

gate and shall not be allowed unless refund claims are filed prior to October 1, 2003, notwithstanding any other provision of law. If the amount of claims totals more than six hundred thousand dollars in the aggregate, the department of revenue and finance shall prorate the six hundred thousand dollars among all claimants in relation to the amounts of the claimants' valid claims. However, notwithstanding any other provision of law, each valid refund claim shall be paid by the department of revenue and finance in five equal installments, or as equal as possible, over five fiscal years beginning with the fiscal year beginning July 1, 2003. Claimants shall not be entitled to interest on any installments.

Sec. 3. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISION. This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 1997.

Approved May 30, 2003

CHAPTER 165
ADULT DAY SERVICES
H.F. 672

AN ACT relating to the regulation of adult day services, providing for penalties, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 231D.1 DEFINITIONS.

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

1. "Adult day services", "adult day services program", or "program" means an organized program providing a variety of health, social, and related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.
2. "Department" means the department of elder affairs created in chapter 231.
3. "Functional impairment" means a psychological, cognitive, or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.
4. "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. "Recognized accrediting entity" means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department for adult day services.
6. "Social services" means services relating to the psychological and social needs of the individual in adjusting to participating in an adult day services program, and minimizing the stress arising from that circumstance.
7. "Supervision" means direct oversight and inspection of the act of accomplishing a function or activity.

Sec. 2. NEW SECTION. 231D.2 PURPOSE — INTENT — RULES — SPECIAL CLASSIFICATIONS.

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

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

3. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recognized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules and standards adopted shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

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

5. The department may establish by administrative rule special classifications for adult day services providers. The department of inspections and appeals shall issue separate certificates for each special classification for which a provider is certified.

Sec. 3. NEW SECTION. 231D.3 CERTIFICATION REQUIRED.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department of inspections and appeals shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department for an adult day services program.

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

3. An adult day services program that has been certified by the department of inspections and appeals shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department of inspections and appeals. The department of inspections and appeals shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective¹ recipient, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services program is provided, if the business or activity serves nonrecipients of adult day services. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

Sec. 4. NEW SECTION. 231D.4 APPLICATION AND FEES.

1. Certificates for adult day services programs shall be obtained from the department of inspections and appeals. Applications shall be upon such forms and shall include such information as the department of inspections and appeals may reasonably require, which may include

¹ The word "prospective" probably intended

affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee.

2. a. The department of inspections and appeals shall collect adult day services certification fees. The fees shall be deposited in the general fund of the state.

b. The following certification and related fees shall apply to adult day services programs:

- (1) For a two-year initial certification, seven hundred fifty dollars.
- (2) For a two-year recertification, one thousand dollars.
- (3) For a blueprint review, nine hundred dollars.
- (4) For an optional preliminary plan review, five hundred dollars.

Sec. 5. NEW SECTION. 231D.5 DENIAL, SUSPENSION, OR REVOCATION.

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

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

b. Appropriation or conversion of the property of an adult day services programs service recipient without the recipient's written consent or the written consent of the service recipient's legal guardian.

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

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

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

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

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

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

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

2. In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, continuing or repeated failure of the certificate holder to operate any previously certified adult day services program in compliance with this chapter or of the rules adopted pursuant to this chapter.

3. In the case of a certificate applicant or existing certificate holder which is an entity other than an individual, the department of inspections and appeals may deny, suspend, or revoke a certificate if any individual who is in a position of control or is an officer of the entity engages in any act or omission proscribed by this section.

Sec. 6. NEW SECTION. 231D.6 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 the action. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within the 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 immediate danger to the health or safety of recipients of services from an adult day services program exists which requires action on an emergency basis, the department of inspections and appeals may direct the removal of all recipients of services from an adult day services program and suspend the certificate prior to a hearing.

Sec. 7. NEW SECTION. 231D.7 CONDITIONAL OPERATION.

The department of inspections and appeals may, as an alternative to denial, suspension, or revocation of certification under section 231D.5, conditionally issue or continue certification dependent upon the performance by the adult day services program of reasonable conditions within a reasonable period of time as prescribed by the department of inspections and appeals so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the adult day services program 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, suspend or revoke the certificate. An adult day services program shall not be operated under conditional certification for more than one year.

Sec. 8. NEW SECTION. 231D.8 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, and any substantial fire or natural or other disaster occurring at or near an adult day services program.

Sec. 9. NEW SECTION. 231D.9 COMPLAINTS AND CONFIDENTIALITY.

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

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. 10. NEW SECTION. 231D.10 PUBLIC DISCLOSURE OF FINDINGS.

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

Sec. 11. NEW SECTION. 231D.11 PENALTIES.

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

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

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

- b. Examining any relevant records of an adult day services program.
 - c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.
3. A civil penalty, as established by rule, may apply in any of the following situations:
- a. Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a recipient of program services.
 - b. Program failure or refusal to comply with regulatory requirements within prescribed time frames.

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

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

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

Sec. 13. NEW SECTION. 231D.13 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 adult day services programs as credit toward sustaining the nursing assistant's or medication aide's certification.

Sec. 14. NEW SECTION. 231D.14 CRIMINAL RECORDS INVESTIGATION CHECK.

An adult day services program shall comply with section 135C.33.

Sec. 15. NEW SECTION. 231D.15 FIRE AND SAFETY STANDARDS.

The state fire marshal shall adopt rules, in coordination with the department of elder affairs and the department of inspections and appeals, relating to the certification and monitoring of the fire and safety standards of adult day services programs.

Sec. 16. NEW SECTION. 231D.16 TRANSITION PROVISIONS.

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

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

Sec. 17. Section 100.1, subsection 6, Code 2003, is amended to read as follows:

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required ~~as a condition of licensure by law~~. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

Sec. 18. Section 135C.1, subsection 1, Code 2003, is amended to read as follows:

1. "Adult day services" means adult day services as defined in section ~~231.61~~ 231D.1 that are provided in a licensed health care facility.

Sec. 19. Section 231C.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. "Adult day services" means adult day services as defined in section 231D.1.

Sec. 20. Section 231.61, Code 2003, is repealed.

Sec. 21. DEPARTMENTAL REPORT. The department of inspections and appeals, in consultation with the department of elder affairs and the department of public safety, shall submit a written report to the general assembly by December 31, 2004, with copies to the joint appropriations subcommittee on health and human services that provides details regarding the implementation of this Act, including fees collected annually, and expenses incurred by the affected state agencies for administration, certification issuance, inspection, and other costs related to this Act. The department of inspections and appeals shall also include information in the report regarding its projections as to whether the fees imposed under this Act are sufficient to cover future expenses of affected state agencies under this Act.

Sec. 22. ADULT DAY SERVICES — PERSONS WITH MENTAL RETARDATION. For the period beginning July 1, 2003, and ending June 30, 2004, if an adult day services program serving persons with mental retardation is voluntarily accredited by the commission on accreditation of rehabilitation facilities (CARF) for personal and social services or by the council on quality and leadership in supports for persons with disabilities, prior to July 1, 2003, the department of inspections and appeals shall accept voluntary accreditation as the basis for certification as an adult day services program by the department.

Sec. 23. EFFECTIVE DATE. The section of this Act relating to adult day services serving persons with mental retardation, being deemed of immediate importance, takes effect upon enactment.

Approved May 30, 2003

CHAPTER 166

REGULATION OF ELDER FAMILY HOMES, ELDER GROUP HOMES, AND ASSISTED LIVING PROGRAMS — FIRE AND SAFETY STANDARDS

H.F. 675

AN ACT relating to the regulation of elder family homes, elder group homes, and assisted living programs, providing for fees, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

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

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required ~~as a condition of licensure~~ by law. The fee designated by rule shall be set in an amount that is reasonably