

House File 2079 - Introduced

HOUSE FILE 2079

BY ISENHART

A BILL FOR

1 An Act to require the department of inspections and appeals to
2 certify and monitor the operations of health care or other
3 agencies providing certain assisted living services and
4 providing for a fee and a criminal penalty.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135C.33, subsection 5, paragraph a,
2 subparagraph (5), Code Supplement 2009, is amended to read as
3 follows:

4 (5) An employee of an assisted living program or assisted
5 living care agency certified under chapter 231C, if the
6 employee provides direct services to consumers.

7 Sec. 2. Section 144C.3, subsection 4, Code Supplement 2009,
8 is amended to read as follows:

9 4. A funeral director, an attorney, or any agent, owner, or
10 employee of a funeral establishment, cremation establishment,
11 cemetery, elder group home, assisted living program, assisted
12 living care agency, adult day services program, or licensed
13 hospice program shall not serve as a designee unless related to
14 the declarant within the third degree of consanguinity.

15 Sec. 3. Section 231C.2, Code Supplement 2009, is amended by
16 adding the following new subsections:

17 NEW SUBSECTION. 2A. "*Assisted living care agency*" means
18 a health care or other agency that provides assisted living
19 services, with the exception of provision of housing, to three
20 or more dependent persons who reside in one or more group or
21 age-restricted facilities, including facilities regulated under
22 chapter 523D.

23 NEW SUBSECTION. 2B. "*Client*" means an individual who
24 receives services through a certified assisted living care
25 agency.

26 NEW SUBSECTION. 2C. "*Client's legal representative*" means a
27 person appointed by the court to act on behalf of a client or a
28 person acting pursuant to a power of attorney.

29 Sec. 4. Section 231C.3A, subsection 1, Code Supplement
30 2009, is amended to read as follows:

31 1. Any of the following circumstances disqualifies a
32 monitor from inspecting a particular assisted living program or
33 assisted living care agency under this chapter:

34 a. The monitor currently works or, within the past two
35 years, has worked as an employee or employment agency staff at

1 the program or agency, or as an officer, consultant, or agent
2 for the program or agency to be monitored.

3 *b.* The monitor has any financial interest or any ownership
4 interest in the program or agency. For purposes of this
5 paragraph, indirect ownership, such as through a broad-based
6 mutual fund, does not constitute financial or ownership
7 interest.

8 *c.* The monitor has an immediate family member who has
9 a relationship with the program or agency as described in
10 paragraph "*a*" or "*b*".

11 *d.* The monitor has an immediate family member who currently
12 resides in the program or obtains services from the agency.

13 Sec. 5. NEW SECTION. **231C.3B Certification of assisted**
14 **living care agencies — fee.**

15 1. The department shall establish by rule minimum standards
16 for certification and monitoring of assisted living care
17 agencies.

18 2. Each assisted living care agency shall be certified by
19 the department.

20 3. The owner or manager of an assisted living care agency
21 shall comply with the rules adopted by the department.

22 4. The department shall have full access to all records and
23 other materials pertaining to the provision of services and
24 care to the clients of an assisted living care agency during
25 certification, monitoring, and complaint investigations.

26 5. Certification of an assisted living care agency shall be
27 for two years unless certification is revoked for good cause
28 by the department.

29 6. The department shall establish and collect certification
30 fees by rule. Fees collected and retained pursuant to this
31 section shall be deposited in the general fund of the state.

32 7. A department, agency, or officer of this state or of
33 any governmental unit shall not pay or approve for payment
34 from public funds any amount to an assisted living care agency
35 for an actual or prospective client, unless the agency holds

1 a current certificate issued by the department and meets all
2 current requirements for certification.

3 8. An assisted living care agency shall comply with section
4 135C.33.

5 9. The department shall conduct training sessions for
6 personnel responsible for conducting monitoring evaluations and
7 complaint investigations of assisted living care agencies.

8 Sec. 6. Section 231C.7, subsection 1, Code 2009, is amended
9 to read as follows:

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

19 Sec. 7. Section 231C.8, Code 2009, is amended to read as
20 follows:

21 **231C.8 Informal review.**

22 1. If an assisted living program or an assisted living
23 care agency contests the regulatory insufficiencies of a
24 monitoring evaluation or complaint investigation, the program
25 or agency shall submit written information, demonstrating that
26 the program or agency was in compliance with the applicable
27 requirement at the time of the monitoring evaluation or
28 complaint investigation, in support of the contesting of the
29 regulatory insufficiencies, to the department for review.

30 2. The department shall review the written information
31 submitted within ten working days of the receipt of the
32 information. At the conclusion of the review, the department
33 may affirm, modify, or dismiss the regulatory insufficiencies.
34 The department shall notify the program or agency in writing
35 of the decision to affirm, modify, or dismiss the regulatory

1 insufficiencies, and the reasons for the decision.

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

5 Sec. 8. Section 231C.9, Code 2009, is amended to read as
6 follows:

7 **231C.9 Public disclosure of findings.**

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

22 Sec. 9. Section 231C.10, Code Supplement 2009, is amended
23 to read as follows:

24 **231C.10 Denial, suspension, or revocation — conditional**
25 **operation.**

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

32 a. Appropriation or conversion of the property of an
33 assisted living program tenant or an assisted living care
34 agency client without the tenant's or client's written consent
35 or the written consent of the tenant's or client's legal

1 representative.

2 *b.* Permitting, aiding, or abetting the commission of any
3 illegal act in the assisted living program or by the agency.

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

7 *d.* Habitual intoxication or addiction to the use of drugs by
8 the applicant, administrator, executive director, manager, or
9 supervisor of the assisted living program or assisted living
10 care agency.

11 *e.* Securing the devise or bequest of the property of a
12 tenant of an assisted living program or a client of an assisted
13 living care agency by undue influence.

14 *f.* Failure to protect tenants or clients from dependent
15 adult abuse as defined in section 235E.1.

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

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

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

1 rule.

2 2. The department may as an alternative to denial,
3 suspension, or revocation conditionally issue or continue a
4 certificate dependent upon the performance by the assisted
5 living program or assisted living care agency of reasonable
6 conditions within a reasonable period of time as set by the
7 department so as to permit the program or agency to commence
8 or continue the operation of the program or agency pending
9 substantial compliance with this chapter or the rules adopted
10 pursuant to this chapter. If the assisted living program or
11 assisted living care agency does not make diligent efforts to
12 comply with the conditions prescribed, the department may,
13 under the proceedings prescribed by this chapter, suspend or
14 revoke the certificate. An assisted living program or assisted
15 living care agency shall not be operated on a conditional
16 certificate for more than one year.

17 Sec. 10. Section 231C.11, subsection 3, Code 2009, is
18 amended to read as follows:

19 3. When the department finds that an imminent danger to the
20 health or safety of tenants of an assisted living program or
21 clients of an assisted living care agency exists which requires
22 action on an emergency basis, the department may direct
23 the removal of all tenants of an the assisted living program or
24 the cessation of services to all clients of the assisted living
25 care agency and suspend the certificate of the program or the
26 agency prior to a hearing.

27 Sec. 11. Section 231C.13, Code 2009, is amended to read as
28 follows:

29 **231C.13 Retaliation by ~~assisted living program~~ prohibited.**

30 An assisted living program or an assisted living care
31 agency shall not discriminate or retaliate in any way against a
32 tenant or client, tenant's or client's family, or an employee
33 of the program or agency who has initiated or participated
34 in any proceeding authorized by this chapter. An assisted
35 living program or an assisted living care agency that violates

1 this section is subject to a penalty as established by
2 administrative rule in accordance with chapter 17A, to be
3 assessed and collected by the department, paid into the state
4 treasury, and credited to the general fund of the state.

5 Sec. 12. Section 231C.14, Code Supplement 2009, is amended
6 to read as follows:

7 **231C.14 Civil penalties.**

8 1. The department may establish by rule, in accordance with
9 chapter 17A, civil penalties for the following violations by an
10 assisted living program or an assisted living care agency:

11 a. 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 or client.

14 b. Following receipt of notice from the department,
15 continued failure or refusal to comply within a prescribed
16 time frame with regulatory requirements that have a direct
17 relationship to the health, safety, or security of program
18 tenants or agency clients.

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

24 (1) Contacting or interviewing any tenant of an assisted
25 living program or client of an assisted living care agency in
26 private at any reasonable hour and without advance notice.

27 (2) Examining any relevant records of an assisted living
28 program or assisted living care agency.

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

31 2. If a program or agency assessed a penalty does not
32 request a formal hearing pursuant to chapter 17A or withdraws
33 its request for a formal hearing within thirty days of the
34 date the penalty was assessed, the penalty shall be reduced by
35 thirty-five percent, if the penalty is paid within thirty days

1 of the issuance of a demand letter issued by the department.
2 The demand letter, which includes the civil penalty, shall
3 include a statement to this effect.

4 Sec. 13. Section 231C.15, Code 2009, is amended to read as
5 follows:

6 **231C.15 Criminal penalties and injunctive relief.**

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

18 Sec. 14. Section 231C.16, Code 2009, is amended to read as
19 follows:

20 **231C.16 Nursing assistant and medication aide —**
21 **certification.**

22 The department, in cooperation with other appropriate
23 agencies, shall establish a procedure to allow nursing
24 assistants or medication aides to claim work within an assisted
25 living program or with an assisted living care agency as credit
26 toward sustaining the nursing assistant's or medication aide's
27 certification.

28 Sec. 15. Section 235E.1, subsection 9, Code 2009, is amended
29 to read as follows:

30 9. "*Program*" means an elder group home as defined in section
31 231B.1, an assisted living program or assisted living care
32 agency certified under section 231C.3 or 231C.3B, or an adult
33 day services program as defined in section 231D.1.

34 Sec. 16. Section 249H.3, subsection 4, Code Supplement
35 2009, is amended to read as follows:

1 4. "Long-term care alternatives" means those services
2 specified as services under the medical assistance home and
3 community-based services waiver for elder persons or adults
4 with disabilities, elder group homes certified under chapter
5 231B, ~~assisted-living~~ assisted living programs or assisted
6 living care agencies certified under chapter 231C, and the PACE
7 program.

8 EXPLANATION

9 Code chapter 231C currently directs the department of
10 inspections and appeals (DIA) to certify and monitor assisted
11 living programs. This bill applies similar certification and
12 monitoring requirements to health care or other agencies which
13 provide assisted living services to three or more dependent
14 persons, who reside in one or more group or age-restricted
15 facilities. Each agency is to be certified and monitored by
16 DIA. Certification is for a two-year period, with the fee set
17 by the DIA in rule.

18 The bill requires certain employees of such agencies to
19 undergo background checks; provides for filing and disposition
20 of complaints; provides for an informal review of contests
21 to the results of a monitoring evaluation or complaint
22 investigation; provides for public disclosure of the final
23 findings of a monitoring evaluation or complaint investigation;
24 provides the bases for denial, suspension, or revocation of
25 certification and for conditional operation of an agency;
26 provides for notice, appeal, and emergency provisions relating
27 to a denial, suspension, or revocation of certification;
28 provides for application of civil penalties, as determined by
29 certain violations, and provides for injunctive relief; and
30 provides for nursing assistants and medication aides to claim
31 work for an agency as credit toward their certification.

32 A person establishing, conducting, managing, or operating
33 an agency without a certificate pursuant to Code chapter 231C
34 is guilty of a serious misdemeanor. Each day of continuing
35 violation after conviction or notice from the department

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1 by certified mail of a violation is a separate offense or
2 chargeable offense.