

MAR 4 2005  
Place On Calendar

HOUSE FILE 587  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 102)

Passed House, Date 3-22-05 Passed Senate, Date 4/14/05  
Vote: Ayes 98 Nays 0 Vote: Ayes 49 Nays 0  
Approved 4-27-05

A BILL FOR

1 An Act relating to adult day services regulation and providing  
2 penalties.

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

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

HF 587

TLSB 1265HV 81

pf/sh/8

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

3 231D.1 DEFINITIONS.

4 For the purposes of this chapter, unless the context  
5 otherwise requires:

6 1. "Adult day services", "adult day services program", or  
7 "program" means an organized program providing a variety of  
8 health health-related care, social services, and other related  
9 support services for sixteen hours or less in a twenty-four-  
10 hour period to two or more persons with a functional  
11 impairment on a regularly scheduled, contractual basis.

12 2. "Contractual agreement" means a written agreement  
13 entered into between an adult day services program and a  
14 participant that clearly describes the rights and  
15 responsibilities of the adult day services program and the  
16 participant, and other information required by rule.

17 ~~2.~~ 3. "Department" means the department of elder affairs  
18 created in chapter 231.

19 ~~3.~~ 4. "Functional impairment" means a psychological,  
20 cognitive, or physical impairment creating the inability to  
21 perform personal and instrumental activities of daily living  
22 and associated tasks necessitating some form of supervision or  
23 assistance or both.

24 ~~4.~~ 5. "Governmental unit" means the state, or any county,  
25 municipality, or other political subdivision or any  
26 department, division, board, or other agency of any of these  
27 entities.

28 6. "Health-related care" means services provided by a  
29 registered nurse or a licensed practical nurse, on a part-time  
30 or intermittent basis, and services provided by other licensed  
31 health care professionals, on a part-time or intermittent  
32 basis.

33 7. "Participant" means an individual who is the recipient  
34 of services provided by an adult day services program.

35 8. "Participant's legal representative" means a person

1 appointed by the court to act on behalf of a participant, or a  
 2 person acting pursuant to a power of attorney.

3 9. "Personal care" means assistance with the essential  
 4 activities of daily living which may include but are not  
 5 limited to transferring, bathing, personal hygiene, dressing,  
 6 grooming, and housekeeping that are essential to the health  
 7 and welfare of a participant.

8 5- 10. "Recognized accrediting entity" means a nationally  
 9 recognized accrediting entity that the department recognizes  
 10 as having specific adult day services program standards  
 11 equivalent to the standards established by the department for  
 12 adult day services.

13 6- 11. "Social services" means services relating to the  
 14 psychological and social needs of the individual in adjusting  
 15 to participating in an adult day services program, and  
 16 minimizing the stress arising from that circumstance.

17 7- 12. "Supervision" means direct oversight and  
 18 inspection of the act of accomplishing a function or activity.

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

21 231D.2 PURPOSE -- INTENT -- RULES ----SPECIAL  
 22 CLASSIFICATIONS.

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

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

29 3. The department shall establish, by rule in accordance  
 30 with chapter 17A, a program for certification and monitoring  
 31 of and complaint investigations related to adult day services  
 32 programs. The department, in establishing minimum standards  
 33 for adult day services programs, may adopt by rule in  
 34 accordance with chapter 17A, nationally recognized standards  
 35 for adult day services programs. The rules shall include

1 specification of recognized accrediting entities. The rules  
2 shall include a requirement that sufficient staffing be  
3 available at all times to fully meet a participant's  
4 identified needs. The rules shall include a requirement that  
5 no fewer than two staff persons who monitor participants as  
6 indicated in each participant's service plan shall be awake  
7 and on duty during the hours of operation when two or more  
8 participants are present. The rules and minimum standards  
9 adopted shall be formulated in consultation with the  
10 department of inspections and appeals and affected industry,  
11 professional, and consumer groups and shall be designed to  
12 accomplish the purpose of this chapter.

13 ~~4. In addition to the adoption of standards and rules for~~  
14 ~~adult day services programs, the department in consultation~~  
15 ~~with the department of inspections and appeals and affected~~  
16 ~~industry, professional, and consumer groups, shall issue~~  
17 ~~interpretive guidelines, including the expectations of program~~  
18 ~~certification monitors, to provide direction to adult day~~  
19 ~~services programs in complying with certification~~  
20 ~~requirements.~~

21 5. 4. The department may establish by administrative  
22 rule, ~~special classifications for adult day services~~  
23 ~~providers. The department of inspections and appeals shall~~  
24 ~~issue separate certificates for each special classification~~  
25 ~~for which a provider is certified.~~ in accordance with chapter  
26 17A, specific rules related to minimum standards for dementia-  
27 specific adult day services programs. The rules shall be  
28 formulated in consultation with the department of inspections  
29 and appeals and affected industry, professional, and consumer  
30 groups.

31 Sec. 3. Section 231D.3, subsections 2, 4, and 5, Code  
32 2005, are amended to read as follows:

33 2. An adult day services program may provide any type of  
34 adult day services for which the program is certified,  
35 ~~including any special classification of adult day services.~~

1 An adult day services program shall provide services and  
2 supervision commensurate with the needs of the recipients  
3 participants. An adult day services program shall not provide  
4 services to individuals requiring a level or type of services  
5 for which the program is not certified and services provided  
6 shall not exceed the level or type of services for which the  
7 program is certified.

8 4. A department, agency, or officer of this state or of  
9 any governmental unit shall not pay or approve for payment  
10 from public funds any amount to an adult day services program  
11 for an actual or prospective recipient participant, unless the  
12 program holds a current certificate issued by the department  
13 of inspections and appeals and meets all current requirements  
14 for certification.

15 5. The department shall adopt rules regarding the  
16 conducting or operating of another business or activity in the  
17 distinct part of the physical structure in which the adult day  
18 services program is provided, if the business or activity  
19 serves nonrecipients-of-adult-day-services persons who are not  
20 participants. The rules shall be developed in consultation  
21 with the department of inspections and appeals and affected  
22 industry, professional, and consumer groups.

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

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

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

33 Sec. 5. Section 231D.4, subsection 2, paragraph b, Code  
34 2005, is amended by adding the following new subparagraph:

35 NEW SUBPARAGRAPH. (5) For certification via a national

1 body of accreditation, one hundred twenty-five dollars.

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

4 1. The department of inspections and appeals may deny,  
5 suspend, or revoke certification if the department of  
6 inspections and appeals finds that there has been a  
7 substantial or repeated failure on the part of the adult day  
8 services program to comply with this chapter or the rules or  
9 minimum standards adopted pursuant to this chapter, or for any  
10 of the following reasons:

11 ~~a. Cruelty or indifference to adult day services program~~  
12 ~~service recipients.~~

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

18 c. b. Permitting, aiding, or abetting the commission of  
19 any illegal act in the adult day services program.

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

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

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

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

32 h. g. Founded dependent adult abuse as defined in section  
33 235B.2.

34 i. h. For any other reason as provided by law or  
35 administrative rule.

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

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

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

13 1. A person with concerns regarding the operations or  
14 service delivery of an adult day services program may file a  
15 complaint with the department of inspections and appeals. The  
16 name of the person who files a complaint with the department  
17 of inspections and appeals and any personal identifying  
18 information of the person or any ~~recipient-of-program-services~~  
19 participant identified in the complaint shall be kept  
20 confidential and shall not be subject to discovery, subpoena,  
21 or other means of legal compulsion for its release to a person  
22 other than employees of the department of inspections and  
23 appeals involved in the investigation of the complaint.

24 Sec. 9. NEW SECTION. 231D.9A INFORMAL REVIEW.

25 1. If an adult day services program contests the findings  
26 of regulatory insufficiencies of a monitoring evaluation or  
27 complaint investigation, the program shall submit written  
28 information, demonstrating that the program was in compliance  
29 with the applicable requirement at the time of the monitoring  
30 evaluation or complaint investigation, to the department of  
31 inspections and appeals for review.

32 2. The department of inspections and appeals shall review  
33 the written information submitted within ten working days of  
34 the receipt of the information. At the conclusion of the  
35 review, the department of inspections and appeals may affirm,

1 modify, or dismiss the regulatory insufficiencies. The  
2 department of inspections and appeals shall notify the program  
3 in writing of the decision to affirm, modify, or dismiss the  
4 regulatory insufficiencies, and the reasons for the decision.

5 3. In the case of a complaint investigation, the  
6 department of inspections and appeals shall also notify the  
7 complainant, if known, of the decision and the reasons for the  
8 decision.

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

11 231D.10 PUBLIC DISCLOSURE OF FINDINGS.

12 ~~Following~~ Upon completion of a monitoring evaluation or  
13 complaint investigation of an adult day services program by  
14 the department of inspections and appeals pursuant to this  
15 chapter, the department's final findings with respect to  
16 compliance by the adult day services program with requirements  
17 for certification shall be made available to the public in a  
18 readily available form and place. Other information relating  
19 to an adult day services program that is obtained by the  
20 department of inspections and appeals which does not  
21 constitute the department's final findings from a monitoring  
22 evaluation or complaint investigation of the adult day  
23 services program shall be made available to the department  
24 upon request to facilitate policy decisions, but shall not be  
25 made available to the public except in proceedings involving  
26 the denial, suspension, or revocation of a certificate under  
27 this chapter.

28 Sec. 11. Section 231D.11, subsection 3, paragraph a, Code  
29 2005, is amended to read as follows:

30 a. Program noncompliance with one or more regulatory  
31 requirements has caused or is likely to cause harm, serious  
32 injury, threat, or death to a ~~recipient-of-program-services~~  
33 participant.

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



1 231D.12 RETALIATION BY AN ADULT DAY SERVICES PROGRAM  
2 PROHIBITED.

3 1. An adult day services program shall not discriminate or  
4 retaliate in any way against a recipient participant,  
5 ~~recipient's~~ participant's family, or an employee of the  
6 program who has initiated or participated in any proceeding  
7 authorized by this chapter. An adult day services program  
8 that violates this section is subject to a penalty as  
9 established by administrative rule, to be assessed and  
10 collected by the department of inspections and appeals and  
11 paid into the state treasury to be credited to the general  
12 fund of the state.

13 2. Any attempt to discharge a recipient participant from  
14 an adult day services program by whom or upon whose behalf a  
15 complaint has been submitted to the department of inspections  
16 and appeals under section 231D.9, within ninety days after the  
17 filing of the complaint or the conclusion of any proceeding  
18 resulting from the complaint, shall raise a rebuttable  
19 presumption that the action was taken by the program in  
20 retaliation for the filing of the complaint, except in  
21 situations in which the recipient participant is discharged  
22 due to changes in health status which exceed the level of care  
23 offered by the adult day services program or in other  
24 situations as specified by rule.

25 Sec. 13. Section 231D.16, Code 2005, is amended to read as  
26 follows:

27 231D.16 TRANSITION PROVISIONS PROVISION.

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

31 2. Adult day services programs that are serving at least  
32 two but not more than five persons that are not voluntarily  
33 accredited by a recognized accrediting entity prior to July 1,  
34 2003, shall comply with this chapter by June 30, 2005.

35 Sec. 14. NEW SECTION. 231D.17 WRITTEN CONTRACTUAL

1 AGREEMENT REQUIRED.

2 1. An adult day services program shall not operate in this  
3 state unless a written contractual agreement is executed  
4 between the adult day services program and each participant or  
5 the participant's legal representative prior to the  
6 participant's admission to the program, and unless the adult  
7 day services program operates in accordance with the terms of  
8 the written contractual agreement. The adult day services  
9 program shall deliver to the participant or the participant's  
10 legal representative a complete copy of the written  
11 contractual agreement and all supporting documents and  
12 attachments, prior to the participant's admission to the  
13 program, and shall also deliver a written copy of changes to  
14 the written contractual agreement, if any changes to the copy  
15 originally delivered are subsequently made, at least thirty  
16 days prior to any changes, unless otherwise provided in this  
17 section.

18 2. An adult day services program written contractual  
19 agreement shall clearly describe the rights and  
20 responsibilities of the participant and the program. The  
21 written contractual agreement shall also include but is not  
22 limited to inclusion of all of the following information in  
23 the body of the agreement or in the supporting documents and  
24 attachments:

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

28 b. A statement regarding the impact of the fee structure  
29 on third-party payments, and whether third-party payments and  
30 resources are accepted by the adult day services program.

31 c. The procedure followed for nonpayment of fees.

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

35 e. The term of the written contractual agreement.

1 f. A statement that the adult day services program shall  
2 notify the participant or the participant's legal  
3 representative, as applicable, in writing at least thirty days  
4 prior to any change being made in the written contractual  
5 agreement, with the following exceptions:

6 (1) When the participant's health status or behavior  
7 constitutes a substantial threat to the health or safety of  
8 the participant, other participants, or others, including when  
9 the participant refuses to consent to discharge.

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

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

19 h. Discharge, involuntary transfer, and transfer criteria  
20 and procedures, which ensure a safe and orderly transfer.

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

23 j. The program's policies and procedures for addressing  
24 grievances between the adult day services program and the  
25 participants, including grievances relating to transfer and  
26 occupancy.

27 k. A statement of the prohibition against retaliation as  
28 prescribed in section 231D.12.

29 l. The emergency response policy.

30 m. The staffing policy which specifies staff is available  
31 during all times of program operation, if nurse delegation  
32 will be used, and how staffing will be adapted to meet  
33 changing participant needs.

34 n. In dementia-specific adult day services programs, a  
35 description of the services and programming provided to meet

1 the life skills and social activities of participants.

2 o. The refund policy.

3 p. A statement regarding billing and payment procedures.

4 3. Written contractual agreements and related documents  
5 executed by each participant or participant's legal  
6 representative shall be maintained by the adult day services  
7 program in program files from the date of execution until  
8 three years from the date the written contractual agreement is  
9 terminated. A copy of the most current written contractual  
10 agreement shall be provided to members of the general public,  
11 upon request. Written contractual agreements and related  
12 documents shall be made available for on-site inspection to  
13 the department of inspections and appeals upon request and at  
14 reasonable times.

15 Sec. 15. NEW SECTION. 231D.18 INVOLUNTARY TRANSFER.

16 1. If an adult day services program initiates the  
17 involuntary transfer of a participant and the action is not a  
18 result of a monitoring evaluation or complaint investigation  
19 by the department of inspections and appeals, and if the  
20 participant or participant's legal representative contests the  
21 transfer, the following procedure shall apply:

22 a. The adult day services program shall notify the  
23 participant or participant's legal representative, in  
24 accordance with the written contractual agreement, of the need  
25 to transfer and the reason for the transfer.

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

30 2. The department, in consultation with the department of  
31 inspections and appeals and affected industry, professional,  
32 and consumer groups, shall establish by rule, in accordance  
33 with chapter 17A, procedures to be followed, including the  
34 opportunity for hearing, when the transfer of a participant  
35 results from a monitoring evaluation or complaint

1 investigation conducted by the department of inspections and  
2 appeals.

3 EXPLANATION

4 This bill makes changes in the regulation of adult day  
5 services programs and provides criminal penalties for  
6 violations.

7 The bill includes new definitions of terms in the adult day  
8 services chapter, including "health-related care",  
9 "participant", "participant's legal representative", "personal  
10 care", and "contractual agreement".

11 The bill directs the department of elder affairs to adopt  
12 rules that include a requirement that sufficient staffing be  
13 available at all times to fully meet a participant's  
14 identified needs. The rules are also to include a requirement  
15 that no fewer than two staff persons who monitor participants  
16 as indicated in each participant's service plan are to be  
17 awake and on duty during the hours of operation when two or  
18 more participants are present.

19 The bill eliminates the requirement that the department of  
20 elder affairs establish, by rule, special classifications for  
21 adult day services, but does require that the department  
22 establish minimum standards for all services and authorizes  
23 the department to adopt minimum standards for dementia-  
24 specific adult day services programs. The bill eliminates the  
25 requirement that in addition to adoption of rules, the  
26 department of elder affairs also issue interpretive  
27 guidelines.

28 The bill provides that certification of an adult day  
29 services program is for two years, unless revoked for good  
30 cause. The bill also directs the department of elder affairs  
31 and the department of inspections and appeals to conduct joint  
32 training sessions for personnel responsible for conducting  
33 monitoring evaluations and complaint investigations of adult  
34 day services programs. The bill provides for imposition of a  
35 fee for certification via a national body of accreditation of

1 \$125. The bill deletes as a basis for denial, suspension, or  
2 revocation of certification cruelty or indifference to a  
3 participant. The bill provides that other information  
4 relating to an adult day services program that is obtained by  
5 the department of inspections and appeals which does not  
6 constitute the department's final findings from a monitoring  
7 evaluation or complaint investigation of the adult day  
8 services program is to be made available to the department of  
9 elder affairs upon request to facilitate policy decisions.  
10 The bill removes a provision affecting certain adult day  
11 services programs that were required to comply with  
12 regulations governing such programs by June 30, 2004. The  
13 bill adds provisions requiring a written contractual agreement  
14 for adult day services programs, providing a process for  
15 involuntary transfers, and providing for informal review  
16 regarding contesting of findings of regulatory insufficiencies  
17 of a monitoring evaluation or complaint investigation.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

HOUSE FILE 587

H-1069

1 Amend House File 587 as follows:

2 1. Page 5, by inserting after line 33, the  
3 following:

4 "h. In the case of any officer, member of the  
5 board of directors, trustee, or designated manager of  
6 the program or any stockholder, partner, or individual  
7 who has greater than a ten percent equity interest in  
8 the program, who has or has had an ownership interest  
9 in an adult day services program, assisted living  
10 program, elder group home, home health agency,  
11 residential care facility, or licensed nursing  
12 facility in any state which has been closed due to  
13 removal of program, agency, or facility licensure or  
14 certification or involuntary termination from  
15 participation in either the medical assistance or  
16 Medicare programs, or who has been found to have  
17 failed to provide adequate protection or services for  
18 participants to prevent abuse or neglect.

19 i. In the case of a certificate applicant or an  
20 existing certified owner or operator who is an entity  
21 other than an individual, the person is in a position  
22 of control or is an officer of the entity and engages  
23 in any act or omission proscribed by this chapter."

24 2. Page 5, line 34, by striking the word "h." and  
25 inserting the following: "j."

26 3. Page 7, line 15, by inserting after the word  
27 "chapter," the following: "including the conclusion  
28 of all appeals processes,".

29 4. Page 7, by striking lines 28 through 33, and  
30 inserting the following:

31 "Sec. \_\_\_\_ . Section 231D.11, Code 2005, is amended  
32 to read as follows:

33 231D.11 PENALTIES.

34 1. A person establishing, conducting, managing, or  
35 operating an adult day services program without a  
36 certificate is guilty of a serious misdemeanor. Each  
37 day of continuing violation after conviction or notice  
38 from the department of inspections and appeals by  
39 certified mail of a violation shall be considered a  
40 separate offense or chargeable offense. A person  
41 establishing, conducting, managing, or operating an  
42 adult day services program without a certificate may  
43 be temporarily or permanently restrained by a court of  
44 competent jurisdiction from such activity in an action  
45 brought by the state.

46 ~~2. A person who prevents or interferes with or~~  
47 ~~attempts to impede in any way any duly authorized~~  
48 ~~representative of the department of inspections and~~  
49 ~~appeals in the lawful enforcement of this chapter or~~  
50 ~~of the rules adopted pursuant to this chapter is~~

H-1069

1 ~~guilty of a simple misdemeanor. As used in this~~  
 2 ~~subsection, lawful enforcement includes but is not~~  
 3 ~~limited to:~~  
 4 ~~a. Contacting or interviewing any participant of~~  
 5 ~~an adult day services program in private at any~~  
 6 ~~reasonable hour and without advance notice.~~  
 7 ~~b. Examining any relevant records of an adult day~~  
 8 ~~services program.~~  
 9 ~~e. Preserving evidence of any violation of this~~  
 10 ~~chapter or of the rules adopted pursuant to this~~  
 11 ~~chapter.~~

12 ~~3.~~ 2. A civil penalty, as established by rule,  
 13 may apply in any of the following situations:

14 a. Program noncompliance with one or more  
 15 regulatory requirements has caused or is likely to  
 16 cause harm, serious injury, threat, or death to a  
 17 ~~recipient of program services participant.~~

18 b. Program failure or refusal to comply with  
 19 regulatory requirements within prescribed time  
 20 frames."

21 5. Page 8, line 31, by inserting before the word  
 22 "Adult" the following: "1."

23 6. Page 8, by inserting after line 34, the  
 24 following:

25 "2. A hospital licensed pursuant to chapter 135B,  
 26 a health care facility licensed pursuant to chapter  
 27 135C, or an assisted living program certified pursuant  
 28 to chapter 231C may operate an adult day services  
 29 program if the adult day services program is certified  
 30 pursuant to this chapter.

31 3. A certified adult day services program that  
 32 complies with the requirements of this chapter shall  
 33 not be required to be licensed or certified as another  
 34 type of facility, unless the facility is represented  
 35 to the public as another type of facility."

36 7. By renumbering, redesignating, and correcting  
 37 internal references as necessary.

By UPMEYER of Hancock



H-1128

1 Amend House File 587 as follows:

2 1. Page 1, by inserting after line 32, the  
3 following:

4 "    . "Medication setup" means assistance with  
5 various steps of medication administration to support  
6 a participant's autonomy, which may include but is not  
7 limited to routine prompting, cueing and reminding,  
8 opening containers or packaging at the direction of  
9 the participant, reading instructions or other label  
10 information, or transferring medications from the  
11 original container into suitable medication dispensing  
12 containers, reminder containers, or medication cups."

13 2. Page 5, by inserting after line 33, the  
14 following:

15 "h. In the case of any officer, member of the  
16 board of directors, trustee, or designated manager of  
17 the program or any stockholder, partner, or individual  
18 who has greater than a ten percent equity interest in  
19 the program, who has or has had an ownership interest  
20 in an adult day services program, assisted living  
21 program, elder group home, home health agency,  
22 residential care facility, or licensed nursing  
23 facility in any state which has been closed due to  
24 removal of program, agency, or facility licensure or  
25 certification or involuntary termination from  
26 participation in either the medical assistance or  
27 Medicare programs, or who has been found to have  
28 failed to provide adequate protection or services for  
29 participants to prevent abuse or neglect.

30 i. In the case of a certificate applicant or an  
31 existing certified owner or operator who is an entity  
32 other than an individual, the person is in a position  
33 of control or is an officer of the entity and engages  
34 in any act or omission proscribed by this chapter."

35 3. Page 5, line 34, by striking the word "h." and  
36 inserting the following: "j."

37 4. Page 7, line 15, by inserting after the word  
38 "chapter," the following: "including the conclusion  
39 of all administrative appeals processes,".

40 5. Page 7, by striking lines 28 through 33, and  
41 inserting the following:

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

44 231D.11 PENALTIES.

45 1. A person establishing, conducting, managing, or  
46 operating an adult day services program without a  
47 certificate is guilty of a serious misdemeanor. Each  
48 day of continuing violation after conviction or notice  
49 from the department of inspections and appeals by  
50 certified mail of a violation shall be considered a

H-1128

1 separate offense or chargeable offense. A person  
2 establishing, conducting, managing, or operating an  
3 adult day services program without a certificate may  
4 be temporarily or permanently restrained by a court of  
5 competent jurisdiction from such activity in an action  
6 brought by the state.

7 ~~2. A person who prevents or interferes with or  
8 attempts to impede in any way any duly authorized  
9 representative of the department of inspections and  
10 appeals in the lawful enforcement of this chapter or  
11 of the rules adopted pursuant to this chapter is  
12 guilty of a simple misdemeanor. As used in this  
13 subsection, lawful enforcement includes but is not  
14 limited to:~~

15 ~~a. Contacting or interviewing any participant of  
16 an adult day services program in private at any  
17 reasonable hour and without advance notice.~~

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

20 ~~e. Preserving evidence of any violation of this  
21 chapter or of the rules adopted pursuant to this  
22 chapter.~~

23 ~~3. 2.~~ A civil penalty, as established by rule,  
24 may apply in any of the following situations:

25 a. Program noncompliance with one or more  
26 regulatory requirements has caused or is likely to  
27 cause harm, serious injury, threat, or death to a  
28 recipient of program services participant.

29 b. Program failure or refusal to comply with  
30 regulatory requirements within prescribed time frames.

31 c. Preventing or interfering with or attempting to  
32 impede in any way any duly authorized representative  
33 of the department of inspections and appeals in the  
34 lawful enforcement of this chapter or of the rules  
35 adopted pursuant to this chapter. As used in this  
36 paragraph, "lawful enforcement" includes but is not  
37 limited to:

38 (1) Contacting or interviewing any participant in  
39 an adult day services program in private at any  
40 reasonable hour and without advance notice.

41 (2) Examining any relevant records of an adult day  
42 services program.

43 (3) Preserving evidence of any violation of this  
44 chapter or of the rules adopted pursuant to this  
45 chapter."

46 6. Page 8, by inserting after line 24, the  
47 following:

48 "Sec. \_\_\_\_ . NEW SECTION. 231D.13A MEDICATION  
49 SETUP -- ADMINISTRATION AND STORAGE OF MEDICATIONS.

50 1. An adult day services program may provide for

1 medication setup if requested by a participant or the  
2 participant's legal representative. If medication  
3 setup is provided following such request, the program  
4 shall be responsible for the specific task requested  
5 and the participant shall retain responsibility for  
6 those tasks not requested to be provided.

7 2. If medications are administered or stored by an  
8 adult day services program, or if the adult day  
9 services program provides for medication setup, all of  
10 the following shall apply:

11 a. If administration of medications is delegated  
12 to the program by the participant or the participant's  
13 legal representative, the medications shall be  
14 administered by a registered nurse, licensed practical  
15 nurse, or advanced registered nurse practitioner  
16 licensed or registered in Iowa or by the individual to  
17 whom such licensed or registered individuals may  
18 properly delegate administration of medications.

19 b. Medications, other than those self-administered  
20 by the participant or provided through medication  
21 setup, shall be stored in locked storage that is not  
22 accessible to persons other than employees responsible  
23 for administration or storage of medications.

24 c. Medications shall be labeled and maintained in  
25 compliance with label instructions and state and  
26 federal law.

27 d. A person other than a dispensing pharmacist  
28 shall not alter the prescription.

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

31 f. If medication setup is provided by the program  
32 at the request of the participant or the participant's  
33 legal representative, or if medication administration  
34 is delegated to the program by the participant or the  
35 participant's legal representative, appropriate staff  
36 of the program may transfer the medications in the  
37 participant's presence from the original prescription  
38 container to medication dispensing containers,  
39 reminder containers, or medication cups.

40 g. Program assistance with medication  
41 administration as specified in the contractual  
42 agreement shall not require the program to provide  
43 assistance with the storage of medications."

44 7. Page 8, line 31, by inserting before the word  
45 "Adult" the following: "1.".

46 8. Page 8, by inserting after line 34, the  
47 following:

48 "2. A hospital licensed pursuant to chapter 135B,  
49 a health care facility licensed pursuant to chapter  
50 135C, or an assisted living program certified pursuant

H-1128

Page 4

1 to chapter 231C may operate an adult day services  
2 program if the adult day services program is certified  
3 pursuant to this chapter.  
4 3. A certified adult day services program that  
5 complies with the requirements of this chapter shall  
6 not be required to be licensed or certified as another  
7 type of facility, unless the facility is represented  
8 to the public as another type of facility."  
9 9. By renumbering, redesignating, and correcting  
10 internal references as necessary.

By UPMEYER of Hancock

JACOBY of Johnson

H-1128 FILED MARCH 21, 2005

**HOUSE FILE 587**

H-1136

1 Amend the amendment, H-1128, to House File 587 as  
2 follows:

3 1. Page 1, line 18, by striking the word "ten"  
4 and inserting the following: "five".

By FORD of Polk

H-1136 FILED MARCH 22, 2005

ADOPTED

HOUSE FILE 587  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 102)

(As Amended and Passed by the House March 22, 2005)

Re-Passed House, Date 4-19-05 Passed Senate, Date 4-14-05  
Vote: Ayes 99 Nays 0 Vote: Ayes 49 Nays 0  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to adult day services regulation and providing  
2 penalties.

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

4

5

House Amendments \_\_\_\_\_

6

**HOUSE FILE 587**

**S-3098**

- 1 Amend House File 587, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 11, by striking lines 19 and 20, and  
4 inserting the following:  
5 "d. A person, other than a person authorized to  
6 prescribe prescription drugs under state and federal  
7 law, shall not alter the prescription of a  
8 participant."  
9 2. Page 15, by inserting after line 22, the  
10 following:  
11 "Sec. \_\_\_\_ . EFFECTIVE DATE. This Act, being deemed  
12 of immediate importance, takes effect upon enactment."  
13 3. Title page, lines 1 and 2, by striking the  
14 words "and providing penalties" and inserting the  
15 following: ", providing penalties, and providing an  
16 effective date".  
17 4. By renumbering as necessary.

COMMITTEE ON HUMAN RESOURCES  
AMANDA RAGAN, CO-CHAIRPERSON  
JAMES SEYMOUR, CO-CHAIRPERSON

**S-3098** FILED APRIL 7, 2005

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

3 231D.1 DEFINITIONS.

4 For the purposes of this chapter, unless the context  
5 otherwise requires:

6 1. "Adult day services", "adult day services program", or  
7 "program" means an organized program providing a variety of  
8 health health-related care, social services, and other related  
9 support services for sixteen hours or less in a twenty-four-  
10 hour period to two or more persons with a functional  
11 impairment on a regularly scheduled, contractual basis.

12 2. "Contractual agreement" means a written agreement  
13 entered into between an adult day services program and a  
14 participant that clearly describes the rights and  
15 responsibilities of the adult day services program and the  
16 participant, and other information required by rule.

17 ~~2.~~ 3. "Department" means the department of elder affairs  
18 created in chapter 231.

19 ~~3.~~ 4. "Functional impairment" means a psychological,  
20 cognitive, or physical impairment creating the inability to  
21 perform personal and instrumental activities of daily living  
22 and associated tasks necessitating some form of supervision or  
23 assistance or both.

24 ~~4.~~ 5. "Governmental unit" means the state, or any county,  
25 municipality, or other political subdivision or any  
26 department, division, board, or other agency of any of these  
27 entities.

28 6. "Health-related care" means services provided by a  
29 registered nurse or a licensed practical nurse, on a part-time  
30 or intermittent basis, and services provided by other licensed  
31 health care professionals, on a part-time or intermittent  
32 basis.

33 7. "Medication setup" means assistance with various steps  
34 of medication administration to support a participant's  
35 autonomy, which may include but is not limited to routine

1 prompting, cueing and reminding, opening containers or  
2 packaging at the direction of the participant, reading  
3 instructions or other label information, or transferring  
4 medications from the original container into suitable  
5 medication dispensing containers, reminder containers, or  
6 medication cups.

7 8. "Participant" means an individual who is the recipient  
8 of services provided by an adult day services program.

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

12 10. "Personal care" means assistance with the essential  
13 activities of daily living which may include but are not  
14 limited to transferring, bathing, personal hygiene, dressing,  
15 grooming, and housekeeping that are essential to the health  
16 and welfare of a participant.

17 5- 11. "Recognized accrediting entity" means a nationally  
18 recognized accrediting entity that the department recognizes  
19 as having specific adult day services program standards  
20 equivalent to the standards established by the department for  
21 adult day services.

22 6- 12. "Social services" means services relating to the  
23 psychological and social needs of the individual in adjusting  
24 to participating in an adult day services program, and  
25 minimizing the stress arising from that circumstance.

26 7- 13. "Supervision" means direct oversight and  
27 inspection of the act of accomplishing a function or activity.

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

30 231D.2 PURPOSE -- INTENT -- RULES ---SPECIAL  
31 CLASSIFICATIONS.

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

34 2. It is the intent of the general assembly that the  
35 department of elder affairs establish policy for adult day

1 services programs and that the department of inspections and  
2 appeals enforce this chapter.

3 3. The department shall establish, by rule in accordance  
4 with chapter 17A, a program for certification and monitoring  
5 of and complaint investigations related to adult day services  
6 programs. The department, in establishing minimum standards  
7 for adult day services programs, may adopt by rule in  
8 accordance with chapter 17A, nationally recognized standards  
9 for adult day services programs. The rules shall include  
10 specification of recognized accrediting entities. The rules  
11 shall include a requirement that sufficient staffing be  
12 available at all times to fully meet a participant's  
13 identified needs. The rules shall include a requirement that  
14 no fewer than two staff persons who monitor participants as  
15 indicated in each participant's service plan shall be awake  
16 and on duty during the hours of operation when two or more  
17 participants are present. The rules and minimum standards  
18 adopted shall be formulated in consultation with the  
19 department of inspections and appeals and affected industry,  
20 professional, and consumer groups and shall be designed to  
21 accomplish the purpose of this chapter.

22 ~~4.--In-addition-to-the-adoption-of-standards-and-rules-for~~  
23 ~~adult-day-services-programs, the department in consultation~~  
24 ~~with the department of inspections and appeals and affected~~  
25 ~~industry, professional, and consumer groups, shall issue~~  
26 ~~interpretive guidelines, including the expectations of program~~  
27 ~~certification monitors, to provide direction to adult day~~  
28 ~~services programs in complying with certification~~  
29 ~~requirements.~~

30 5. 4. The department may establish by administrative  
31 rule, ~~special classifications for adult day services~~  
32 ~~providers.--The department of inspections and appeals shall~~  
33 ~~issue separate certificates for each special classification~~  
34 ~~for which a provider is certified.~~ in accordance with chapter  
35 17A, specific rules related to minimum standards for dementia-



1 specific adult day services programs. The rules shall be  
2 formulated in consultation with the department of inspections  
3 and appeals and affected industry, professional, and consumer  
4 groups.

5 Sec. 3. Section 231D.3, subsections 2, 4, and 5, Code  
6 2005, are amended to read as follows:

7 2. An adult day services program may provide any type of  
8 adult day services for which the program is certified,  
9 ~~including any special classification of adult day services.~~

10 An adult day services program shall provide services and  
11 supervision commensurate with the needs of the **recipients**  
12 participants. An adult day services program shall not provide  
13 services to individuals requiring a level or type of services  
14 for which the program is not certified and services provided  
15 shall not exceed the level or type of services for which the  
16 program is certified.

17 4. A department, agency, or officer of this state or of  
18 any governmental unit shall not pay or approve for payment  
19 from public funds any amount to an adult day services program  
20 for an actual or prospective **recipient participant**, unless the  
21 program holds a current certificate issued by the department  
22 of inspections and appeals and meets all current requirements  
23 for certification.

24 5. The department shall adopt rules regarding the  
25 conducting or operating of another business or activity in the  
26 distinct part of the physical structure in which the adult day  
27 services program is provided, if the business or activity  
28 serves ~~nonrecipients of adult day services~~ persons who are not  
29 participants. The rules shall be developed in consultation  
30 with the department of inspections and appeals and affected  
31 industry, professional, and consumer groups.

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

34 NEW SUBSECTION. 6. The department of elder affairs and  
35 the department of inspections and appeals shall conduct joint

1 training sessions for personnel responsible for conducting  
2 monitoring evaluations and complaint investigations of adult  
3 day services programs.

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

7 Sec. 5. Section 231D.4, subsection 2, paragraph b, Code  
8 2005, is amended by adding the following new subparagraph:

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

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

13 1. The department of inspections and appeals may deny,  
14 suspend, or revoke certification if the department of  
15 inspections and appeals finds that there has been a  
16 substantial or repeated failure on the part of the adult day  
17 services program to comply with this chapter or the rules or  
18 minimum standards adopted pursuant to this chapter, or for any  
19 of the following reasons:

20 ~~a. Cruelty or indifference to adult day services program~~  
21 ~~service recipients.~~

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

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

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

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

35 ~~f. e.~~ Securing the devise or bequest of the property of a

1 ~~recipient-of-services-of-an-adult-day-services-program~~

2 participant by undue influence.

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

6 ~~h.~~ g. Founded dependent adult abuse as defined in section  
7 235B.2.

8 h. In the case of any officer, member of the board of  
9 directors, trustee, or designated manager of the program or  
10 any stockholder, partner, or individual who has greater than a  
11 five percent equity interest in the program, who has or has  
12 had an ownership interest in an adult day services program,  
13 assisted living program, elder group home, home health agency,  
14 residential care facility, or licensed nursing facility in any  
15 state which has been closed due to removal of program, agency,  
16 or facility licensure or certification or involuntary  
17 termination from participation in either the medical  
18 assistance or Medicare programs, or who has been found to have  
19 failed to provide adequate protection or services for  
20 participants to prevent abuse or neglect.

21 i. In the case of a certificate applicant or an existing  
22 certified owner or operator who is an entity other than an  
23 individual, the person is in a position of control or is an  
24 officer of the entity and engages in any act or omission  
25 proscribed by this chapter.

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

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

30 3. When the department of inspections and appeals finds  
31 that an immediate danger to the health or safety of recipients  
32 ~~of-services-from~~ participants in an adult day services program  
33 exists which requires action on an emergency basis, the  
34 department of inspections and appeals may direct the removal  
35 of all ~~recipients-of-services-from-an~~ participants in the

1 adult day services program and suspend the certificate prior  
2 to a hearing.

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

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

16 Sec. 9. NEW SECTION. 231D.9A INFORMAL REVIEW.

17 1. If an adult day services program contests the findings  
18 of regulatory insufficiencies of a monitoring evaluation or  
19 complaint investigation, the program shall submit written  
20 information, demonstrating that the program was in compliance  
21 with the applicable requirement at the time of the monitoring  
22 evaluation or complaint investigation, to the department of  
23 inspections and appeals for review.

24 2. The department of inspections and appeals shall review  
25 the written information submitted within ten working days of  
26 the receipt of the information. At the conclusion of the  
27 review, the department of inspections and appeals may affirm,  
28 modify, or dismiss the regulatory insufficiencies. The  
29 department of inspections and appeals shall notify the program  
30 in writing of the decision to affirm, modify, or dismiss the  
31 regulatory insufficiencies, and the reasons for the decision.

32 3. In the case of a complaint investigation, the  
33 department of inspections and appeals shall also notify the  
34 complainant, if known, of the decision and the reasons for the  
35 decision.

1 Sec. 10. Section 231D.10, Code 2005, is amended to read as  
2 follows:

3 231D.10 PUBLIC DISCLOSURE OF FINDINGS.

4 Following Upon completion of a monitoring evaluation or  
5 complaint investigation of an adult day services program by  
6 the department of inspections and appeals pursuant to this  
7 chapter, including the conclusion of all administrative  
8 appeals processes, the department's final findings with  
9 respect to compliance by the adult day services program with  
10 requirements for certification shall be made available to the  
11 public in a readily available form and place. Other  
12 information relating to an adult day services program that is  
13 obtained by the department of inspections and appeals which  
14 does not constitute the department's final findings from a  
15 monitoring evaluation or complaint investigation of the adult  
16 day services program shall be made available to the department  
17 upon request to facilitate policy decisions, but shall not be  
18 made available to the public except in proceedings involving  
19 the denial, suspension, or revocation of a certificate under  
20 this chapter.

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

23 231D.11 PENALTIES.

24 1. A person establishing, conducting, managing, or  
25 operating an adult day services program without a certificate  
26 is guilty of a serious misdemeanor. Each day of continuing  
27 violation after conviction or notice from the department of  
28 inspections and appeals by certified mail of a violation shall  
29 be considered a separate offense or chargeable offense. A  
30 person establishing, conducting, managing, or operating an  
31 adult day services program without a certificate may be  
32 temporarily or permanently restrained by a court of competent  
33 jurisdiction from such activity in an action brought by the  
34 state.

35 2.--A-person-who-prevents-or-interferes-with-or-attempts-to

1 impede in any way any duly authorized representative of the  
2 department of inspections and appeals in the lawful  
3 enforcement of this chapter or of the rules adopted pursuant  
4 to this chapter is guilty of a simple misdemeanor. As used in  
5 this subsection, lawful enforcement includes but is not  
6 limited to:  
7 a. Contacting or interviewing any participant of an adult  
8 day services program in private at any reasonable hour and  
9 without advance notice.  
10 b. Examining any relevant records of an adult day services  
11 program.  
12 c. Preserving evidence of any violation of this chapter or  
13 of the rules adopted pursuant to this chapter.  
14 3. 2. A civil penalty, as established by rule, may apply  
15 in any of the following situations:  
16 a. Program noncompliance with one or more regulatory  
17 requirements has caused or is likely to cause harm, serious  
18 injury, threat, or death to a recipient of program services  
19 participant.  
20 b. Program failure or refusal to comply with regulatory  
21 requirements within prescribed time frames.  
22 c. Preventing or interfering with or attempting to impede  
23 in any way any duly authorized representative of the  
24 department of inspections and appeals in the lawful  
25 enforcement of this chapter or of the rules adopted pursuant  
26 to this chapter. As used in this paragraph, "lawful  
27 enforcement" includes but is not limited to:  
28 (1) Contacting or interviewing any participant in an adult  
29 day services program in private at any reasonable hour and  
30 without advance notice.  
31 (2) Examining any relevant records of an adult day  
32 services program.  
33 (3) Preserving evidence of any violation of this chapter  
34 or of the rules adopted pursuant to this chapter.  
35 Sec. 12. Section 231D.12, Code 2005, is amended to read as

1 follows:

2 231D.12 RETALIATION BY AN ADULT DAY SERVICES PROGRAM  
3 PROHIBITED.

4 1. An adult day services program shall not discriminate or  
5 retaliate in any way against a recipient participant,  
6 recipient's participant's family, or an employee of the  
7 program who has initiated or participated in any proceeding  
8 authorized by this chapter. An adult day services program  
9 that violates this section is subject to a penalty as  
10 established by administrative rule, to be assessed and  
11 collected by the department of inspections and appeals and  
12 paid into the state treasury to be credited to the general  
13 fund of the state.

14 2. Any attempt to discharge a recipient participant from  
15 an adult day services program by whom or upon whose behalf a  
16 complaint has been submitted to the department of inspections  
17 and appeals under section 231D.9, within ninety days after the  
18 filing of the complaint or the conclusion of any proceeding  
19 resulting from the complaint, shall raise a rebuttable  
20 presumption that the action was taken by the program in  
21 retaliation for the filing of the complaint, except in  
22 situations in which the recipient participant is discharged  
23 due to changes in health status which exceed the level of care  
24 offered by the adult day services program or in other  
25 situations as specified by rule.

26 Sec. 13. NEW SECTION. 231D.13A MEDICATION SETUP --  
27 ADMINISTRATION AND STORAGE OF MEDICATIONS.

28 1. An adult day services program may provide for  
29 medication setup if requested by a participant or the  
30 participant's legal representative. If medication setup is  
31 provided following such request, the program shall be  
32 responsible for the specific task requested and the  
33 participant shall retain responsibility for those tasks not  
34 requested to be provided.

35 2. If medications are administered or stored by an adult

1 day services program, or if the adult day services program  
2 provides for medication setup, all of the following shall  
3 apply:

4 a. If administration of medications is delegated to the  
5 program by the participant or the participant's legal  
6 representative, the medications shall be administered by a  
7 registered nurse, licensed practical nurse, or advanced  
8 registered nurse practitioner licensed or registered in Iowa  
9 or by the individual to whom such licensed or registered  
10 individuals may properly delegate administration of  
11 medications.

12 b. Medications, other than those self-administered by the  
13 participant or provided through medication setup, shall be  
14 stored in locked storage that is not accessible to persons  
15 other than employees responsible for administration or storage  
16 of medications.

17 c. Medications shall be labeled and maintained in  
18 compliance with label instructions and state and federal law.

19 d. A person other than a dispensing pharmacist shall not  
20 alter the prescription.

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

23 f. If medication setup is provided by the program at the  
24 request of the participant or the participant's legal  
25 representative, or if medication administration is delegated  
26 to the program by the participant or the participant's legal  
27 representative, appropriate staff of the program may transfer  
28 the medications in the participant's presence from the  
29 original prescription container to medication dispensing  
30 containers, reminder containers, or medication cups.

31 g. Program assistance with medication administration as  
32 specified in the contractual agreement shall not require the  
33 program to provide assistance with the storage of medications.

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



1 231D.16 TRANSITION PROVISIONS PROVISION.

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

5 ~~2.~~ 1. Adult day services programs that are serving at  
6 least two but not more than five persons that are not  
7 voluntarily accredited by a recognized accrediting entity  
8 prior to July 1, 2003, shall comply with this chapter by June  
9 30, 2005.

10 2. A hospital licensed pursuant to chapter 135B, a health  
11 care facility licensed pursuant to chapter 135C, or an  
12 assisted living program certified pursuant to chapter 231C may  
13 operate an adult day services program if the adult day  
14 services program is certified pursuant to this chapter.

15 3. A certified adult day services program that complies  
16 with the requirements of this chapter shall not be required to  
17 be licensed or certified as another type of facility, unless  
18 the facility is represented to the public as another type of  
19 facility.

20 Sec. 15. NEW SECTION. 231D.17 WRITTEN CONTRACTUAL  
21 AGREEMENT REQUIRED.

22 1. An adult day services program shall not operate in this  
23 state unless a written contractual agreement is executed  
24 between the adult day services program and each participant or  
25 the participant's legal representative prior to the  
26 participant's admission to the program, and unless the adult  
27 day services program operates in accordance with the terms of  
28 the written contractual agreement. The adult day services  
29 program shall deliver to the participant or the participant's  
30 legal representative a complete copy of the written  
31 contractual agreement and all supporting documents and  
32 attachments, prior to the participant's admission to the  
33 program, and shall also deliver a written copy of changes to  
34 the written contractual agreement, if any changes to the copy  
35 originally delivered are subsequently made, at least thirty

1 days prior to any changes, unless otherwise provided in this  
2 section.

3 2. An adult day services program written contractual  
4 agreement shall clearly describe the rights and  
5 responsibilities of the participant and the program. The  
6 written contractual agreement shall also include but is not  
7 limited to inclusion of all of the following information in  
8 the body of the agreement or in the supporting documents and  
9 attachments:

10 a. A description of all fees, charges, and rates  
11 describing admission and basic services covered, and any  
12 additional and optional services and their related costs.

13 b. A statement regarding the impact of the fee structure  
14 on third-party payments, and whether third-party payments and  
15 resources are accepted by the adult day services program.

16 c. The procedure followed for nonpayment of fees.

17 d. Identification of the party responsible for payment of  
18 fees and identification of the participant's legal  
19 representative, if any.

20 e. The term of the written contractual agreement.

21 f. A statement that the adult day services program shall  
22 notify the participant or the participant's legal  
23 representative, as applicable, in writing at least thirty days  
24 prior to any change being made in the written contractual  
25 agreement, with the following exceptions:

26 (1) When the participant's health status or behavior  
27 constitutes a substantial threat to the health or safety of  
28 the participant, other participants, or others, including when  
29 the participant refuses to consent to discharge.

30 (2) When an emergency or a significant change in the  
31 participant's condition results in the need for the provision  
32 of services that exceed the type or level of services included  
33 in the written contractual agreement and the necessary  
34 services cannot be safely provided by the adult day services  
35 program.

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

4 h. Discharge, involuntary transfer, and transfer criteria  
5 and procedures, which ensure a safe and orderly transfer.

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

8 j. The program's policies and procedures for addressing  
9 grievances between the adult day services program and the  
10 participants, including grievances relating to transfer and  
11 occupancy.

12 k. A statement of the prohibition against retaliation as  
13 prescribed in section 231D.12.

14 l. The emergency response policy.

15 m. The staffing policy which specifies staff is available  
16 during all times of program operation, if nurse delegation  
17 will be used, and how staffing will be adapted to meet  
18 changing participant needs.

19 n. In dementia-specific adult day services programs, a  
20 description of the services and programming provided to meet  
21 the life skills and social activities of participants.

22 o. The refund policy.

23 p. A statement regarding billing and payment procedures.

24 3. Written contractual agreements and related documents  
25 executed by each participant or participant's legal  
26 representative shall be maintained by the adult day services  
27 program in program files from the date of execution until  
28 three years from the date the written contractual agreement is  
29 terminated. A copy of the most current written contractual  
30 agreement shall be provided to members of the general public,  
31 upon request. Written contractual agreements and related  
32 documents shall be made available for on-site inspection to  
33 the department of inspections and appeals upon request and at  
34 reasonable times.

35 Sec. 16. NEW SECTION. 231D.18 INVOLUNTARY TRANSFER.

1 1. If an adult day services program initiates the  
2 involuntary transfer of a participant and the action is not a  
3 result of a monitoring evaluation or complaint investigation  
4 by the department of inspections and appeals, and if the  
5 participant or participant's legal representative contests the  
6 transfer, the following procedure shall apply:

7 a. The adult day services program shall notify the  
8 participant or participant's legal representative, in  
9 accordance with the written contractual agreement, of the need  
10 to transfer and the reason for the transfer.

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

15 2. The department, in consultation with the department of  
16 inspections and appeals and affected industry, professional,  
17 and consumer groups, shall establish by rule, in accordance  
18 with chapter 17A, procedures to be followed, including the  
19 opportunity for hearing, when the transfer of a participant  
20 results from a monitoring evaluation or complaint  
21 investigation conducted by the department of inspections and  
22 appeals.

23

**SENATE AMENDMENT TO  
HOUSE FILE 587**

**H-1376**

1 Amend House File 587, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 11, by striking lines 19 and 20, and  
4 inserting the following:

5 "d. A person, other than a person authorized to  
6 prescribe prescription drugs under state and federal  
7 law, shall not alter the prescription of a  
8 participant."

9 2. Page 15, by inserting after line 22, the  
10 following:

11 "Sec. \_\_\_\_ . EFFECTIVE DATE. This Act, being deemed  
12 of immediate importance, takes effect upon enactment."

13 3. Title page, lines 1 and 2, by striking the  
14 words "and providing penalties" and inserting the  
15 following: ", providing penalties, and providing an  
16 effective date".

17 4. By renumbering as necessary.

RECEIVED FROM THE SENATE

**H-1376** FILED APRIL 14, 2005

*Upmeyer  
Roberts  
Hunter*

HSB 102  
HUMAN RESOURCES added R.

SENATE/HOUSE FILE 0587  
BY (PROPOSED DEPARTMENT OF  
ELDER AFFAIRS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to adult day services regulation and providing  
2 penalties.

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

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

3 231D.1 DEFINITIONS.

4 For the purposes of this chapter, unless the context  
5 otherwise requires:

6 1. "Adult day services", "adult day services program", or  
7 "program" means an organized program providing a variety of  
8 health health-related care, social services, and other related  
9 support services for sixteen hours or less in a twenty-four-  
10 hour period to two or more persons with a functional  
11 impairment on a regularly scheduled, contractual basis.

12 2. "Contractual agreement" means a written agreement  
13 entered into between an adult day services program and a  
14 participant that clearly describes the rights and  
15 responsibilities of the adult day services program and the  
16 participant, and other information required by rule.

17 ~~2.~~ 3. "Department" means the department of elder affairs  
18 created in chapter 231.

19 ~~3.~~ 4. "Functional impairment" means a psychological,  
20 cognitive, or physical impairment creating the inability to  
21 perform personal and instrumental activities of daily living  
22 and associated tasks necessitating some form of supervision or  
23 assistance or both.

24 ~~4.~~ 5. "Governmental unit" means the state, or any county,  
25 municipality, or other political subdivision or any  
26 department, division, board, or other agency of any of these  
27 entities.

28 6. "Health-related care" means services provided by a  
29 registered nurse or a licensed practical nurse, on a part-time  
30 or intermittent basis, and services provided by other licensed  
31 health care professionals, on a part-time or intermittent  
32 basis, as defined by rule, and provided in accordance with  
33 respective health-related professional governing standards.  
34 "Health-related care" does not include a twenty-four-hour  
35 program of health-related care.

1 7. "Participant" means an individual who is the recipient  
2 of services provided by an adult day services program.

3 8. "Participant's legal representative" means a person  
4 appointed by the court to act on behalf of a participant, or a  
5 person acting pursuant to a power of attorney.

6 9. "Personal care" means assistance with the essential  
7 activities of daily living which may include but are not  
8 limited to transferring, bathing, personal hygiene, dressing,  
9 grooming, and housekeeping that are essential to the health  
10 and welfare of a participant.

11 ~~5-~~ 10. "Recognized accrediting entity" means a nationally  
12 recognized accrediting entity that the department recognizes  
13 as having specific adult day services program standards  
14 equivalent to the standards established by the department for  
15 adult day services.

16 ~~6-~~ 11. "Social services" means services relating to the  
17 psychological and social needs of the individual in adjusting  
18 to participating in an adult day services program, and  
19 minimizing the stress arising from that circumstance.

20 ~~7-~~ 12. "Supervision" means direct oversight and  
21 inspection of the act of accomplishing a function or activity.

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

24 231D.2 PURPOSE -- INTENT -- RULES ---SPECIAL  
25 CLASSIFICATIONS.

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

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

32 3. The department shall establish, by rule in accordance  
33 with chapter 17A, a program for certification and monitoring  
34 of and complaint investigations related to adult day services  
35 programs. The department, in establishing minimum standards

1 for adult day services programs, may adopt by rule in  
2 accordance with chapter 17A, nationally recognized standards  
3 for adult day services programs. The rules shall include  
4 specification of recognized accrediting entities. The rules  
5 shall include a requirement that sufficient staffing be  
6 available at all times to fully meet a participant's  
7 identified needs. The rules shall include a requirement that  
8 no fewer than two staff persons who monitor participants as  
9 indicated in each participant's service plan shall be awake  
10 and on duty during the hours of operation when two or more  
11 participants are present. The rules and minimum standards  
12 adopted shall be formulated in consultation with the  
13 department of inspections and appeals and affected industry,  
14 professional, and consumer groups and shall be designed to  
15 accomplish the purpose of this chapter. An adult day services  
16 program certified under this section is exempt from the  
17 requirements of section 135.63 relating to certificate of need  
18 requirements.

19 ~~4.--In-addition-to-the-adoption-of-standards-and-rules-for~~  
20 ~~adult-day-services-programs,-the-department-in-consultation~~  
21 ~~with-the-department-of-inspections-and-appeals-and-affected~~  
22 ~~industry,-professional,-and-consumer-groups,-shall-issue~~  
23 ~~interpretive-guidelines,-including-the-expectations-of-program~~  
24 ~~certification-monitors,-to-provide-direction-to-adult-day~~  
25 ~~services-programs-in-complying-with-certification~~  
26 ~~requirements.~~

27 5. 4. The department may establish by administrative  
28 rule, special-classifications-for-adult-day-services  
29 providers.--The-department-of-inspections-and-appeals-shall  
30 issue-separate-certificates-for-each-special-classification  
31 for-which-a-provider-is-certified. in accordance with chapter  
32 17A, specific rules related to minimum standards for dementia-  
33 specific adult day services programs. The rules shall be  
34 formulated in consultation with the department of inspections  
35 and appeals and affected industry, professional, and consumer



1 groups.

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

4 2. An adult day services program may provide any type of  
5 adult day services for which the program is certified,  
6 ~~including-any-special-classification-of-adult-day-services.~~

7 An adult day services program shall provide services and  
8 supervision commensurate with the needs of the recipients  
9 participants. An adult day services program shall not provide  
10 services to individuals requiring a level or type of services  
11 for which the program is not certified and services provided  
12 shall not exceed the level or type of services for which the  
13 program is certified.

14 4. A department, agency, or officer of this state or of  
15 any governmental unit shall not pay or approve for payment  
16 from public funds any amount to an adult day services program  
17 for an actual or prospective recipient participant, unless the  
18 program holds a current certificate issued by the department  
19 of inspections and appeals and meets all current requirements  
20 for certification.

21 5. The department shall adopt rules regarding the  
22 conducting or operating of another business or activity in the  
23 distinct part of the physical structure in which the adult day  
24 services program is provided, if the business or activity  
25 serves ~~nonrecipients-of-adult-day-services~~ persons who are not  
26 participants. The rules shall be developed in consultation  
27 with the department of inspections and appeals and affected  
28 industry, professional, and consumer groups.

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

31 NEW SUBSECTION. 6. An adult day services program, an  
32 owner or agent of the program, or an employee of the program  
33 shall not act as a fiduciary as defined in section 633.1102 or  
34 be designated as an attorney in fact under a power of attorney  
35 for a participant or any of the participant's property. An

1 adult day services program shall not require a participant or  
2 the participant's legal representative to liquidate personal  
3 property as a condition of participation in the program.

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

7 Sec. 5. Section 231D.4, subsection 2, paragraph b, Code  
8 2005, is amended by adding the following new subparagraph:

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

11 Sec. 6. Section 231D.5, subsections 1 and 2, Code 2005,  
12 are amended to read as follows:

13 1. The department of inspections and appeals may deny,  
14 suspend, or revoke certification if the department of  
15 inspections and appeals finds that there has been a  
16 substantial or repeated failure on the part of the adult day  
17 services program to comply with this chapter or other  
18 applicable laws, or the rules or minimum standards adopted  
19 pursuant to this chapter or other applicable laws or rules, or  
20 for any of the following reasons:

21 a. Cruelty or indifference to ~~adult-day-services-program~~  
22 ~~service-recipients~~ participants.

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

28 c. Permitting, aiding, or abetting the commission of any  
29 illegal act in the adult day services program.

30 d. Obtaining or attempting to obtain or retain  
31 certification by fraudulent means, misrepresentation, or by  
32 submitting false information.

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

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

4 g. Failure or neglect to maintain a continuing education  
5 and training program for all personnel employed in the adult  
6 day services program.

7 h. In the case of any officer, member of the board of  
8 directors, trustee, or designated manager of the program or  
9 any stockholder, partner, or individual who has greater than a  
10 ten percent equity interest in the program, who has or has had  
11 an ownership interest in an adult day services or assisted  
12 living program, home health agency, residential care facility,  
13 or licensed nursing facility in this state which has been  
14 closed due to removal of program, agency, or facility  
15 licensure or certification, or involuntary termination from  
16 participation in either the medical assistance or Medicare  
17 programs, or who has been found to have failed to provide  
18 adequate protection or services for participants to prevent  
19 abuse or neglect.

20 i. In the case of a certificate applicant or an existing  
21 certified owner or operator who is an entity other than an  
22 individual, the person is in a position of control or is an  
23 officer of the entity and engages in any act or omission  
24 proscribed by this chapter.

25 ~~h-~~ j. Founded dependent adult abuse as defined in section  
26 235B.2.

27 ~~i-~~ k. For any other reason as provided by law or  
28 administrative rule.

29 2. In the case of an application by an existing  
30 certificate holder for a new or newly acquired adult day  
31 services program, continuing or repeated failure of the  
32 certificate holder to operate any previously certified adult  
33 day services program in compliance with this chapter or other  
34 applicable laws or of the rules adopted pursuant to this  
35 chapter.

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

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

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

13 1. A person with concerns regarding the operations or  
14 service delivery of an adult day services program may file a  
15 complaint with the department of inspections and appeals. The  
16 name of the person who files a complaint with the department  
17 of inspections and appeals and any personal identifying  
18 information of the person or any ~~recipient-of-program-services~~  
19 participant identified in the complaint shall be kept  
20 confidential and shall not be subject to discovery, subpoena,  
21 or other means of legal compulsion for its release to a person  
22 other than employees of the department of inspections and  
23 appeals involved in the investigation of the complaint.

24 Sec. 9. NEW SECTION. 231D.9A INFORMAL REVIEW.

25 If an adult day services program contests the findings of  
26 regulatory insufficiencies of a monitoring evaluation or  
27 complaint investigation, the program shall submit written  
28 information, demonstrating that the program was in compliance  
29 with the applicable requirement at the time of the monitoring  
30 evaluation or complaint investigation, to the department of  
31 inspections and appeals for review. The department of  
32 inspections and appeals shall review the written information  
33 submitted within ten working days of the receipt of the  
34 information. At the conclusion of the review, the department  
35 of inspections and appeals may affirm, modify, or dismiss the

1 regulatory insufficiencies. The department of inspections and  
2 appeals shall notify the program in writing of the decision to  
3 affirm, modify, or dismiss the regulatory insufficiencies, and  
4 the reasons for the decision. In the case of a complaint  
5 investigation, the department of inspections and appeals shall  
6 also notify the complainant, if known, of the decision and the  
7 reasons for the decision.

8 Sec. 10. Section 231D.10, Code 2005, is amended to read as  
9 follows:

10 231D.10 PUBLIC DISCLOSURE OF FINDINGS.

11 ~~Following~~ Upon completion of a monitoring evaluation or  
12 complaint investigation of an adult day services program by  
13 the department of inspections and appeals pursuant to this  
14 chapter, the department's final findings with respect to  
15 compliance by the adult day services program with requirements  
16 for certification shall be made available to the public in a  
17 readily available form and place. Other information relating  
18 to an adult day services program that is obtained by the  
19 department of inspections and appeals which does not  
20 constitute the department's final findings from a monitoring  
21 evaluation or complaint investigation of the adult day  
22 services program shall be made available to the department  
23 upon request to facilitate policy decisions, but shall not be  
24 made available to the public except in proceedings involving  
25 the denial, suspension, or revocation of a certificate under  
26 this chapter.

27 Sec. 11. Section 231D.11, subsection 3, paragraph a, Code  
28 2005, is amended to read as follows:

29 a. Program noncompliance with one or more regulatory  
30 requirements has caused or is likely to cause harm, serious  
31 injury, threat, or death to a ~~recipient-of-program-services~~  
32 participant.

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

35 231D.12 RETALIATION BY AN ADULT DAY SERVICES PROGRAM

1 PROHIBITED.

2 1. An adult day services program shall not discriminate or  
3 retaliate in any way against a recipient participant,  
4 ~~recipient's~~ participant's family, or an employee of the  
5 program who has initiated or participated in any proceeding  
6 authorized by this chapter. An adult day services program  
7 that violates this section is subject to a penalty as  
8 established by administrative rule, to be assessed and  
9 collected by the department of inspections and appeals and  
10 paid into the state treasury to be credited to the general  
11 fund of the state.

12 2. Any attempt to discharge a recipient participant from  
13 an adult day services program by whom or upon whose behalf a  
14 complaint has been submitted to the department of inspections  
15 and appeals under section 231D.9, within ninety days after the  
16 filing of the complaint or the conclusion of any proceeding  
17 resulting from the complaint, shall raise a rebuttable  
18 presumption that the action was taken by the program in  
19 retaliation for the filing of the complaint, except in  
20 situations in which the recipient participant is discharged  
21 due to changes in health status which exceed the level of care  
22 offered by the adult day services program or in other  
23 situations as specified by rule.

24 Sec. 13. Section 231D.16, Code 2005, is amended to read as  
25 follows:

26 231D.16 TRANSITION PROVISIONS PROVISION.

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

30 2. Adult day services programs that are serving at least  
31 two but not more than five persons that are not voluntarily  
32 accredited by a recognized accrediting entity prior to July 1,  
33 2003, shall comply with this chapter by June 30, 2005.

34 Sec. 14. NEW SECTION. 231D.17 WRITTEN CONTRACTUAL  
35 AGREEMENT REQUIRED.

1 1. An adult day services program shall not operate in this  
2 state unless a written contractual agreement is executed  
3 between the adult day services program and each participant or  
4 the participant's legal representative prior to the  
5 participant's admission to the program, and unless the adult  
6 day services program operates in accordance with the terms of  
7 the written contractual agreement. The adult day services  
8 program shall deliver to the participant or the participant's  
9 legal representative a complete copy of the written  
10 contractual agreement and all supporting documents and  
11 attachments, prior to the participant's admission to the  
12 program, and shall also deliver a written copy of changes to  
13 the written contractual agreement, if any changes to the copy  
14 originally delivered are subsequently made, at least thirty  
15 days prior to any changes, unless otherwise provided in this  
16 section.

17 2. An adult day services program written contractual  
18 agreement shall clearly describe the rights and  
19 responsibilities of the participant and the program. The  
20 written contractual agreement shall also include but is not  
21 limited to inclusion of all of the following information in  
22 the body of the agreement or in the supporting documents and  
23 attachments:

- 24 a. A description of all fees, charges, and rates  
25 describing admission and basic services covered, and any  
26 additional and optional services and their related costs.
- 27 b. A statement regarding the impact of the fee structure  
28 on third-party payments, and whether third-party payments and  
29 resources are accepted by the adult day services program.
- 30 c. The procedure followed for nonpayment of fees.
- 31 d. Identification of the party responsible for payment of  
32 fees and identification of the participant's legal  
33 representative, if any.
- 34 e. The term of the written contractual agreement.
- 35 f. A statement that the adult day services program shall

1 notify the participant or the participant's legal  
2 representative, as applicable, in writing at least thirty days  
3 prior to any change being made in the written contractual  
4 agreement, with the following exceptions:

5 (1) When the participant's health status or behavior  
6 constitutes a substantial threat to the health or safety of  
7 the participant, other participants, or others, including when  
8 the participant refuses to consent to discharge.

9 (2) When an emergency or a significant change in the  
10 participant's condition results in the need for the provision  
11 of services that exceed the type or level of services included  
12 in the written contractual agreement and the necessary  
13 services cannot be safely provided by the adult day services  
14 program.

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

18 h. Occupancy, involuntary transfer, and transfer criteria  
19 and procedures, which ensure a safe and orderly transfer.

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

22 j. The program's policies and procedures for addressing  
23 grievances between the adult day services program and the  
24 participants, including grievances relating to transfer and  
25 occupancy.

26 k. A statement of the prohibition against retaliation as  
27 prescribed in section 231D.12.

28 l. The emergency response policy.

29 m. The staffing policy which specifies staff is available  
30 during all times of program operation, if nurse delegation  
31 will be used, and how staffing will be adapted to meet  
32 changing participant needs.

33 n. In dementia-specific adult day services programs, a  
34 description of the services and programming provided to meet  
35 the life skills and social activities of participants.



1 o. The refund policy.  
2 p. A statement regarding billing and payment procedures.  
3 3. Written contractual agreements and related documents  
4 executed by each participant or participant's legal  
5 representative shall be maintained by the adult day services  
6 program in program files from the date of execution until  
7 three years from the date the written contractual agreement is  
8 terminated. A copy of the most current written contractual  
9 agreement shall be provided to members of the general public,  
10 upon request. Written contractual agreements and related  
11 documents shall be made available for on-site inspection to  
12 the department of inspections and appeals upon request and at  
13 reasonable times.

14 Sec. 15. NEW SECTION. 231D.18 INVOLUNTARY TRANSFER.

15 1. If an adult day services program initiates the  
16 involuntary transfer of a participant and the action is not a  
17 result of a monitoring evaluation or complaint investigation  
18 by the department of inspections and appeals, and if the  
19 participant or participant's legal representative contests the  
20 transfer, the following procedure shall apply:

21 a. The adult day services program shall notify the  
22 participant or participant's legal representative, in  
23 accordance with the written contractual agreement, of the need  
24 to transfer and the reason for the transfer.

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

29 2. The department, in consultation with the department of  
30 inspections and appeals and affected industry, professional,  
31 and consumer groups, shall establish by rule, in accordance  
32 with chapter 17A, procedures to be followed, including the  
33 opportunity for hearing, when the transfer of a participant  
34 results from a monitoring evaluation or complaint  
35 investigation conducted by the department of inspections and

1 appeals.

2

EXPLANATION

3 This bill makes changes in the regulation of adult day  
4 services programs and provides criminal penalties for  
5 violations.

6 The bill includes new definitions of terms in the adult day  
7 services chapter, including "health-related care",  
8 "participant", "participant's legal representative", "personal  
9 care", and "contractual agreement".

10 The bill directs the department of elder affairs to adopt  
11 rules that include a requirement that sufficient staffing be  
12 available at all times to fully meet a participant's  
13 identified needs. The rules are also to include a requirement  
14 that no fewer than two staff persons who monitor participants  
15 as indicated in each participant's service plan are to be  
16 awake and on duty during the hours of operation when two or  
17 more participants are present. The bill also provides that a  
18 certified adult day services program is exempt from the  
19 requirements of Code section 135.63 relating to certificate of  
20 need requirements.

21 The bill eliminates the requirement that the department of  
22 elder affairs establish, by rule, special classifications for  
23 adult day services, but does require that the department  
24 establish minimum standards for all services and authorizes  
25 the department to adopt minimum standards for dementia-  
26 specific adult day services programs. The bill eliminates the  
27 requirement that in addition to adoption of rules, the  
28 department of elder affairs also issue interpretive  
29 guidelines.

30 The bill provides that certification of an adult day  
31 services program is for two years, unless revoked for good  
32 cause. The bill also prohibits an adult day services program,  
33 an owner or agent of the program, or an employee of the  
34 program to act as a fiduciary or attorney in fact for a  
35 participant or a participant's property. An adult day

1 services program is also prohibited from requiring a  
2 participant or a participant's legal representative from  
3 liquidating personal property to participate in the program.  
4 The bill provides for imposition of a fee for certification  
5 via a national body of accreditation of \$125. The bill  
6 provides that the basis for denial, suspension, or revocation  
7 of certification may be the conduct of the officers, members  
8 of the boards of directors, trustees, managers, stockholders,  
9 partners, or individuals with an equity interest in an adult  
10 day services or assisted living program, home health agency,  
11 residential care facility, or licensed nursing facility that  
12 has been closed due to loss of licensure or certification or  
13 involuntary termination from participation in the Medicare or  
14 medical assistance programs, or that have been found to have  
15 failed to provide adequate protection or services for  
16 participants to prevent abuse or neglect. The bill also  
17 provides that the basis for denial, suspension, or revocation  
18 of certification may be, in the case of a certificate  
19 applicant or an existing certified owner or operator who is an  
20 entity other than an individual, that the person is in a  
21 position of control or is an officer of the entity and engages  
22 in any act or omission proscribed by Code chapter 231D. The  
23 bill provides that other information relating to an adult day  
24 services program that is obtained by the department of  
25 inspections and appeals which does not constitute the  
26 department's final findings from a monitoring evaluation or  
27 complaint investigation of the adult day services program is  
28 to be made available to the department of elder affairs upon  
29 request to facilitate policy decisions.

30 The bill removes a provision affecting certain adult day  
31 services programs that were required to comply with  
32 regulations governing such programs by June 30, 2004. The  
33 bill adds provisions requiring a written contractual agreement  
34 for adult day services programs, providing a process for  
35 involuntary transfers, and providing for informal review

S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

1 regarding contesting of findings of regulatory insufficiencies  
2 of a monitoring evaluation or complaint investigation.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35



# STATE OF IOWA

THOMAS J. VILSACK  
GOVERNOR

SALLY J. PEDERSON  
LT. GOVERNOR

DEPARTMENT OF ELDER AFFAIRS  
MARK A. HAVERLAND, DIRECTOR

## MEMORANDUM

**TO:** Members of the Iowa General Assembly  
**FROM:** Joel Wulf  
**Re:** 2005 Prefiling of Iowa Code Changes 231D  
**Date:** November 4, 2004

In 2003, the Iowa Department of Elder Affairs was given the responsibility for establishing policy for adult day services in Iowa. The Department of Inspections and Appeals was given the responsibility for enforcement, and the State Fire Marshal was given responsibility for issues associated with life safety.

During the past 18 months, public policy related to adult day service programs has become better understood. To that end, the proposed changes to section 231D of the Iowa Code reflect both technical and substantive changes related to adult day services. Some of the changes proposed are:

- ❖ Clarifying staffing requirements.
- ❖ Adding missed definitions.
- ❖ Removing the requirement to establish interpretive guidelines as Chapter 17A of the Iowa Code currently defines an interpretive guideline as an administrative rule.
- ❖ Adding sections related to corporate officer conduct, written contractual agreements, involuntary transfer, informal review and criminal penalties and injunctive relief.
- ❖ Allowing personnel from DEA to access needed information related to decisions and the formulation of policy.
- ❖ Allowing the collection of fees for certification for those programs requesting certification via a national body of accreditation.

**INQUIRES:** For further information, please contact Joel Wulf at 242-3326 or [joel.wulf@iowa.gov](mailto:joel.wulf@iowa.gov)

**Cc:** Harold Davis, Chair, Iowa Commission for the Department of Elder Affairs  
Scott Galenbeck, Attorney General's Office  
Samual Smith, AoA, Aging Services Program Specialist  
Hugh Ceaser, IDOM  
Josh Mandelbaum, IGOV

HOUSE FILE 587

AN ACT

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

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

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

231D.1 DEFINITIONS.

For the purposes of this chapter, unless the context  
otherwise requires:

1. "Adult day services", "adult day services program", or  
"program" means an organized program providing a variety of  
health health-related care, social services, and other related  
support services for sixteen hours or less in a twenty-four-  
hour period to two or more persons with a functional  
impairment on a regularly scheduled, contractual basis.

2. "Contractual agreement" means a written agreement  
entered into between an adult day services program and a  
participant that clearly describes the rights and  
responsibilities of the adult day services program and the  
participant, and other information required by rule.

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

3- 4. "Functional impairment" means a psychological,  
cognitive, or physical impairment creating the inability to  
perform personal and instrumental activities of daily living  
and associated tasks necessitating some form of supervision or  
assistance or both.

4- 5. "Governmental unit" means the state, or any county,  
municipality, or other political subdivision or any  
department, division, board, or other agency of any of these  
entities.

6. "Health-related care" means services provided by a  
registered nurse or a licensed practical nurse, on a part-time  
or intermittent basis, and services provided by other licensed  
health care professionals, on a part-time or intermittent  
basis.

7. "Medication setup" means assistance with various steps  
of medication administration to support a participant's  
autonomy, which may include but is not limited to routine  
prompting, cueing and reminding, opening containers or  
packaging at the direction of the participant, reading  
instructions or other label information, or transferring  
medications from the original container into suitable  
medication dispensing containers, reminder containers, or  
medication cups.

8. "Participant" means an individual who is the recipient  
of services provided by an adult day services program.

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

10. "Personal care" means assistance with the essential  
activities of daily living which may include but are not  
limited to transferring, bathing, personal hygiene, dressing,  
grooming, and housekeeping that are essential to the health  
and welfare of a participant.

5- 11. "Recognized accrediting entity" means a nationally  
recognized accrediting entity that the department recognizes  
as having specific adult day services program standards  
equivalent to the standards established by the department for  
adult day services.

6- 12. "Social services" means services relating to the  
psychological and social needs of the individual in adjusting

to participating in an adult day services program, and minimizing the stress arising from that circumstance.

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

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

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

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

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

3. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing minimum standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recognized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules shall include a requirement that sufficient staffing be available at all times to fully meet a participant's identified needs. The rules shall include a requirement that no fewer than two staff persons who monitor participants as indicated in each participant's service plan shall be awake and on duty during the hours of operation when two or more participants are present. The rules and minimum standards adopted shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

~~4.--In-addition-to-the-adoption-of-standards-and-rules-for adult-day-services-programs,-the-department-in-consultation~~

~~with-the-department-of-inspections-and-appeals-and-affected industry,-professional,-and-consumer-groups,-shall-issue interpretive-guidelines,-including-the-expectations-of-program certification-monitors,-to-provide-direction-to-adult-day services-programs-in-complying-with-certification requirements.~~

5+ 4. The department may establish by administrative rule, special-classifications-for-adult-day-services providers---The-department-of-inspections-and-appeals-shall issue-separate-certificates-for-each-special-classification for-which-a-provider-is-certified, in accordance with chapter 17A, specific rules related to minimum standards for dementia-specific adult day services programs. The rules shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

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

2. An adult day services program may provide any type of adult day services for which the program is certified, ~~including-any-special-classification-of-adult-day-services.~~ An adult day services program shall provide services and supervision commensurate with the needs of the recipients participants. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective recipient participant, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services program is provided, if the business or activity serves nonrecipients-of-adult-day-services persons who are not participants. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

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

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

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

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

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

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

1. The department of inspections and appeals may deny, suspend, or revoke certification if the department of inspections and appeals finds that there has been a substantial or repeated failure on the part of the adult day services program to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter, or for any of the following reasons:

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

b. a. Appropriation or conversion of the property of an adult-day-services-programs-service-recipient a participant

without the recipient's participant's written consent or the written consent of the service-recipient's participant's legal guardian representative.

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

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

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

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

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

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

h. In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a five percent equity interest in the program, who has or has had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or who has been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

i. In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an



officer of the entity and engages in any act or omission proscribed by this chapter.

4- j. For any other reason as provided by law or administrative rule.

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

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

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

1. A person with concerns regarding the operations or service delivery of an adult day services program may file a complaint with the department of inspections and appeals. The name of the person who files a complaint with the department of inspections and appeals and any personal identifying information of the person or any recipient-of-program-services participant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department of inspections and appeals involved in the investigation of the complaint.

Sec. 9. NEW SECTION. 231D.9A INFORMAL REVIEW.

1. If an adult day services program contests the findings of regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, to the department of inspections and appeals for review.

2. The department of inspections and appeals shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department of inspections and appeals may affirm, modify, or dismiss the regulatory insufficiencies. The department of inspections and appeals shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department of inspections and appeals shall also notify the complainant, if known, of the decision and the reasons for the decision.

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

231D.10 PUBLIC DISCLOSURE OF FINDINGS.

Following Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department of inspections and appeals pursuant to this chapter, including the conclusion of all administrative appeals processes, the department's final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services program that is obtained by the department of inspections and appeals which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall be made available to the department upon request to facilitate policy decisions, but shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

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

231D.11 PENALTIES.

1. A person establishing, conducting, managing, or operating an adult day services program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department of inspections and appeals by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an adult day services program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

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

~~a.--Contacting or interviewing any participant of an adult day services program in private at any reasonable hour and without advance notice.~~

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

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

3r 2. A civil penalty, as established by rule, may apply in any of the following situations:

a. Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a recipient of program services participant.

b. Program failure or refusal to comply with regulatory requirements within prescribed time frames.

c. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "lawful enforcement" includes but is not limited to:

(1) Contacting or interviewing any participant in an adult day services program in private at any reasonable hour and without advance notice.

(2) Examining any relevant records of an adult day services program.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

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

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

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

2. Any attempt to discharge a recipient participant from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department of inspections and appeals under section 231D.9, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the program in retaliation for the filing of the complaint, except in

situations in which the recipient participant is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

Sec. 13. NEW SECTION. 231D.13A MEDICATION SETUP -- ADMINISTRATION AND STORAGE OF MEDICATIONS.

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

2. If medications are administered or stored by an adult day services program, or if the adult day services program provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the program by the participant or the participant's legal representative, the medications shall be administered by a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed or registered in Iowa or by the individual to whom such licensed or registered individuals may properly delegate administration of medications.

b. Medications, other than those self-administered by the participant or provided through medication setup, shall be stored in locked storage that is not accessible to persons other than employees responsible for administration or storage of medications.

c. Medications shall be labeled and maintained in compliance with label instructions and state and federal law.

d. A person, other than a person authorized to prescribe prescription drugs under state and federal law, shall not alter the prescription of a participant.

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

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

g. Program assistance with medication administration as specified in the contractual agreement shall not require the program to provide assistance with the storage of medications.

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

231D.16 TRANSITION PROVISIONS PROVISION.

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

2. 1. Adult day services programs that are serving at least two but not more than five persons that are not voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2005.

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

3. A certified adult day services program that complies with the requirements of this chapter shall not be required to be licensed or certified as another type of facility, unless the facility is represented to the public as another type of facility.

Sec. 15. NEW SECTION. 231D.17 WRITTEN CONTRACTUAL AGREEMENT REQUIRED.

1. An adult day services program shall not operate in this state unless a written contractual agreement is executed between the adult day services program and each participant or the participant's legal representative prior to the participant's admission to the program, and unless the adult day services program operates in accordance with the terms of the written contractual agreement. The adult day services program shall deliver to the participant or the participant's legal representative a complete copy of the written contractual agreement and all supporting documents and attachments, prior to the participant's admission to the program, and shall also deliver a written copy of changes to the written contractual agreement, if any changes to the copy originally delivered are subsequently made, at least thirty days prior to any changes, unless otherwise provided in this section.

2. An adult day services program written contractual agreement shall clearly describe the rights and responsibilities of the participant and the program. The written contractual agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

- a. A description of all fees, charges, and rates describing admission and basic services covered, and any additional and optional services and their related costs.
- b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the adult day services program.
- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the participant's legal representative, if any.

- e. The term of the written contractual agreement.
- f. A statement that the adult day services program shall notify the participant or the participant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the written contractual agreement, with the following exceptions:
  - (1) When the participant's health status or behavior constitutes a substantial threat to the health or safety of the participant, other participants, or others, including when the participant refuses to consent to discharge.
  - (2) When an emergency or a significant change in the participant's condition results in the need for the provision of services that exceed the type or level of services included in the written contractual agreement and the necessary services cannot be safely provided by the adult day services program.
- g. A statement that all participant information shall be maintained in a confidential manner to the extent required under state and federal law.
- h. Discharge, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.
- i. The internal appeals process provided relative to an involuntary transfer.
- j. The program's policies and procedures for addressing grievances between the adult day services program and the participants, including grievances relating to transfer and occupancy.
- k. A statement of the prohibition against retaliation as prescribed in section 231D.12.
  - l. The emergency response policy.
  - m. The staffing policy which specifies staff is available during all times of program operation, if nurse delegation will be used, and how staffing will be adapted to meet changing participant needs.

n. In dementia-specific adult day services programs, a description of the services and programming provided to meet the life skills and social activities of participants.

o. The refund policy.

p. A statement regarding billing and payment procedures.

3. Written contractual agreements and related documents executed by each participant or participant's legal representative shall be maintained by the adult day services program in program files from the date of execution until three years from the date the written contractual agreement is terminated. A copy of the most current written contractual agreement shall be provided to members of the general public, upon request. Written contractual agreements and related documents shall be made available for on-site inspection to the department of inspections and appeals upon request and at reasonable times.

Sec. 16. NEW SECTION. 231D.18 INVOLUNTARY TRANSFER.

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

a. The adult day services program shall notify the participant or participant's legal representative, in accordance with the written contractual agreement, of the need to transfer and the reason for the transfer.

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

2. The department, in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the

opportunity for hearing, when the transfer of a participant results from a monitoring evaluation or complaint investigation conducted by the department of inspections and appeals.

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

---

CHRISTOPHER C. RANTS  
Speaker of the House

---

JOHN P. KIBBIE  
President of the Senate

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

---

MARGARET THOMSON  
Chief Clerk of the House

Approved 4/27, 2005

---

THOMAS J. VILSACK  
Governor