NURSING ASSISTANT AND
9 MEDICATION AIDE -- CERTIFICATION.

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

15 Sec. 27. NEW SECTION. 231C.18 COORDINATION OF THE LONG-
16 TERM CARE SYSTEM -- TRANSITIONAL PROVISIONS.

17 1. An elder group home certified under chapter 231B prior
18 to July 1, 2003, shall be exempt from the requirements of this
19 chapter. If an elder group home certified under chapter 231B
20 prior to July 1, 2003, seeks certification as an assisted
21 living program on or after July 1, 2003, the elder group home
22 shall be granted a conditional assisted living program
23 certification by the department of inspections and appeals for
24 a period of one year from the date the conditional certificate
25 is issued. At the end of the one-year period, the elder group
26 home shall meet the requirements of this chapter to receive
27 subsequent certification as an assisted living program.

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

33 3. This chapter shall not be construed to require that a
34 facility licensed as a different type of facility also comply
35 with the requirements of this chapter, unless the facility is

1 represented to the public as a certified assisted living
2 program.

3 Sec. 28. NEW SECTION. 231C.19 IOWA ASSISTED LIVING FEES.

4 The department of inspections and appeals shall collect and
5 retain assisted living program certification and related fees
6 as established by rule in accordance with chapter 17A. An
7 assisted living program that is certified by the department of
8 inspections and appeals on the basis of voluntary
9 accreditation by a recognized accrediting entity shall not be
10 subject to payment of certification fees. Fees collected and
11 retained pursuant to this section shall be deposited into an
12 assisted living program fund created in the state treasury
13 under the authority of the department of inspections and
14 appeals and are appropriated to the department of inspections
15 and appeals to carry out the purposes of this chapter.
16 Amounts deposited in the fund shall not be transferred, used,
17 obligated, appropriated, or otherwise encumbered except as
18 provided in this section. Notwithstanding section 12C.7,
19 subsection 2, interest or earnings on moneys deposited into
20 the fund shall be credited to the fund. Notwithstanding
21 section 8.33, amounts deposited in the fund that remain
22 unexpended or unencumbered at the close of the fiscal year
23 shall remain in the fund for utilization as provided in this
24 section for the following fiscal year.

25 Sec. 29. Section 235B.3, subsection 2, paragraph d, Code
26 2003, is amended to read as follows:

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

31 Sec. 30. Chapter 231A, Code 2003, is repealed.

32 Sec. 31. TRANSITION OF STAFF. All employees of the
33 department of elder affairs performing functions related to
34 certification and monitoring of or complaint investigations
35 related to assisted living programs as of June 30, 2003, shall

1 become employees of the department of inspections and appeals
2 without loss of classification, pay, or benefits, effective
3 July 1, 2003. All employees of the department of elder
4 affairs performing functions related to affordable assisted
5 living as of June 30, 2003, shall become employees of the Iowa
6 finance authority without loss of classification, pay, or
7 benefits, effective July 1, 2003.

8

EXPLANATION

9 This bill provides for regulation of elder group homes and
10 assisted living programs.

11 The bill provides for regulation of elder group homes by
12 the department of elder affairs in cooperation with the
13 department of inspections and appeals. The bill also provides
14 that the provisions of the Code chapter apply only to elder
15 group homes certified by the department of elder affairs prior
16 to July 1, 2003, and that applications for certification as an
17 elder group home are not to be accepted or approved on or
18 after July 1, 2003.

19 The bill provides for regulation of assisted living
20 programs by directing the department of elder affairs, in
21 cooperation with the department of inspections and appeals, to
22 establish, by rule, a program for certification and monitoring
23 related to assisted living programs. The rules are to be
24 formulated in consultation with affected industry,
25 professional, and consumer groups. Each assisted living
26 program operating in the state is to be certified by the
27 department of inspections and appeals. If an assisted living
28 program is voluntarily accredited by a recognized accrediting
29 entity, the department of inspections and appeals is to
30 certify the program based upon the voluntary accreditation.
31 The bill provides specifically that if the tenant is
32 terminally ill and has elected to receive hospice services
33 under the federal Medicare program from a Medicare-certified
34 hospice program, the assisted living program and the hospice
35 program are to enter an agreement under which the hospice

1 program retains professional management responsibility for
2 those services.

3 The bill provides that the department of elder affairs in
4 cooperation with the department of inspections and appeals may
5 establish by administrative rule a special classification for
6 affordable assisted living programs. The bill also provides
7 that a department, agency, or officer of this state, or of any
8 political subdivision shall not pay or approve for payment
9 from public funds any amount to an assisted living program for
10 an actual or prospective tenant, unless the program holds a
11 current certificate and meets all requirements for
12 certification. The bill also directs the department of elder
13 affairs in cooperation with the department of inspections and
14 appeals to adopt rules regarding the conducting or operating
15 of another business or activity in the facility in which the
16 assisted living program is provided, if the business or
17 activity serves primarily nontenants. The rules are to be
18 developed in consultation with affected industry,
19 professional, and consumer groups.

20 The bill specifies requirements for written occupancy
21 agreements and provides for retention of a tenant in an
22 assisted living facility, notwithstanding a determination by
23 the department of inspections and appeals that the tenant's
24 needs exceed the occupancy criteria established.

25 The bill directs the department of elder affairs and the
26 department of inspections and appeals, in consultation with
27 affected industry, professional, and consumer groups to
28 develop a tenant's bill of rights.

29 The bill provides for the filing and disposition of
30 complaints; provides for an informal review of contests to the
31 results of a monitoring evaluation or complaint investigation;
32 provides for public disclosure of the final findings with
33 respect to a monitoring evaluation or complaint investigation;
34 provides the bases for the denial, suspension, or revocation
35 of certification and for conditional operation of a program as

1 an alternative to denial, suspension, or revocation of
2 certification; provides for notice and hearings related to
3 denial, suspension, or revocation of certification; provides
4 for the notification of the director of inspections and
5 appeals of any casualties at an assisted living program;
6 prohibits retaliation by an assisted living program against a
7 tenant, tenant's family, or an employee of the program who has
8 initiated or participated in any proceeding under the Code
9 chapter; establishes civil and criminal penalties for certain
10 violations of the bill; provides for nursing assistants and
11 medication aides to claim work within assisted living programs
12 as credit toward their certification; provides transitional
13 provisions for long-term care providers including elder group
14 homes by making elder group homes exempt from the requirements
15 of the assisted living chapter and providing for conditional
16 certification of an elder group home as an assisted living
17 facility if the elder group home was certified as an elder
18 group home prior to July 1, 2003, and seeks certification as
19 an assisted living program on or after July 1, 2003. The bill
20 provides for collection and retaining of assisted living
21 program fees by the department of inspections and appeals and
22 provides that if an assisted living program is certified based
23 upon voluntary accreditation, the program is not subject to
24 payment of certification fees.

25 The bill provides for transition of staff used in the
26 regulation of assisted living programs by providing that
27 employees of the department of elder affairs who performed
28 functions related to certification and monitoring of or
29 complaint investigations related to assisted living programs
30 as of June 30, 2003, are to become employees of the department
31 of inspections and appeals without loss of classification,
32 pay, or benefits, effective July 1, 2003. Additionally, all
33 employees of the department of elder affairs performing
34 functions related to affordable assisted living as of June 30,
35 2003, are to become employees of the Iowa finance authority

1 without loss of classification, pay, or benefits, effective
2 July 1, 2003.

3 The bill also repeals Code chapter 231A, relating to elder
4 family homes.

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