

MAR 1 1 2005
Place On Calendar

HOUSE FILE 710
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 101)

Passed House, Date 3-22-05 Passed Senate, Date _____
Vote: Ayes 96 Nays 0 Vote: Ayes _____ Nays _____
Approved 4-27-05

A BILL FOR

1 An Act relating to the regulation of elder group homes and
2 providing penalties.

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

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HF 710

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

4 231B.1 DEFINITIONS.

5 1. "Department" means the department of elder affairs or
6 the department's designee.

7 2. "Elder" means a person sixty years of age or older.

8 3. "Elder group home" means a single-family residence that
9 is operated by a person who is providing room, board, and
10 personal care and may provide health-related services to three
11 through five elders who are not related to the person
12 providing the service within the third degree of consanguinity
13 or affinity, and which is staffed by an on-site manager
14 twenty-four hours per day, seven days per week.

15 4. "Governmental unit" means the state, or any county,
16 municipality, or other political subdivision or any
17 department, division, board, or other agency of any of these
18 entities.

19 5. "Health-related care" means services provided by a
20 registered nurse or a licensed practical nurse, on a part-time
21 or intermittent basis, and services provided by other licensed
22 health care professionals, on a part-time or intermittent
23 basis.

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

30 7. "Personal care" means assistance with the essential
31 activities of daily living which may include but are not
32 limited to transferring, bathing, personal hygiene, dressing,
33 grooming, and housekeeping that are essential to the health
34 and welfare of a tenant.

35 8. "Tenant" means an individual who receives elder group

1 home services through a certified elder group home.

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

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

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

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

14 2. The purposes of establishing and regulating elder group
15 homes include all of the following:

16 a. To encourage the establishment and maintenance of a
17 safe and homelike environment for individuals of all income
18 levels who require assistance with personal care to live
19 independently but who require health-related care only on a
20 part-time or intermittent basis.

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

25 c. To encourage public participation in the development of
26 elder group home programs for individuals of all income
27 levels.

28 3. It is the intent of the general assembly that the
29 department of elder affairs establish policy for elder group
30 homes and that the department of inspections and appeals
31 enforce this chapter.

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

34 231B.2 CERTIFICATION OF ELDER GROUP HOMES -- RULES.

35 1. The department shall establish by rule, in accordance

1 with chapter 17A, minimum standards for certification and
2 monitoring of elder group homes. The department may adopt by
3 reference, with or without amendment, nationally recognized
4 standards and rules for elder group homes. The standards and
5 rules shall be formulated in consultation with the department
6 of inspections and appeals and affected industry,
7 professional, and consumer groups and shall be designed to
8 accomplish the purposes of this chapter and shall include but
9 not be limited to rules relating to all of the following:

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

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

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

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

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

28 3. The owner or manager of a certified elder group home
29 shall comply with the rules adopted by the department for an
30 elder group home. A person, including a governmental unit,
31 shall not represent an elder group home to the public as an
32 elder group home or as a certified elder group home unless and
33 until the program is certified pursuant to this chapter.

34 4. a. Services provided by a certified elder group home
35 may be provided directly by staff of the elder group home, by

1 individuals contracting with the elder group home to provide
2 services, or by individuals employed by the tenant or with
3 whom the tenant contracts if the tenant agrees to assume the
4 responsibility and risk of the employment or the contractual
5 relationship.

6 b. If a tenant is terminally ill and has elected to
7 receive hospice services under the federal Medicare program
8 from a Medicare-certified hospice program, the elder group
9 home and the Medicare-certified hospice program shall enter
10 into a written agreement under which the hospice program
11 retains professional management responsibility for those
12 services.

13 5. The department of inspections and appeals may enter
14 into contracts to provide certification and monitoring of
15 elder group homes. The department of inspections and appeals
16 shall:

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

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

25 6. A department, agency, or officer of this state or of
26 any governmental unit shall not pay or approve for payment
27 from public funds any amount to an elder group home for an
28 actual or prospective tenant, unless the program holds a
29 current certificate issued by the department of inspections
30 and appeals and meets all current requirements for
31 certification.

32 7. The department shall adopt rules regarding the
33 conducting or operating of another business or activity in the
34 distinct part of the physical structure in which the elder
35 group home is operated, if the business or activity serves

1 persons who are not tenants. The rules shall be developed in
2 consultation with the department of inspections and appeals
3 and affected industry, professional, and consumer groups.

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

5 9. The department of elder affairs and the department of
6 inspections and appeals shall conduct joint training sessions
7 for personnel responsible for conducting monitoring
8 evaluations and complaint investigations of elder group homes.

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

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

13 231B.4 ZONING -- FIRE AND SAFETY STANDARDS.

14 An elder group home shall be located in an area zoned for
15 single-family or multiple-family housing or in an
16 unincorporated area and shall be constructed in compliance
17 with applicable local housing codes and the rules adopted for
18 the special classification by the state fire marshal. In the
19 absence of local building codes, the facility shall comply
20 with the state plumbing code established pursuant to section
21 135.11 and the state building code established pursuant to
22 section 103A.7 and the rules adopted for the special
23 classification by the state fire marshal.

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

26 1. An elder group home shall not operate in this state
27 unless a written occupancy agreement, as prescribed in
28 subsection 2, is executed between the elder group home and
29 each tenant or the tenant's legal representative prior to the
30 tenant's occupancy, and unless the elder group home operates
31 in accordance with the terms of the occupancy agreement. The
32 elder group home shall deliver to the tenant or the tenant's
33 legal representative a complete copy of the occupancy
34 agreement and all supporting documents and attachments and
35 shall deliver at least thirty days prior to any changes, a

1 written copy of changes to the occupancy agreement if any
2 changes to the copy originally delivered are subsequently
3 made, unless otherwise provided in this section.

4 2. An elder group home occupancy agreement shall clearly
5 describe the rights and responsibilities of the tenant and the
6 elder group home. The occupancy agreement shall also include
7 but is not limited to inclusion of all of the following
8 information in the body of the agreement or in the supporting
9 documents and attachments:

10 a. A description of all fees, charges, and rates
11 describing tenancy 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 elder group home.

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 tenant's legal representative,
19 if any.

20 e. The term of the occupancy agreement.

21 f. A statement that the elder group home shall notify the
22 tenant or the tenant's legal representative, as applicable, in
23 writing at least thirty days prior to any change being made in
24 the occupancy agreement with the following exceptions:

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

29 (2) When an emergency or a significant change in the
30 tenant's condition results in the need for the provision of
31 services that exceed the type or level of services included in
32 the occupancy agreement and the necessary services cannot be
33 safely provided by the elder group home.

34 g. A statement that all tenant information shall be
35 maintained in a confidential manner to the extent required

1 under state and federal law.

2 h. Occupancy, involuntary transfer, and transfer criteria
3 and procedures, which ensure a safe and orderly transfer.

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

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

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

11 l. The emergency response policy.

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

15 n. The refund policy.

16 o. A statement regarding billing and payment procedures.

17 3. Occupancy agreements and related documents executed by
18 each tenant or tenant's legal representative shall be
19 maintained by the elder group home from the date of execution
20 until three years from the date the occupancy agreement is
21 terminated. A copy of the most current occupancy agreement
22 shall be provided to members of the general public, upon
23 request. Occupancy agreements and related documents shall be
24 made available for on-site inspection to the department of
25 inspections and appeals upon request and at reasonable times.

26 Sec. 6. NEW SECTION. 231B.6 INVOLUNTARY TRANSFER.

27 1. If an elder group home initiates the involuntary
28 transfer of a tenant and the action is not a result of a
29 monitoring evaluation or complaint investigation by the
30 department of inspections and appeals, and if the tenant or
31 tenant's legal representative contests the transfer, the
32 following procedure shall apply:

33 a. The elder group home shall notify the tenant or
34 tenant's legal representative, in accordance with the
35 occupancy agreement, of the need to transfer, the reason for

1 the transfer, and the contact information of the tenant
2 advocate.

3 b. The elder group home shall provide the tenant advocate
4 with a copy of the notification to the tenant.

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

9 d. If, following the internal appeals process, the elder
10 group home upholds the transfer decision, the tenant or the
11 tenant's legal representative may utilize other remedies
12 authorized by law to contest the transfer.

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

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

21 1. Any person with concerns regarding the operations or
22 service delivery of an elder group home may file a complaint
23 with the department of inspections and appeals. The name of
24 the person who files a complaint with the department of
25 inspections and appeals and any personal identifying
26 information of the person or any tenant identified in the
27 complaint shall be kept confidential and shall not be subject
28 to discovery, subpoena, or other means of legal compulsion for
29 its release to a person other than department of inspections
30 and appeals' employees involved with the complaint.

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

35 Sec. 8. NEW SECTION. 231B.8 INFORMAL REVIEW.

1 1. If an elder group home contests the findings of
2 regulatory insufficiencies of a monitoring evaluation or
3 complaint investigation, the program shall submit written
4 information, demonstrating that the program was in compliance
5 with the applicable requirement at the time of the monitoring
6 evaluation or complaint investigation of the regulatory
7 insufficiencies, to the department of inspections and appeals
8 for review.

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

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

21 Sec. 9. NEW SECTION. 231B.9 PUBLIC DISCLOSURE OF
22 FINDINGS.

23 Upon completion of a monitoring evaluation or complaint
24 investigation of an elder group home by the department of
25 inspections and appeals pursuant to this chapter, including
26 the conclusion of all appeals processes, the department of
27 inspections and appeals' final findings with respect to
28 compliance by the elder group home with requirements for
29 certification shall be made available to the public in a
30 readily available form and place. Other information relating
31 to an elder group home that is obtained by the department of
32 inspections and appeals which does not constitute the
33 department of inspections and appeals' final findings from a
34 monitoring evaluation or complaint investigation of the elder
35 group home shall be made available to the department of elder

1 affairs upon request to facilitate policy decisions, but shall
2 not be made available to the public except in proceedings
3 involving the denial, suspension, or revocation of a
4 certificate under this chapter.

5 Sec. 10. NEW SECTION. 231B.10 DENIAL, SUSPENSION, OR
6 REVOCATION -- CONDITIONAL OPERATION.

7 1. The department of inspections and appeals may deny,
8 suspend, or revoke a certificate in any case where the
9 department of inspections and appeals finds that there has
10 been a substantial or repeated failure on the part of the
11 elder group home to comply with this chapter or minimum
12 standards adopted under this chapter or for any of the
13 following reasons:

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

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

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

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

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

27 f. Founded dependent adult abuse as defined in section
28 235B.2.

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

1 nursing facility in this or any state which has been closed
2 due to removal of program, agency, or facility licensure or
3 certification or involuntary termination from participation in
4 either the medical assistance or Medicare programs, or who has
5 been found to have failed to provide adequate protection or
6 services for tenants to prevent abuse or neglect.

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

12 i. For any other reason as provided by law or
13 administrative rule.

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

29 Sec. 11. NEW SECTION. 231B.11 NOTICE -- APPEAL --
30 EMERGENCY PROVISIONS.

31 1. The denial, suspension, or revocation of a certificate
32 shall be effected by delivering to the applicant or
33 certificate holder by restricted certified mail or by personal
34 service a notice setting forth the particular reasons for such
35 action. Such denial, suspension, or revocation shall become

1 effective thirty days after the mailing or service of the
2 notice, unless the applicant or certificate holder, within
3 such thirty-day period, requests a hearing, in writing, of the
4 department of inspections and appeals, in which case the
5 notice shall be deemed to be suspended.

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

10 3. When the department of inspections and appeals finds
11 that an imminent danger to the health or safety of a tenant of
12 an elder group home exists which requires action on an
13 emergency basis, the department of inspections and appeals may
14 direct removal of all tenants of the elder group home and
15 suspend the certificate prior to a hearing.

16 Sec. 12. NEW SECTION. 231B.12 DEPARTMENT NOTIFIED OF
17 CASUALTIES.

18 The department of inspections and appeals shall be notified
19 within twenty-four hours, by the most expeditious means
20 available, of any accident causing substantial injury or death
21 to a tenant, and any substantial fire or natural or other
22 disaster occurring at or near an elder group home.

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

25 An elder group home shall not discriminate or retaliate in
26 any way against a tenant, a tenant's family, or an employee of
27 the elder group home who has initiated or participated in any
28 proceeding authorized by this chapter. An elder group home
29 that violates this section is subject to a penalty as
30 established by administrative rule in accordance with chapter
31 17A and to be assessed and collected by the department of
32 inspections and appeals and paid into the state treasury to be
33 credited to the general fund of the state.

34 Sec. 14. NEW SECTION. 231B.14 CIVIL PENALTIES.

35 The department may establish by rule, in accordance with

1 chapter 17A, civil penalties for the following violations by
2 an elder group home:

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

6 2. Following receipt of notice from the department of
7 inspections and appeals, continued failure or refusal to
8 comply within a prescribed time frame with regulatory
9 requirements that have a direct relationship to the health,
10 safety, or security of elder group home tenants.

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

13 A person establishing, conducting, managing, or operating
14 an elder group home without a certificate is guilty of a
15 serious misdemeanor. Each day of continuing violation after
16 conviction or notice from the department of inspections and
17 appeals by certified mail of a violation shall be considered a
18 separate offense. A person establishing, conducting,
19 managing, or operating an elder group home without a
20 certificate may be temporarily or permanently restrained by a
21 court of competent jurisdiction from such activity in an
22 action brought by the state.

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

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

31 2. This chapter shall not be construed to require that a
32 facility licensed as a different type of facility also comply
33 with the requirements of this chapter, unless the facility is
34 represented to the public as an elder group home.

35 3. A certified elder group home that complies with the

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

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

7 1. The department of inspections and appeals shall collect
8 elder group home certification and related fees. Fees
9 collected and retained pursuant to this section shall be
10 deposited in the general fund of the state.

11 2. The following certification and related fees shall
12 apply to elder group homes:

13 a. For a two-year initial certification, seven hundred
14 fifty dollars.

15 b. For a two-year recertification, one thousand dollars.

16 c. For a blueprint plan review, nine hundred dollars.

17 d. For an optional preliminary plan review, five hundred
18 dollars.

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

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

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

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

28 Sec. 20. NEW SECTION. 231B.20 NURSING ASSISTANT AND
29 MEDICATION AIDE -- CERTIFICATION.

30 The department of inspections and appeals, in cooperation
31 with other appropriate agencies, shall establish a procedure
32 to allow nursing assistants or medication aides to claim work
33 within an elder group home as credit toward sustaining the
34 nursing assistant's or medication aide's certification.

35 Sec. 21. Section 335.33, Code 2005, is amended to read as

1 follows:

2 335.33 ELDER GROUP HOMES.

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

8 Sec. 22. Section 414.31, Code 2005, is amended to read as
9 follows:

10 414.31 ELDER GROUP HOMES.

11 A city council or city zoning commission shall consider an
12 elder ~~family~~ group home a family home, as defined in section
13 414.22, for purposes of zoning, in accordance with section
14 ~~231B.2~~ 231B.4, and may establish limitations regarding the
15 proximity of one proposed elder group home to another.

16 EXPLANATION

17 This bill establishes a new regulatory framework for elder
18 group homes. The bill provides findings, purpose, and intent
19 related to elder group homes, provides definitions, and
20 provides for certification and monitoring of elder group homes
21 similar to the requirements for assisted living programs. The
22 bill establishes fire and safety standards; requires written
23 occupancy agreements; establishes provisions for involuntary
24 transfer of a tenant and a process for addressing complaints;
25 establishes a process for informal review when an elder group
26 home contests the findings of regulatory insufficiencies of a
27 monitoring evaluation or complaint investigation; provides for
28 public disclosure of final findings upon completion of a
29 monitoring evaluation or complaint investigation to the public
30 and disclosure of other information to the department of elder
31 affairs; establishes provisions for denial, suspension, or
32 revocation of certification and for conditional operation of
33 an elder group home; provides for notice and an appeal process
34 relative to the denial, suspension, or revocation of a
35 certificate; provides for the department of inspections and

1 appeals to be notified of casualties; prohibits retaliation by
2 an elder group home against a tenant, a tenant's family, or an
3 employee of the elder group home who has initiated or
4 participated in any proceeding authorized under the chapter;
5 provides for civil and criminal penalties and injunctive
6 relief; provides transitional provisions; establishes
7 certification and related fees; provides provisions relating
8 to nursing assistants and medication aides; provides that the
9 landlord and tenant Act is applicable to elder group homes;
10 and provides for the appointment of members of resident
11 advocate committees for elder group homes.

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HOUSE FILE 710

H-1129

1 Amend House File 710 as follows:

2 1. Page 1, by inserting after line 23, the
3 following:

4 "____. "Medication setup" means assistance with
5 various steps of medication administration to support
6 a tenant'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 tenant, 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 9, line 26, by inserting after the word
14 "all" the following: "administrative".

15 3. Page 13, by inserting after line 10, the
16 following:

17 "3. Preventing or interfering with or attempting
18 to impede in any way any duly authorized
19 representative of the department of inspections and
20 appeals in the lawful enforcement of this chapter or
21 of the rules adopted pursuant to this chapter. As
22 used in this subsection, "lawful enforcement" includes
23 but is not limited to:

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

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

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

32 4. Page 14, by inserting after line 34, the
33 following:

34 "Sec. ____ . NEW SECTION. 231B.21 MEDICATION SETUP
35 -- ADMINISTRATION AND STORAGE OF MEDICATIONS.

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

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

47 a. If administration of medications is delegated
48 to the elder group home by the tenant or tenant's
49 legal representative, the medications shall be
50 administered by a registered nurse, licensed practical

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1 nurse, or advanced registered nurse practitioner
2 licensed or registered in Iowa or by the individual to
3 whom such licensed or registered individuals may
4 properly delegate administration of medications.

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

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

13 d. A person other than a dispensing pharmacist
14 shall not alter the prescription.

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

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

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

30 5. By renumbering as necessary.

By UPMEYER of Hancock
JACOBY of Johnson

H-1129 FILED MARCH 21, 2005

HOUSE FILE 710

H-1137

1 Amend the amendment, H-1129, to House File 710 as
2 follows:

3 1. Page 1, by inserting after line 14 the
4 following:

5 "____. Page 10, line 32, by striking the word
6 "ten" and inserting the following: "five"."

7 2. By renumbering as necessary.

By FORD of Polk

H-1137 FILED MARCH 22, 2005
ADOPTED

HOUSE FILE 710
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 101)

(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 50 Nays 0
Approved _____

A BILL FOR

1 An Act relating to the regulation of elder group homes and
2 providing penalties.

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

4
5
6
7

House Amendments _____

HOUSE FILE 710

S-3099

1 Amend House File 710, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, line 31, by inserting after the word
4 "marshal." the following: "The rules adopted for the
5 special classification by the state fire marshal
6 regarding second floor occupancy shall be adopted in
7 consultation with the department of elder affairs and
8 shall take into consideration the mobility of the
9 tenants."

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

S-3099 FILED APRIL 7, 2005

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

4 231B.1 DEFINITIONS.

5 1. "Department" means the department of elder affairs or
6 the department's designee.

7 2. "Elder" means a person sixty years of age or older.

8 3. "Elder group home" means a single-family residence that
9 is operated by a person who is providing room, board, and
10 personal care and may provide health-related services to three
11 through five elders who are not related to the person
12 providing the service within the third degree of consanguinity
13 or affinity, and which is staffed by an on-site manager
14 twenty-four hours per day, seven days per week.

15 4. "Governmental unit" means the state, or any county,
16 municipality, or other political subdivision or any
17 department, division, board, or other agency of any of these
18 entities.

19 5. "Health-related care" means services provided by a
20 registered nurse or a licensed practical nurse, on a part-time
21 or intermittent basis, and services provided by other licensed
22 health care professionals, on a part-time or intermittent
23 basis.

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

32 7. "Occupancy agreement" means a written agreement entered
33 into between an elder group home and a tenant that clearly
34 describes the rights and responsibilities of the elder group
35 home and the tenant, and other information required by rule.

1 "Occupancy agreement" may include a separate signed lease and
2 signed service agreement.

3 8. "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 tenant.

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

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

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

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

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

22 2. The purposes of establishing and regulating elder group
23 homes include all of the following:

24 a. To encourage the establishment and maintenance of a
25 safe and homelike environment for individuals of all income
26 levels who require assistance with personal care to live
27 independently but who require health-related care only on a
28 part-time or intermittent basis.

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

33 c. To encourage public participation in the development of
34 elder group home programs for individuals of all income
35 levels.

1 3. It is the intent of the general assembly that the
2 department of elder affairs establish policy for elder group
3 homes and that the department of inspections and appeals
4 enforce this chapter.

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

7 231B.2 CERTIFICATION OF ELDER GROUP HOMES -- RULES.

8 1. The department shall establish by rule, in accordance
9 with chapter 17A, minimum standards for certification and
10 monitoring of elder group homes. The department may adopt by
11 reference, with or without amendment, nationally recognized
12 standards and rules for elder group homes. The standards and
13 rules shall be formulated in consultation with the department
14 of inspections and appeals and affected industry,
15 professional, and consumer groups and shall be designed to
16 accomplish the purposes of this chapter and shall include but
17 not be limited to rules relating to all of the following:

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

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

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

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

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

1 3. The owner or manager of a certified elder group home
2 shall comply with the rules adopted by the department for an
3 elder group home. A person, including a governmental unit,
4 shall not represent an elder group home to the public as an
5 elder group home or as a certified elder group home unless and
6 until the program is certified pursuant to this chapter.

7 4. a. Services provided by a certified elder group home
8 may be provided directly by staff of the elder group home, by
9 individuals contracting with the elder group home to provide
10 services, or by individuals employed by the tenant or with
11 whom the tenant contracts if the tenant agrees to assume the
12 responsibility and risk of the employment or the contractual
13 relationship.

14 b. If a tenant is terminally ill and has elected to
15 receive hospice services under the federal Medicare program
16 from a Medicare-certified hospice program, the elder group
17 home and the Medicare-certified hospice program shall enter
18 into a written agreement under which the hospice program
19 retains professional management responsibility for those
20 services.

21 5. The department of inspections and appeals may enter
22 into contracts to provide certification and monitoring of
23 elder group homes. The department of inspections and appeals
24 shall:

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

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

33 6. A department, agency, or officer of this state or of
34 any governmental unit shall not pay or approve for payment
35 from public funds any amount to an elder group home for an

1 actual or prospective tenant, unless the program holds a
2 current certificate issued by the department of inspections
3 and appeals and meets all current requirements for
4 certification.

5 7. The department shall adopt rules regarding the
6 conducting or operating of another business or activity in the
7 distinct part of the physical structure in which the elder
8 group home is operated, if the business or activity serves
9 persons who are not tenants. The rules shall be developed in
10 consultation with the department of inspections and appeals
11 and affected industry, professional, and consumer groups.

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

13 9. The department of elder affairs and the department of
14 inspections and appeals shall conduct joint training sessions
15 for personnel responsible for conducting monitoring
16 evaluations and complaint investigations of elder group homes.

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

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

21 231B.4 ZONING -- FIRE AND SAFETY STANDARDS.

22 An elder group home shall be located in an area zoned for
23 single-family or multiple-family housing or in an
24 unincorporated area and shall be constructed in compliance
25 with applicable local housing codes and the rules adopted for
26 the special classification by the state fire marshal. In the
27 absence of local building codes, the facility shall comply
28 with the state plumbing code established pursuant to section
29 135.11 and the state building code established pursuant to
30 section 103A.7 and the rules adopted for the special
31 classification by the state fire marshal.

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

34 1. An elder group home shall not operate in this state
35 unless a written occupancy agreement, as prescribed in

1 subsection 2, is executed between the elder group home and
2 each tenant or the tenant's legal representative prior to the
3 tenant's occupancy, and unless the elder group home operates
4 in accordance with the terms of the occupancy agreement. The
5 elder group home shall deliver to the tenant or the tenant's
6 legal representative a complete copy of the occupancy
7 agreement and all supporting documents and attachments and
8 shall deliver at least thirty days prior to any changes, a
9 written copy of changes to the occupancy agreement if any
10 changes to the copy originally delivered are subsequently
11 made, unless otherwise provided in this section.

12 2. An elder group home occupancy agreement shall clearly
13 describe the rights and responsibilities of the tenant and the
14 elder group home. The occupancy agreement shall also include
15 but is not limited to inclusion of all of the following
16 information in the body of the agreement or in the supporting
17 documents and attachments:

18 a. A description of all fees, charges, and rates
19 describing tenancy and basic services covered, and any
20 additional and optional services and their related costs.

21 b. A statement regarding the impact of the fee structure
22 on third-party payments, and whether third-party payments and
23 resources are accepted by the elder group home.

24 c. The procedure followed for nonpayment of fees.

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

28 e. The term of the occupancy agreement.

29 f. A statement that the elder group home shall notify the
30 tenant or the tenant's legal representative, as applicable, in
31 writing at least thirty days prior to any change being made in
32 the occupancy agreement with the following exceptions:

33 (1) When the tenant's health status or behavior
34 constitutes a substantial threat to the health or safety of
35 the tenant, other tenants, or others, including when the

1 tenant refuses to consent to relocation.

2 (2) When an emergency or a significant change in the
3 tenant's condition results in the need for the provision of
4 services that exceed the type or level of services included in
5 the occupancy agreement and the necessary services cannot be
6 safely provided by the elder group home.

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

10 h. Occupancy, involuntary transfer, and transfer criteria
11 and procedures, which ensure a safe and orderly transfer.

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

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

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

19 l. The emergency response policy.

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

23 n. The refund policy.

24 o. A statement regarding billing and payment procedures.

25 3. Occupancy agreements and related documents executed by
26 each tenant or tenant's legal representative shall be
27 maintained by the elder group home from the date of execution
28 until three years from the date the occupancy agreement is
29 terminated. A copy of the most current occupancy agreement
30 shall be provided to members of the general public, upon
31 request. Occupancy agreements and related documents shall be
32 made available for on-site inspection to the department of
33 inspections and appeals upon request and at reasonable times.

34 Sec. 6. NEW SECTION. 231B.6 INVOLUNTARY TRANSFER.

35 1. If an elder group home initiates the involuntary

1 transfer of a tenant and the action is not a result of a
2 monitoring evaluation or complaint investigation by the
3 department of inspections and appeals, and if the tenant or
4 tenant's legal representative contests the transfer, the
5 following procedure shall apply:

6 a. The elder group home shall notify the tenant or
7 tenant's legal representative, in accordance with the
8 occupancy agreement, of the need to transfer, the reason for
9 the transfer, and the contact information of the tenant
10 advocate.

11 b. The elder group home shall provide the tenant advocate
12 with a copy of the notification to the tenant.

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

17 d. If, following the internal appeals process, the elder
18 group home upholds the transfer decision, the tenant or the
19 tenant's legal representative may utilize other remedies
20 authorized by law to contest the transfer.

21 2. The department, in consultation with the department of
22 inspections and appeals and affected industry, professional,
23 and consumer groups, shall establish by rule, in accordance
24 with chapter 17A, procedures to be followed, including the
25 opportunity for hearing, when the transfer of a tenant results
26 from a monitoring evaluation or complaint investigation
27 conducted by the department of inspections and appeals.

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

29 1. Any person with concerns regarding the operations or
30 service delivery of an elder group home may file a complaint
31 with the department of inspections and appeals. The name of
32 the person who files a complaint with the department of
33 inspections and appeals and any personal identifying
34 information of the person or any tenant identified in the
35 complaint shall be kept confidential and shall not be subject

1 to discovery, subpoena, or other means of legal compulsion for
2 its release to a person other than department of inspections
3 and appeals' employees involved with the complaint.

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

8 Sec. 8. NEW SECTION. 231B.8 INFORMAL REVIEW.

9 1. If an elder group home contests the findings of
10 regulatory insufficiencies of a monitoring evaluation or
11 complaint investigation, the program shall submit written
12 information, demonstrating that the program was in compliance
13 with the applicable requirement at the time of the monitoring
14 evaluation or complaint investigation of the regulatory
15 insufficiencies, to the department of inspections and appeals
16 for review.

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

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

29 Sec. 9. NEW SECTION. 231B.9 PUBLIC DISCLOSURE OF
30 FINDINGS.

31 Upon completion of a monitoring evaluation or complaint
32 investigation of an elder group home by the department of
33 inspections and appeals pursuant to this chapter, including
34 the conclusion of all administrative appeals processes, the
35 department of inspections and appeals' final findings with

1 respect to compliance by the elder group home with
2 requirements for certification shall be made available to the
3 public in a readily available form and place. Other
4 information relating to an elder group home that is obtained
5 by the department of inspections and appeals which does not
6 constitute the department of inspections and appeals' final
7 findings from a monitoring evaluation or complaint
8 investigation of the elder group home shall be made available
9 to the department of elder affairs upon request to facilitate
10 policy decisions, but shall not be made available to the
11 public except in proceedings involving the denial, suspension,
12 or revocation of a certificate under this chapter.

13 Sec. 10. NEW SECTION. 231B.10 DENIAL, SUSPENSION, OR
14 REVOCATION -- CONDITIONAL OPERATION.

15 1. The department of inspections and appeals may deny,
16 suspend, or revoke a certificate in any case where the
17 department of inspections and appeals finds that there has
18 been a substantial or repeated failure on the part of the
19 elder group home to comply with this chapter or minimum
20 standards adopted under this chapter or for any of the
21 following reasons:

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

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

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

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

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

35 f. Founded dependent adult abuse as defined in section

1 235B.2.

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

15 h. In the case of a certificate applicant or an existing
16 certified owner or operator who is an entity other than an
17 individual, the person is in a position of control or is an
18 officer of the entity and engages in any act or omission
19 proscribed by this chapter.

20 i. For any other reason as provided by law or
21 administrative rule.

22 2. The department of inspections and appeals may as an
23 alternative to denial, suspension, or revocation conditionally
24 issue or continue a certificate dependent upon the performance
25 by the elder group home of reasonable conditions within a
26 reasonable period of time as set by the department of
27 inspections and appeals so as to permit the program to
28 commence or continue the operation of the elder group home
29 pending full compliance with this chapter or the rules adopted
30 pursuant to this chapter. If the elder group home does not
31 make diligent efforts to comply with the conditions
32 prescribed, the department of inspections and appeals may,
33 under the proceedings prescribed by this chapter, deny,
34 suspend, or revoke the certificate. An elder group home shall
35 not be operated on a conditional certificate for more than one

1 year.

2 Sec. 11. NEW SECTION. 231B.11 NOTICE -- APPEAL --
3 EMERGENCY PROVISIONS.

4 1. The denial, suspension, or revocation of a certificate
5 shall be effected by delivering to the applicant or
6 certificate holder by restricted certified mail or by personal
7 service a notice setting forth the particular reasons for such
8 action. Such denial, suspension, or revocation shall become
9 effective thirty days after the mailing or service of the
10 notice, unless the applicant or certificate holder, within
11 such thirty-day period, requests a hearing, in writing, of the
12 department of inspections and appeals, in which case the
13 notice shall be deemed to be suspended.

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

18 3. When the department of inspections and appeals finds
19 that an imminent danger to the health or safety of a tenant of
20 an elder group home exists which requires action on an
21 emergency basis, the department of inspections and appeals may
22 direct removal of all tenants of the elder group home and
23 suspend the certificate prior to a hearing.

24 Sec. 12. NEW SECTION. 231B.12 DEPARTMENT NOTIFIED OF
25 CASUALTIES.

26 The department of inspections and appeals shall be notified
27 within twenty-four hours, by the most expeditious means
28 available, of any accident causing substantial injury or death
29 to a tenant, and any substantial fire or natural or other
30 disaster occurring at or near an elder group home.

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

33 An elder group home shall not discriminate or retaliate in
34 any way against a tenant, a tenant's family, or an employee of
35 the elder group home who has initiated or participated in any

1 proceeding authorized by this chapter. An elder group home
2 that violates this section is subject to a penalty as
3 established by administrative rule in accordance with chapter
4 17A and to be assessed and collected by the department of
5 inspections and appeals and paid into the state treasury to be
6 credited to the general fund of the state.

7 Sec. 14. NEW SECTION. 231B.14 CIVIL PENALTIES.

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

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

14 2. Following receipt of notice from the department of
15 inspections and appeals, continued failure or refusal to
16 comply within a prescribed time frame with regulatory
17 requirements that have a direct relationship to the health,
18 safety, or security of elder group home tenants.

19 3. Preventing or interfering with or attempting to impede
20 in any way any duly authorized representative of the
21 department of inspections and appeals in the lawful
22 enforcement of this chapter or of the rules adopted pursuant
23 to this chapter. As used in this subsection, "lawful
24 enforcement" includes but is not limited to:

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

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

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

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

33 A person establishing, conducting, managing, or operating
34 an elder group home without a certificate is guilty of a
35 serious misdemeanor. Each day of continuing violation after

1 conviction or notice from the department of inspections and
2 appeals by certified mail of a violation shall be considered a
3 separate offense. A person establishing, conducting,
4 managing, or operating an elder group home without a
5 certificate may be temporarily or permanently restrained by a
6 court of competent jurisdiction from such activity in an
7 action brought by the state.

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

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

16 2. This chapter shall not be construed to require that a
17 facility licensed as a different type of facility also comply
18 with the requirements of this chapter, unless the facility is
19 represented to the public as an elder group home.

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

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

27 1. The department of inspections and appeals shall collect
28 elder group home certification and related fees. Fees
29 collected and retained pursuant to this section shall be
30 deposited in the general fund of the state.

31 2. The following certification and related fees shall
32 apply to elder group homes:

33 a. For a two-year initial certification, seven hundred
34 fifty dollars.

35 b. For a two-year recertification, one thousand dollars.

- 1 c. For a blueprint plan review, nine hundred dollars.
- 2 d. For an optional preliminary plan review, five hundred
- 3 dollars.

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

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

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

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

13 Sec. 20. NEW SECTION. 231B.20 NURSING ASSISTANT AND
14 MEDICATION AIDE -- CERTIFICATION.

15 The department of inspections and appeals, in cooperation
16 with other appropriate agencies, shall establish a procedure
17 to allow nursing assistants or medication aides to claim work
18 within an elder group home as credit toward sustaining the
19 nursing assistant's or medication aide's certification.

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

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

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

31 a. If administration of medications is delegated to the
32 elder group home by the tenant or tenant's legal
33 representative, the medications shall be administered by a
34 registered nurse, licensed practical nurse, or advanced
35 registered nurse practitioner licensed or registered in Iowa

1 or by the individual to whom such licensed or registered
2 individuals may properly delegate administration of
3 medications.

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

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

11 d. A person other than a dispensing pharmacist shall not
12 alter the prescription.

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

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

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

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

29 335.33 ELDER GROUP HOMES.

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

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

1 follows:

2 414.31 ELDER GROUP HOMES.

3 A city council or city zoning commission shall consider an
4 elder family group home a family home, as defined in section
5 414.22, for purposes of zoning, in accordance with section
6 ~~231B.2~~ 231B.4, and may establish limitations regarding the
7 proximity of one proposed elder group home to another.

8

HOUSE FILE 710

S-3120

1 Amend House File 710, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 16, by striking lines 11 and 12, 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 tenant."

By MAGGIE TINSMAN

S-3120 FILED APRIL 13, 2005

18

SENATE AMENDMENT TO
HOUSE FILE 710

H-1378

1 Amend House File 710, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 5, line 31, by inserting after the word
4 "marshal." the following: "The rules adopted for the
5 special classification by the state fire marshal
6 regarding second floor occupancy shall be adopted in
7 consultation with the department of elder affairs and
8 shall take into consideration the mobility of the
9 tenants."

10 2. Page 16, by striking lines 11 and 12, and
11 inserting the following:

12 "d. A person, other than a person authorized to
13 prescribe prescription drugs under state and federal
14 law, shall not alter the prescription of a tenant."

15 3. By renumbering, relettering, or redesignating
16 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-1378 FILED APRIL 14, 2005

Succeeded By
SF 0710

HSB 101
HUMAN RESOURCES

Upsmeyer
Freeman
Hunter

SENATE/HOUSE FILE _____
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 the regulation of elder group homes and
2 providing penalties.

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

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

4 231B.1 DEFINITIONS.

5 1. "Department" means the department of elder affairs or
6 the department's designee.

7 2. "Elder" means a person sixty years of age or older.

8 3. "Elder group home" means a single-family residence that
9 is operated by a person who is providing room, board, and
10 personal care and may provide health-related services to three
11 through five elders who are not related to the person
12 providing the service within the third degree of consanguinity
13 or affinity, and which is staffed by an on-site manager
14 twenty-four hours per day, seven days per week.

15 4. "Governmental unit" means the state, or any county,
16 municipality, or other political subdivision or any
17 department, division, board, or other agency of any of these
18 entities.

19 5. "Health-related care" means services provided by a
20 registered nurse or a licensed practical nurse, on a part-time
21 or intermittent basis, and services provided by other licensed
22 health care professionals, on a part-time or intermittent
23 basis, as defined by rule, and provided in accordance with
24 respective health-related professional governing standards.
25 "Health-related care" does not include a twenty-four-hour
26 program of health-related care.

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

33 7. "Personal care" means assistance with the essential
34 activities of daily living which may include but are not
35 limited to transferring, bathing, personal hygiene, dressing,

1 grooming, and housekeeping that are essential to the health
2 and welfare of a tenant.

3 8. "Tenant" means an individual who receives elder group
4 home services through a certified elder group home.

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

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

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

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

17 2. The purposes of establishing and regulating elder group
18 homes include all of the following:

19 a. To encourage the establishment and maintenance of a
20 safe and homelike environment for individuals of all income
21 levels who require assistance with personal care to live
22 independently but who require health-related care only on a
23 part-time or intermittent basis.

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

28 c. To encourage public participation in the development of
29 elder group home programs for individuals of all income
30 levels.

31 3. It is the intent of the general assembly that the
32 department of elder affairs establish policy for elder group
33 homes and that the department of inspections and appeals
34 enforce this chapter.

35 Sec. 3. Section 231B.2, Code 2005, is amended by striking

1 the section and inserting in lieu thereof the following:

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

3 1. The department shall establish by rule, in accordance
4 with chapter 17A, minimum standards for certification and
5 monitoring of elder group homes. The department may adopt by
6 reference, with or without amendment, nationally recognized
7 standards and rules for elder group homes. The standards and
8 rules shall be formulated in consultation with the department
9 of inspections and appeals and affected industry,
10 professional, and consumer groups and shall be designed to
11 accomplish the purposes of this chapter and shall include but
12 not be limited to rules relating to all of the following:

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

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

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

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

29 2. Each elder group home operating in this state shall be
30 certified by the department of inspections and appeals. An
31 elder group home certified under this section is exempt from
32 the requirements of section 135.63 relating to certificate of
33 need requirements.

34 3. The owner or manager of a certified elder group home
35 shall comply with the rules adopted by the department for an

1 elder group home. A person, including a governmental unit,
2 shall not represent an elder group home to the public as an
3 elder group home or as a certified elder group home unless and
4 until the program is certified pursuant to this chapter.

5 4. a. Services provided by a certified elder group home
6 may be provided directly by staff of the elder group home, by
7 individuals contracting with the elder group home to provide
8 services, or by individuals employed by the tenant or with
9 whom the tenant contracts if the tenant agrees to assume the
10 responsibility and risk of the employment or the contractual
11 relationship.

12 b. If a tenant is terminally ill and has elected to
13 receive hospice services under the federal Medicare program
14 from a Medicare-certified hospice program, the elder group
15 home and the Medicare-certified hospice program shall enter
16 into a written agreement under which the hospice program
17 retains professional management responsibility for those
18 services.

19 5. The department of inspections and appeals may enter
20 into contracts to provide certification and monitoring of
21 elder group homes. The department of inspections and appeals
22 shall:

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

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

31 6. A department, agency, or officer of this state or of
32 any governmental unit shall not pay or approve for payment
33 from public funds any amount to an elder group home for an
34 actual or prospective tenant, unless the program holds a
35 current certificate issued by the department of inspections

1 and appeals and meets all current requirements for
2 certification.

3 7. The department shall adopt rules regarding the
4 conducting or operating of another business or activity in the
5 distinct part of the physical structure in which the elder
6 group home is operated, if the business or activity serves
7 persons who are not tenants. The rules shall be developed in
8 consultation with the department of inspections and appeals
9 and affected industry, professional, and consumer groups.

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

11 9. An elder group home, an owner or agent of the elder
12 group home, or an employee of the elder group home shall not
13 act as a fiduciary as defined in section 633.1102 or be
14 designated as an attorney in fact under a power of attorney
15 for a tenant or any of the tenant's property. An elder group
16 home shall not require a tenant or the tenant's legal
17 representative to liquidate personal property as a condition
18 of tenancy.

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

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

23 231B.4 ZONING -- FIRE AND SAFETY STANDARDS.

24 An elder group home shall be located in an area zoned for
25 single-family or multiple-family housing or in an
26 unincorporated area and shall be constructed in compliance
27 with applicable local housing codes and the rules adopted for
28 the special classification by the state fire marshal. In the
29 absence of local building codes, the facility shall comply
30 with the state plumbing code established pursuant to section
31 135.11 and the state building code established pursuant to
32 section 103A.7 and the rules adopted for the special
33 classification by the state fire marshal.

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

1 1. An elder group home shall not operate in this state
2 unless a written occupancy agreement, as prescribed in
3 subsection 2, is executed between the elder group home and
4 each tenant or the tenant's legal representative prior to the
5 tenant's occupancy, and unless the elder group home operates
6 in accordance with the terms of the occupancy agreement. The
7 elder group home shall deliver to the tenant or the tenant's
8 legal representative a complete copy of the occupancy
9 agreement and all supporting documents and attachments and
10 shall deliver at least thirty days prior to any changes, a
11 written copy of changes to the occupancy agreement if any
12 changes to the copy originally delivered are subsequently
13 made, unless otherwise provided in this section.

14 2. An elder group home occupancy agreement shall clearly
15 describe the rights and responsibilities of the tenant and the
16 elder group home. The occupancy agreement shall also include
17 but is not limited to inclusion of all of the following
18 information in the body of the agreement or in the supporting
19 documents and attachments:

20 a. A description of all fees, charges, and rates
21 describing tenancy and basic services covered, and any
22 additional and optional services and their related costs.

23 b. A statement regarding the impact of the fee structure
24 on third-party payments, and whether third-party payments and
25 resources are accepted by the elder group home.

26 c. The procedure followed for nonpayment of fees.

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

30 e. The term of the occupancy agreement.

31 f. A statement that the elder group home shall notify the
32 tenant or the tenant's legal representative, as applicable, in
33 writing at least thirty days prior to any change being made in
34 the occupancy agreement with the following exceptions:

35 (1) When the tenant's health status or behavior

1 constitutes a substantial threat to the health or safety of
2 the tenant, other tenants, or others, including when the
3 tenant refuses to consent to relocation.

4 (2) When an emergency or a significant change in the
5 tenant's condition results in the need for the provision of
6 services that exceed the type or level of services included in
7 the occupancy agreement and the necessary services cannot be
8 safely provided by the elder group home.

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

12 h. Occupancy, involuntary transfer, and transfer criteria
13 and procedures, which ensure a safe and orderly transfer.

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

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

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

21 l. The emergency response policy.

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

26 n. The refund policy.

27 o. A statement regarding billing and payment procedures.

28 3. Occupancy agreements and related documents executed by
29 each tenant or tenant's legal representative shall be
30 maintained by the elder group home from the date of execution
31 until three years from the date the occupancy agreement is
32 terminated. A copy of the most current occupancy agreement
33 shall be provided to members of the general public, upon
34 request. Occupancy agreements and related documents shall be
35 made available for on-site inspection to the department of

1 inspections and appeals upon request and at reasonable times.

2 Sec. 6. NEW SECTION. 231B.6 INVOLUNTARY TRANSFER.

3 1. If an elder group home initiates the involuntary
4 transfer of a tenant and the action is not a result of a
5 monitoring evaluation or complaint investigation by the
6 department of inspections and appeals, and if the tenant or
7 tenant's legal representative contests the transfer, the
8 following procedure shall apply:

9 a. The elder group home shall notify the tenant or
10 tenant's legal representative, in accordance with the
11 occupancy agreement, of the need to transfer, the reason for
12 the transfer, and the contact information of the tenant
13 advocate.

14 b. The elder group home shall provide the tenant advocate
15 with a copy of the notification to the tenant.

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

20 d. If, following the internal appeals process, the elder
21 group home upholds the transfer decision, the tenant or the
22 tenant's legal representative may utilize other remedies
23 authorized by law to contest the transfer.

24 2. The department, in consultation with the department of
25 inspections and appeals and affected industry, professional,
26 and consumer groups, shall establish by rule, in accordance
27 with chapter 17A, procedures to be followed, including the
28 opportunity for hearing, when the transfer of a tenant results
29 from a monitoring evaluation or complaint investigation
30 conducted by the department of inspections and appeals.

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

32 1. Any person with concerns regarding the operations or
33 service delivery of an elder group home may file a complaint
34 with the department of inspections and appeals. The name of
35 the person who files a complaint with the department of

1 inspections and appeals and any personal identifying
2 information of the person or any tenant identified in the
3 complaint shall be kept confidential and shall not be subject
4 to discovery, subpoena, or other means of legal compulsion for
5 its release to a person other than department of inspections
6 and appeals' employees involved with the complaint.

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

11 Sec. 8. NEW SECTION. 231B.8 INFORMAL REVIEW.

12 1. If an elder group home contests the findings of
13 regulatory insufficiencies of a monitoring evaluation or
14 complaint investigation, the program shall submit written
15 information, demonstrating that the program was in compliance
16 with the applicable requirement at the time of the monitoring
17 evaluation or complaint investigation of the regulatory
18 insufficiencies, to the department of inspections and appeals
19 for review.

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

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

32 Sec. 9. NEW SECTION. 231B.9 PUBLIC DISCLOSURE OF
33 FINDINGS.

34 Upon completion of a monitoring evaluation or complaint
35 investigation of an elder group home by the department of

1 inspections and appeals pursuant to this chapter, including
2 the conclusion of all appeals processes, the department of
3 inspections and appeals' final findings with respect to
4 compliance by the elder group home with requirements for
5 certification shall be made available to the public in a
6 readily available form and place. Other information relating
7 to an elder group home that is obtained by the department of
8 inspections and appeals which does not constitute the
9 department of inspections and appeals' final findings from a
10 monitoring evaluation or complaint investigation of the elder
11 group home shall be made available to the department of elder
12 affairs upon request to facilitate policy decisions, but shall
13 not be made available to the public except in proceedings
14 involving the denial, suspension, or revocation of a
15 certificate under this chapter.

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

18 1. The department of inspections and appeals may deny,
19 suspend, or revoke a certificate in any case where the
20 department of inspections and appeals finds that there has
21 been a substantial or repeated failure on the part of the
22 elder group home to comply with this chapter or other
23 applicable laws or rules, or minimum standards adopted under
24 this chapter, or other applicable laws or rules, or for any of
25 the following reasons:

26 a. Cruelty or indifference to elder group home tenants.

27 b. Appropriation or conversion of the property of an elder
28 group home tenant without the tenant's written consent or the
29 written consent of the tenant's legal representative.

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

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

35 e. Habitual intoxication or addiction to the use of drugs

1 by the applicant, administrator, executive director, manager,
2 or supervisor of the elder group home.

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

5 g. Founded dependent adult abuse as defined in section
6 235B.2.

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

27 2. The department of inspections and appeals may as an
28 alternative to denial, suspension, or revocation conditionally
29 issue or continue a certificate dependent upon the performance
30 by the elder group home of reasonable conditions within a
31 reasonable period of time as set by the department of
32 inspections and appeals so as to permit the program to
33 commence or continue the operation of the elder group home
34 pending full compliance with this chapter or the rules adopted
35 pursuant to this chapter. If the elder group home does not

1 make diligent efforts to comply with the conditions
2 prescribed, the department of inspections and appeals may,
3 under the proceedings prescribed by this chapter, deny,
4 suspend, or revoke the certificate. An elder group home shall
5 not be operated on a conditional certificate for more than one
6 year.

7 Sec. 11. NEW SECTION. 231B.11 NOTICE -- APPEAL --
8 EMERGENCY PROVISIONS.

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

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

23 3. When the department of inspections and appeals finds
24 that an imminent danger to the health or safety of a tenant of
25 an elder group home exists which requires action on an
26 emergency basis, the department of inspections and appeals may
27 direct removal of all tenants of the elder group home and
28 suspend the certificate prior to a hearing.

29 Sec. 12. NEW SECTION. 231B.12 DEPARTMENT NOTIFIED OF
30 CASUALTIES.

31 The department of inspections and appeals shall be notified
32 within twenty-four hours, by the most expeditious means
33 available, of any accident causing substantial injury or death
34 to a tenant, and any substantial fire or natural or other
35 disaster occurring at or near an elder group home.

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

3 An elder group home shall not discriminate or retaliate in
4 any way against a tenant, a tenant's family, or an employee of
5 the elder group home who has initiated or participated in any
6 proceeding authorized by this chapter. An elder group home
7 that violates this section is subject to a penalty as
8 established by administrative rule in accordance with chapter
9 17A and to be assessed and collected by the department of
10 inspections and appeals and paid into the state treasury to be
11 credited to the general fund of the state.

12 Sec. 14. NEW SECTION. 231B.14 CIVIL PENALTIES.

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

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

19 2. Following receipt of notice from the department of
20 inspections and appeals, continued failure or refusal to
21 comply within a prescribed time frame with regulatory
22 requirements that have a direct relationship to the health,
23 safety, or security of elder group home tenants.

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

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

1 2. A person who prevents or interferes with or attempts to
2 impede in any way any duly authorized representative of the
3 department of inspections and appeals in the lawful
4 enforcement of this chapter or other applicable law or rules
5 adopted pursuant to this chapter is guilty of a simple
6 misdemeanor. As used in this subsection, "lawful enforcement"
7 includes but is not limited to:

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

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

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

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

16 1. A hospital licensed pursuant to chapter 135B or a
17 health care facility licensed pursuant to chapter 135C may
18 operate an elder group home, if certified pursuant to this
19 chapter.

20 2. This chapter shall not be construed to require that a
21 facility licensed as a different type of facility also comply
22 with the requirements of this chapter, unless the facility is
23 represented to the public as an elder group home.

24 3. A certified elder group home that complies with the
25 requirements of this chapter shall not be required to be
26 licensed as a health care facility pursuant to chapter 135C,
27 unless the facility is represented to the public as a licensed
28 health care facility.

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

31 1. The department of inspections and appeals shall collect
32 elder group home certification and related fees. Fees
33 collected and retained pursuant to this section shall be
34 deposited in the general fund of the state.

35 2. The following certification and related fees shall

1 apply to elder group homes:

2 a. For a two-year initial certification, seven hundred
3 fifty dollars.

4 b. For a two-year recertification, one thousand dollars.

5 c. For a blueprint plan review, nine hundred dollars.

6 d. For an optional preliminary plan review, five hundred
7 dollars.

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

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

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

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

17 Sec. 20. NEW SECTION. 231B.20 NURSING ASSISTANT AND
18 MEDICATION AIDE -- CERTIFICATION.

19 The department of inspections and appeals, in cooperation
20 with other appropriate agencies, shall establish a procedure
21 to allow nursing assistants or medication aides to claim work
22 within an elder group home as credit toward sustaining the
23 nursing assistant's or medication aide's certification.

24 Sec. 21. Section 335.33, Code 2005, is amended to read as
25 follows:

26 335.33 ELDER GROUP HOMES.

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

32 Sec. 22. Section 414.31, Code 2005, is amended to read as
33 follows:

34 414.31 ELDER GROUP HOMES.

35 A city council or city zoning commission shall consider an

1 elder family home a family home, as defined in section 414.22,
2 for purposes of zoning, in accordance with section 231B-2
3 231B.4, and may establish limitations regarding the proximity
4 of one proposed elder group home to another.

5

EXPLANATION

6 This bill establishes a new regulatory framework for elder
7 group homes. The bill provides findings, purpose, and intent
8 related to elder group homes, provides definitions, and
9 provides for certification and monitoring of elder group homes
10 similar to the requirements for assisted living programs. The
11 bill establishes fire and safety standards; requires written
12 occupancy agreements; establishes provisions for involuntary
13 transfer of a tenant and a process for addressing complaints;
14 establishes a process for informal review when an elder group
15 home contests the findings of regulatory insufficiencies of a
16 monitoring evaluation or complaint investigation; provides for
17 public disclosure of final findings upon completion of a
18 monitoring evaluation or complaint investigation to the public
19 and disclosure of other information to the department of elder
20 affairs; establishes provisions for denial, suspension, or
21 revocation of certification and for conditional operation of
22 an elder group home; provides for notice and an appeal process
23 relative to the denial, suspension, or revocation of a
24 certificate; provides for the department of inspections and
25 appeals to be notified of casualties; prohibits retaliation by
26 an elder group home against a tenant, a tenant's family, or an
27 employee of the elder group home who has initiated or
28 participated in any proceeding authorized under the chapter;
29 provides for civil and criminal penalties and injunctive
30 relief; provides transitional provisions; establishes
31 certification and related fees; provides prohibitions relating
32 to fiduciary duties; provides provisions relating to nursing
33 assistants and medication aides; provides that the landlord
34 and tenant Act is applicable to elder group homes; and
35 provides for the appointment of members of resident advocate

1 committees for elder group homes.

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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 231B
Date: November 3, 2004

As of July 1, 2003, the Department of Elder Affairs was given responsibility for establishing policy for elder group homes and the department of inspections and appeals was given responsibility for enforcement.

In drafting administrative rules, the department became aware of the need for a number of necessary changes to the Iowa Code which will assist insuring the health, safety and well being of frail and vulnerable adults utilizing elder group homes throughout the state. Department personnel visited a majority of the elder group homes in Iowa to better understand the types of tenants being served, the types of services available and the types of physical environments currently in existence.

The department's research indicated most adults living in elder group homes in Iowa are at the intermediate level of care or above. The cost of elder group homes is consistent with that of many assisted living programs.

To that end, the department believes that public policy in elder group homes should be consistent with that of public policy in assisted living programs.

INQUIRES: For further information, please contact Joel Wulf at 242-3326 or joel.wulf@iowa.gov

Cc: Harold Davis, Chair, Iowa Commission for the Department of Elder Affairs
Scott Galenbeck, Attorney General's Office
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HOUSE FILE 710

AN ACT

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

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

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

231B.1 DEFINITIONS.

1. "Department" means the department of elder affairs or the department's designee.
2. "Elder" means a person sixty years of age or older.
3. "Elder group home" means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity, and which is staffed by an on-site manager twenty-four hours per day, seven days per week.
4. "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

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

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

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

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

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

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

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

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

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

2. The purposes of establishing and regulating elder group homes include all of the following:

- a. To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance with personal care to live independently but who require health-related care only on a part-time or intermittent basis.
- b. To establish standards for elder group homes that allow flexibility in design, which promotes a model of service delivery by focusing on individual independence, needs and desires, and consumer-driven quality of service.
- c. To encourage public participation in the development of elder group home programs for individuals of all income levels.

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

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

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

1. The department shall establish by rule, in accordance with chapter 17A, minimum standards for certification and monitoring of elder group homes. The department may adopt by reference, with or without amendment, nationally recognized standards and rules for elder group homes. The standards and rules shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups and shall be designed to accomplish the purposes of this chapter and shall include but not be limited to rules relating to all of the following:

- a. Provisions to ensure, to the greatest extent possible, the health, safety, well-being, and appropriate treatment of tenants.
- b. Requirements that elder group homes furnish the department of elder affairs and the department of inspections and appeals with specified information necessary to administer

this chapter. All information related to the provider application for an elder group home presented to either the department of inspections and appeals or the department of elder affairs shall be considered a public record pursuant to chapter 22.

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

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

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

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

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

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

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

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

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

6. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an elder group home for an actual or prospective tenant, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

7. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the elder group home is operated, if the business or activity serves persons who are not tenants. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

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

9. The department of elder affairs and the department of inspections and appeals shall conduct joint training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of elder group homes.

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

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

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

An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the

absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to section 103A.7 and the rules adopted for the special classification by the state fire marshal. The rules adopted for the special classification by the state fire marshal regarding second floor occupancy shall be adopted in consultation with the department of elder affairs and shall take into consideration the mobility of the tenants.

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

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

2. An elder group home occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the elder group home. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

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

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the elder group home.

- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
- e. The term of the occupancy agreement.
- f. A statement that the elder group home shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:
 - (1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.
 - (2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the elder group home.
- g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.
- h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.
- i. The internal appeals process provided relative to an involuntary transfer.
- j. The program's policies and procedures for addressing grievances between the elder group home and the tenants, including grievances relating to transfer and occupancy.
- k. A statement of the prohibition against retaliation as prescribed in section 231B.13.
 - l. The emergency response policy.
 - m. The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.
 - n. The refund policy.
 - o. A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or tenant's legal representative shall be maintained by the elder group home from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department of inspections and appeals upon request and at reasonable times.

Sec. 6. NEW SECTION. 231B.6 INVOLUNTARY TRANSFER.

- 1. If an elder group home initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department of inspections and appeals, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:
 - a. The elder group home shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.
 - b. The elder group home shall provide the tenant advocate with a copy of the notification to the tenant.
 - c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.
 - d. If, following the internal appeals process, the elder group home upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.
- 2. The department, in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department of inspections and appeals.

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

1. Any person with concerns regarding the operations or service delivery of an elder group home may file a complaint with the department of inspections and appeals. The name of the person who files a complaint with the department of inspections and appeals and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department of inspections and appeals' employees involved with the complaint.

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

Sec. 8. NEW SECTION. 231B.8 INFORMAL REVIEW.

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

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

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

Sec. 9. NEW SECTION. 231B.9 PUBLIC DISCLOSURE OF FINDINGS.

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

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

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

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

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

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

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

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

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

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

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

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

2. The department of inspections and appeals may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the elder group home of reasonable conditions within a reasonable period of time as set by the department of inspections and appeals so as to permit the program to commence or continue the operation of the elder group home pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the elder group home does not make diligent efforts to comply with the conditions

prescribed, the department of inspections and appeals may, under the proceedings prescribed by this chapter, deny, suspend, or revoke the certificate. An elder group home shall not be operated on a conditional certificate for more than one year.

Sec. 11. NEW SECTION. 231B.11 NOTICE -- APPEAL -- EMERGENCY PROVISIONS.

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

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

3. When the department of inspections and appeals finds that an imminent danger to the health or safety of a tenant of an elder group home exists which requires action on an emergency basis, the department of inspections and appeals may direct removal of all tenants of the elder group home and suspend the certificate prior to a hearing.

Sec. 12. NEW SECTION. 231B.12 DEPARTMENT NOTIFIED OF CASUALTIES.

The department of inspections and appeals shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death to a tenant, and any substantial fire or natural or other disaster occurring at or near an elder group home.

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

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

Sec. 14. NEW SECTION. 231B.14 CIVIL PENALTIES.

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

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

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

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

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

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

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

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

A person establishing, conducting, managing, or operating an elder group home without a certificate is guilty of a

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

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

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

2. This chapter shall not be construed to require that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as an elder group home.

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

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

1. The department of inspections and appeals shall collect elder group home certification and related fees. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to elder group homes:

a. For a two-year initial certification, seven hundred fifty dollars.

b. For a two-year recertification, one thousand dollars.

c. For a blueprint plan review, nine hundred dollars.

d. For an optional preliminary plan review, five hundred dollars.

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

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

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

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

Sec. 20. NEW SECTION. 231B.20 NURSING ASSISTANT AND MEDICATION AIDE -- CERTIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

335.33 ELDER GROUP HOMES.

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

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

414.31 ELDER GROUP HOMES.

A city council or city zoning commission shall consider an elder ~~family~~ group home a family home, as defined in section

414.22, for purposes of zoning, in accordance with section ~~231B-2~~ 231B.4, and may establish limitations regarding the proximity of one proposed elder group home to another.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 710, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 4/27, 2005

THOMAS J. VILSACK
Governor