

Senate Study Bill 1079

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 assisted living programs, providing for
2 application of a penalty, and providing for a fee.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1266DP 81
5 pf/pj/5

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1 1 Section 1. Section 231C.1, subsection 1, Code 2005, is
1 2 amended to read as follows:
1 3 1. The general assembly finds that assisted living is an
1 4 important part of the long-term care ~~system~~ continua in this
1 5 state. Assisted living emphasizes the independence and
1 6 dignity of the individual while providing services in a cost=
1 7 effective manner.
1 8 Sec. 2. Section 231C.1, subsection 2, paragraphs b and c,
1 9 Code 2005, are amended to read as follows:
1 10 b. To establish standards for assisted living programs
1 11 that allow flexibility in design which promotes a ~~social~~ model
1 12 of service delivery by focusing on ~~individual~~ independence,
1 13 individual needs and desires, and consumer-driven quality of
1 14 service.
1 15 c. To encourage ~~general~~ public participation in the
1 16 development of assisted living programs for individuals of all
1 17 income levels.
1 18 Sec. 3. Section 231C.2, subsections 2, 5, and 9, Code
1 19 2005, are amended to read as follows:
1 20 2. "Assisted living" means provision of housing with
1 21 services which may include but are not limited to health=
1 22 related care, personal care, and assistance with instrumental
1 23 activities of daily living to three or more tenants in a
1 24 physical structure which provides a homelike environment.
1 25 "Assisted living" also includes encouragement of family
1 26 involvement, tenant self-direction, and tenant participation
1 27 in decisions that emphasize choice, dignity, privacy,
1 28 individuality, shared risk, and independence. "Assisted
1 29 living" includes the provision of housing and assistance with
1 30 instrumental activities of daily living only if personal care
1 31 or health-related care is also included. "Assisted living"
1 32 includes twenty-four-hours per day on-site response staff to
1 33 meet scheduled and unscheduled or unpredictable needs in a
1 34 manner that promotes maximum dignity and independence and
1 35 provides supervision, safety, and security.
2 1 5. "Health-related care" means services provided by a
2 2 registered nurse or a licensed practical nurse, on a part=
2 3 time or intermittent basis, and services provided by other
2 4 licensed health care professionals, on a part-time or
2 5 intermittent basis, as defined by rule, and provided in
2 6 accordance with respective health-related professional
2 7 governing standards. "Health-related care" does not include a
2 8 twenty-four-hour program of health-related care.
2 9 9. "Personal care" means assistance with the essential
2 10 activities of daily living, which may include but are not
2 11 limited to transferring, bathing, personal hygiene, dressing,
2 12 grooming, and housekeeping, that are essential to the health
2 13 and welfare of the tenant, and supervising of self-
2 14 administered medications, but does not include the
2 15 administration of medications.
2 16 Sec. 4. Section 231C.2, subsection 7, Code 2005, is
2 17 amended by striking the subsection.

2 18 Sec. 5. Section 231C.2, subsection 13, Code 2005, is
2 19 amended by striking the subsection and inserting in lieu
2 20 thereof the following:

2 21 13. "Tenant's legal representative" means a person
2 22 appointed by the court to act on behalf of a tenant or a
2 23 person acting pursuant to a power of attorney.

2 24 Sec. 6. Section 231C.3, subsection 1, unnumbered paragraph
2 25 1, Code 2005, is amended to read as follows:

2 26 The department shall establish by rule in accordance with
2 27 chapter 17A, ~~a program~~ minimum standards for certification and
2 28 monitoring of assisted living programs. The department may
2 29 adopt by reference with or without amendment, nationally
2 30 recognized standards and rules for assisted living programs.

2 31 The rules shall include specification of recognized
2 32 accrediting entities and provisions related to dementia=
2 33 specific programs. The standards and rules shall be
2 34 formulated in consultation with the department of inspections
2 35 and appeals, and affected industry, professional, and consumer
3 1 groups and shall be designed to accomplish the purposes of
3 2 this chapter and shall include but are not limited to rules
3 3 relating to all of the following:

3 4 Sec. 7. Section 231C.3, subsection 1, paragraph b, Code
3 5 2005, is amended to read as follows:

3 6 b. Requirements that assisted living programs furnish the
3 7 department of elder affairs and the department of inspections
3 8 and appeals with specified information necessary to administer
3 9 this chapter. All information related to a provider

3 10 application for an assisted living program submitted to either
3 11 the department of elder affairs or the department of
3 12 inspections and appeals shall be considered a public record
3 13 pursuant to chapter 22.

3 14 Sec. 8. Section 231C.3, subsection 2, Code 2005, is
3 15 amended by striking the subsection.

3 16 Sec. 9. Section 231C.3, subsection 7, Code 2005, is
3 17 amended to read as follows:

3 18 7. The department may also establish by rule in accordance
3 19 with chapter 17A ~~a special classification~~ minimum standards

3 20 for ~~affordable subsidized and dementia-specific~~ assisted
3 21 living programs. The rules shall be formulated in
3 22 consultation with the department of inspections and appeals
3 23 and affected industry, professional, and consumer groups.

3 24 Sec. 10. Section 231C.3, Code 2005, is amended by adding
3 25 the following new subsections:

3 26 NEW SUBSECTION. 11. An assisted living program, an owner
3 27 or agent of the program, or an employee of the program shall
3 28 not act as a fiduciary as defined in section 633.1102 or be
3 29 designated as an attorney in fact under a power of attorney
3 30 for a tenant or any of the tenant's property. An assisted
3 31 living program shall not require a tenant or the tenant's
3 32 legal representative to liquidate personal property as a
3 33 condition of tenancy.

3 34 NEW SUBSECTION. 12. Certification of an assisted living
3 35 program shall be for two years unless certification is revoked
4 1 for good cause by the department of inspections and appeals.

4 2 Sec. 11. Section 231C.5, Code 2005, is amended to read as
4 3 follows:

4 4 231C.5 WRITTEN OCCUPANCY AGREEMENT REQUIRED.

4 5 1. An assisted living program shall not operate in this
4 6 state unless a written occupancy agreement, as prescribed in
4 7 subsection 2, is executed between the assisted living program
4 8 and each tenant or the tenant's legal representative, prior to
4 9 the tenant's occupancy, and unless the assisted living program
4 10 operates in accordance with the terms of the occupancy
4 11 agreement. The assisted living program shall deliver to the
4 12 tenant or the tenant's legal representative a complete copy of
4 13 the occupancy agreement and all supporting documents and
4 14 attachments and shall deliver, at least thirty days prior to
4 15 any changes, a written copy of changes to the occupancy
4 16 agreement if any changes to the copy originally delivered are
4 17 subsequently made.

4 18 2. An assisted living program occupancy agreement shall
4 19 clearly describe the rights and responsibilities of the tenant
4 20 and the program. The occupancy agreement shall also include
4 21 but is not limited to inclusion of all of the following
4 22 information in the body of the agreement or in the supporting
4 23 documents and attachments:

4 24 a. A description of all fees, charges, and rates
4 25 describing tenancy and basic services covered, and any
4 26 additional and optional services and their related costs.

4 27 b. A statement regarding the impact of the fee structure
4 28 on third-party payments, and whether third-party payments and

4 29 resources are accepted by the assisted living program.

4 30 c. The procedure followed for nonpayment of fees.

4 31 d. Identification of the party responsible for payment of
4 32 fees and identification of the tenant's legal representative,
4 33 if any.

4 34 e. The term of the occupancy agreement.

4 35 f. A statement that the assisted living program shall
5 1 notify the tenant or the tenant's legal representative, as
5 2 applicable, in writing at least thirty days prior to any
5 3 change being made in the occupancy agreement with the
5 4 following exceptions:

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

5 9 (2) When an emergency or a significant change in the
5 10 tenant's condition results in the need for the provision of
5 11 services that exceed the type or level of services included in
5 12 the occupancy agreement and the necessary services cannot be
5 13 safely provided by the assisted living program.

5 14 g. A statement that all tenant information shall be
5 15 maintained in a confidential manner to the extent required
5 16 under state and federal law.

5 17 h. Occupancy, involuntary transfer, and transfer criteria
5 18 and procedures, which ensure a safe and orderly transfer.

5 19 i. The internal appeals process provided relative to an
5 20 involuntary transfer.

5 21 ~~i.~~ j. The program's policies and procedures for addressing
5 22 grievances between the assisted living program and the
5 23 tenants, including grievances relating to transfer and
5 24 occupancy.

5 25 ~~j.~~ k. A statement of the prohibition against retaliation
5 26 as prescribed in section 231C.13.

5 27 ~~k.~~ l. The emergency response policy.

5 28 ~~l.~~ m. The staffing policy which specifies if the staff is
5 29 available twenty-four hours per day, if nurse delegation will
5 30 be used, and how staffing will be adapted to meet changing
5 31 tenant needs.

5 32 ~~m.~~ n. In dementia-specific assisted living programs, a
5 33 description of the services and programming provided to meet
5 34 the life skills and social activities of tenants.

5 35 ~~n.~~ o. The refund policy.

6 1 ~~o.~~ p. A statement regarding billing and payment
6 2 procedures.

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

6 13 Sec. 12. Section 231C.6, subsection 1, Code 2005, is
6 14 amended to read as follows:

6 15 1. If an assisted living program initiates the involuntary
6 16 transfer of a tenant and the action is not a result of a
6 17 monitoring evaluation or complaint investigation by the
6 18 department of inspections and appeals, and if the tenant or
6 19 the tenant's legal representative contests the transfer, the
6 20 following procedure shall apply:

6 21 a. The assisted living program shall notify the tenant or
6 22 the tenant's legal representative, in accordance with the
6 23 occupancy agreement, of the need to transfer, the reason for
6 24 the transfer, and the contact information of the tenant
6 25 advocate.

6 26 b. The assisted living program shall provide the tenant
6 27 advocate with a copy of the notification to the tenant.

6 28 c. The tenant advocate shall offer the notified tenant or
6 29 the tenant's legal representative assistance with the
6 30 program's internal appeals process. The tenant is not
6 31 required to accept the assistance of the tenant advocate.

6 32 d. If, following the internal appeals process, the
6 33 assisted living program upholds the transfer decision, the
6 34 tenant or the tenant's legal representative may utilize other
6 35 remedies authorized by law to contest the transfer.

7 1 Sec. 13. Section 231C.8, Code 2005, is amended to read as
7 2 follows:

7 3 231C.8 INFORMAL REVIEW.

7 4 1. If an assisted living program contests the regulatory

7 5 insufficiencies of a monitoring evaluation or complaint
7 6 investigation, the program shall submit written information,
7 7 demonstrating that the program was in compliance with the
7 8 applicable requirement at the time of the monitoring
7 9 evaluation or complaint investigation, in support of the
7 10 contesting of the regulatory insufficiencies, to the
7 11 department of inspections and appeals for review.

7 12 2. The department of inspections and appeals shall review
7 13 the written information submitted within ten working days of
7 14 the receipt of the information. At the conclusion of the
7 15 review, the department of inspections and appeals may affirm,
7 16 modify, or dismiss the regulatory insufficiencies. The
7 17 department of inspections and appeals shall notify the program
7 18 in writing of the decision to affirm, modify, or dismiss the
7 19 regulatory insufficiencies, and the reasons for the decision.

7 20 3. In the case of a complaint investigation, the
7 21 department of inspections and appeals shall also notify the
7 22 complainant, if known, of the decision and the reasons for the
7 23 decision.

7 24 Sec. 14. Section 231C.9, Code 2005, is amended to read as
7 25 follows:

7 26 231C.9 PUBLIC DISCLOSURE OF FINDINGS.

7 27 ~~Following~~ Upon completion of a monitoring evaluation or
7 28 complaint investigation of an assisted living program by the
7 29 department of inspections and appeals pursuant to this
7 30 chapter, the department of inspections and appeals' final
7 31 findings with respect to compliance by the assisted living
7 32 program with requirements for certification shall be made
7 33 available to the public in a readily available form and place.
7 34 Other information relating to an assisted living program that
7 35 is obtained by the department of inspections and appeals which
8 1 does not constitute the department of inspections and appeals'
8 2 final findings from a monitoring evaluation or complaint
8 3 investigation of the assisted living program shall be made
8 4 available to the department of elder affairs upon request in
8 5 order to facilitate policy decisions, but shall not be made
8 6 available to the public except in proceedings involving the
8 7 denial, suspension, or revocation of a certificate under this
8 8 chapter.

8 9 Sec. 15. Section 231C.10, subsection 1, unnumbered
8 10 paragraph 1, Code 2005, is amended to read as follows:

8 11 The department of inspections and appeals may deny,
8 12 suspend, or revoke a certificate in any case where the
8 13 department of inspections and appeals finds that there has
8 14 been a substantial or repeated failure on the part of the
8 15 assisted living program to comply with this chapter or, other
8 16 applicable laws, the rules, or minimum standards adopted under
8 17 this chapter, other applicable rules or minimum standards, or
8 18 for any of the following reasons:

8 19 Sec. 16. Section 231C.10, subsection 1, paragraphs b and
8 20 h, Code 2005, are amended to read as follows:

8 21 b. Appropriation or conversion of the property of an
8 22 assisted living program tenant without the tenant's written
8 23 consent or the written consent of the tenant's legal ~~guardian~~
8 24 representative.

8 25 h. In the case of any officer, member of the board of
8 26 directors, trustee, or designated manager of the program or
8 27 any stockholder, partner, or individual who has greater than a
8 28 ten percent equity interest in the program, who has or has had
8 29 an ownership interest in an assisted living or adult day
8 30 services program, home health agency, residential care
8 31 facility, or licensed nursing facility in any state which has
8 32 been closed due to removal of program, agency, or facility
8 33 licensure or certification or involuntary termination from
8 34 participation in either the medical assistance or Medicare
8 35 programs, or who has been found to have failed to provide
9 1 adequate protection or services for tenants to prevent abuse
9 2 or neglect.

9 3 Sec. 17. Section 231C.15, subsection 2, unnumbered
9 4 paragraph 1, Code 2005, is amended to read as follows:

9 5 A person who prevents or interferes with or attempts to
9 6 impede in any way any duly authorized representative of the
9 7 department of inspections and appeals in the lawful
9 8 enforcement of this chapter, or of the rules adopted pursuant
9 9 to this chapter, or other applicable laws or rules is guilty
9 10 of a simple misdemeanor. As used in this subsection, lawful
9 11 enforcement includes but is not limited to:

9 12 Sec. 18. Section 231C.18, subsection 2, Code 2005, is
9 13 amended by adding the following new paragraph:

9 14 NEW PARAGRAPH. e. For accreditation via a national body
9 15 of accreditation, one hundred twenty-five dollars.

EXPLANATION

9 16

9 17 This bill makes changes in the assisted living programs
9 18 chapter, Code chapter 231C.

9 19 The bill changes the definition of "assisted living" to
9 20 provide that "assisted living" includes 24 hours per day on=
9 21 site response staff to meet scheduled and unscheduled or
9 22 unpredictable needs in a manner that promotes maximum dignity
9 23 and independence and provides supervision, safety, and
9 24 security. The bill also changes the definition of "personal
9 25 care" by eliminating the inclusion of supervision of self=
9 26 administered medication, not including the administration of
9 27 medications.

9 28 The bill directs the department to adopt rules to establish
9 29 minimum standards for certification and monitoring of assisted
9 30 living programs, provides that all information related to the
9 31 provider application for an assisted living program submitted
9 32 to the department of elder affairs or the department of
9 33 inspections and appeals is considered a public record under
9 34 Code chapter 22, and deletes the requirement that the
9 35 department of elder affairs issue interpretive guidelines.

10 1 The bill eliminates the authorization to the department of
10 2 elder affairs to establish a special classification for
10 3 affordable assisted living programs and instead provides that
10 4 the department may establish, by rule, minimum standards for
10 5 subsidized and dementia-specific assisted living programs.
10 6 The bill prohibits an assisted living program, an owner or
10 7 agent of the program, or an employee of the program to act as
10 8 a fiduciary or attorney in fact for a tenant of the program or
10 9 the tenant's property. An assisted living program is also
10 10 prohibited from requiring the tenant or the tenant's legal
10 11 representative from liquidating personal property as a
10 12 condition of tenancy. The bill also provides that
10 13 certification of an assisted living program is for two years,
10 14 unless revoked for good cause.

10 15 The bill clarifies provisions relating to a tenant or the
10 16 tenant's legal representative.

10 17 The bill provides for the final findings, with respect to
10 18 compliance by an assisted living program with requirements for
10 19 certification, to be made available to the public upon
10 20 completion, rather than following a monitoring evaluation or
10 21 complaint investigation. The bill provides that the final
10 22 findings shall be made available to the department of elder
10 23 affairs upon request to facilitate policy decisions.

10 24 The bill provides that the department of inspections and
10 25 appeals may deny, suspend, or revoke a certificate in any case
10 26 where the department of inspections and appeals finds that
10 27 there has been a substantial or repeated failure on the part
10 28 of the assisted living program to comply not only with the
10 29 assisted living chapter or the rules or minimum standards
10 30 adopted under that chapter, but with other applicable laws,
10 31 rules, or minimum standards. The bill also adds that a
10 32 program's certificate may be denied, suspended, or revoked if
10 33 any officer, member of the board of directors, trustee, or
10 34 designated manager of the program or any stockholder, partner,
10 35 or individual who has greater than 10 percent equity interest
11 1 in the program, has or has had an ownership interest in an
11 2 adult day services program which has been closed due to
11 3 certain reasons.

11 4 The bill provides that a person who prevents or interferes
11 5 with or attempts to impede in any way any duly authorized
11 6 representative of the department of inspections and appeals in
11 7 the lawful enforcement of the Code chapter or its rules, and
11 8 in addition, any other applicable laws or rules, is guilty of
11 9 a simple misdemeanor. The bill provides that a fee of \$125
11 10 applies to an assisted living program that is accredited via a
11 11 national body of accreditation.

11 12 LSB 1266DP 81

11 13 pf/pj/5.1