

SECTION 2:

**IOWA CODE
231D**

AND

**ADMINISTRATIVE
RULES**

CHAPTER 231D

ADULT DAY SERVICES

Referred to in §105.11, §231B.16, §231C.17, §235E.2, §483A.24

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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-related care, social services, and other related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

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

3. “*Department*” means the department of inspections and appeals.

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

5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

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

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

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

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

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

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

12. “*Social services*” means services relating to the psychological and social needs of the

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

13. “Supervision” means direct oversight and inspection of the act of accomplishing a function or activity.

[2003 Acts, ch 165, §1](#); [2005 Acts, ch 61, §1, 17](#); [2007 Acts, ch 215, §184](#)

Referred to in [§135C.1](#), [§142D.2](#), [§144C.2](#), [§231C.2](#), [§231D.3A](#), [§235E.1](#)

231D.2 Purpose — rules.

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

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

3. The department may establish by administrative rule, in accordance with [chapter 17A](#), specific rules related to minimum standards for dementia-specific adult day services programs. The rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups.

[2003 Acts, ch 165, §2](#); [2005 Acts, ch 61, §2, 17](#); [2007 Acts, ch 215, §185, 186](#)

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 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. An adult day services program shall provide services and supervision commensurate with the needs of the participants. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

3. An adult day services program that has been certified by the department 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. The department 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 prospective participant, unless the program holds a current certificate issued by the department 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 persons who are not participants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

6. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of adult day services programs.

7. Beginning January 1, 2013, certification of an adult day services program shall be for three years unless revoked for good cause by the department.

2003 Acts, ch 165, §3; 2005 Acts, ch 61, §3, 4, 17; 2007 Acts, ch 215, §187; 2013 Acts, ch 55, §1, 3, 4

2013 amendment to subsection 7 takes effect April 24, 2013, and applies retroactively to January 1, 2013; any initial certification or recertification issued on or after January 1, 2013, and prior to April 24, 2013, shall be extended to reflect a three-year period; 2013 Acts, ch 55, §3, 4

231D.3A Exception.

An entity certified by the centers for Medicare and Medicaid services of the United States department of health and human services as a federal program of all-inclusive care for the elderly shall not be required to be certified as an adult day services program under [this chapter](#). A program of all-inclusive care for the elderly, as used in [this section](#), shall not identify itself or hold itself out to be an adult day services program as defined in [section 231D.1](#).

2012 Acts, ch 1035, §1; 2013 Acts, ch 30, §44

231D.4 Application and fees.

1. Certificates for adult day services programs shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include 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 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) Beginning January 1, 2013, for a three-year initial certification, seven hundred fifty dollars.

(2) Beginning January 1, 2013, for a three-year recertification, one thousand dollars.

(3) For a blueprint review, nine hundred dollars.

(4) For an optional preliminary plan review, five hundred dollars.

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

2003 Acts, ch 165, §4; 2005 Acts, ch 61, §5, 17; 2007 Acts, ch 215, §188, 189; 2013 Acts, ch 55, §2, 3, 4

2013 amendments to subsection 2, paragraph b, subparagraphs (1) and (2), take effect April 24, 2013, and apply retroactively to January 1, 2013; any initial certification or recertification issued on or after January 1, 2013, and prior to April 24, 2013, shall be extended to reflect a three-year period; 2013 Acts, ch 55, §3, 4

231D.5 Denial, suspension, or revocation.

1. The department may deny, suspend, or revoke certification if the department 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. Appropriation or conversion of the property of a participant without the participant's written consent or the written consent of the participant's legal representative.

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

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

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

e. Securing the devise or bequest of the property of a participant by undue influence.

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

g. Founded dependent adult abuse as defined in [section 235E.1](#).

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

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

j. In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, the department may deny certification on the basis of 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](#).

k. In the case of an application 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 or programs in compliance with the provisions of [this chapter](#), the rules adopted pursuant to [this chapter](#), or equivalent provisions that the adult day services program is subject to in this state or any other state.

l. Intentionally preventing or interfering with or attempting to prevent or interfere in any way with the performance by any duly authorized representative of the department of the lawful enforcement of [this chapter](#) or of the rules adopted pursuant to [this chapter](#). As used in this paragraph, “lawful enforcement” includes but is not limited to the following:

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

(2) Examining any relevant books or records of an adult day services program unless otherwise protected from disclosure by operation of law.

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

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

2. In the case of a certificate applicant or existing certificate holder which is an entity other than an individual, the department 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](#).

[2003 Acts, ch 165, §5; 2005 Acts, ch 61, §6, 17; 2006 Acts, ch 1030, §25; 2007 Acts, ch 215, §190, 191; 2008 Acts, ch 1031, §41; 2008 Acts, ch 1032, §37; 2014 Acts, ch 1040, §24; 2015 Acts, ch 80, §13](#)

Referred to in [§231D.7](#)

Subsection 1, paragraphs g and k amended

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, 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 in accordance with [chapter 17A](#).

3. When the department finds that an immediate danger to the health or safety of participants in an adult day services program exists which requires action on an emergency

basis, the department may direct the removal of all participants in the adult day services program and suspend the certificate prior to a hearing.

2003 Acts, ch 165, §6; 2005 Acts, ch 61, §7, 17; 2007 Acts, ch 215, §192

231D.7 Conditional operation.

The department 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 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 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.

2003 Acts, ch 165, §7; 2007 Acts, ch 215, §193

231D.8 Department notified of casualties.

The department 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.

2003 Acts, ch 165, §8; 2007 Acts, ch 215, §194

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. The name of the person who files a complaint with the department and any personal identifying information of the person or any participant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department involved in the investigation of the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with [this section](#).

2003 Acts, ch 165, §9; 2005 Acts, ch 61, §8, 17; 2007 Acts, ch 215, §195

Referred to in [§231D.12](#)

231D.9A Exit interview — issuance of findings.

1. The department shall provide an adult day services program an exit interview at the conclusion of a monitoring evaluation or a complaint investigation, and the department shall inform the program's representative of all issues and areas of concern related to the insufficient practices. The department may conduct the exit interview in person or by telephone, and the department shall provide a second exit interview if any additional issues or areas of concern are identified. The program shall have two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. The department shall issue the final findings of a monitoring evaluation or complaint investigation within ten working days after completion of the on-site monitoring evaluation or complaint investigation. The final findings shall be served upon the program personally, by electronic mail, or by certified mail.

2005 Acts, ch 61, §9, 17; 2007 Acts, ch 215, §196; 2014 Acts, ch 1040, §25, 28

2014 amendment to section takes effect July 1, 2014, and applies to an adult day services program desiring to request an informal conference under chapter 231D on or after January 1, 2015; 2014 Acts, ch 1040, §28

231D.10 Disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department 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 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 assessment of a civil penalty pursuant to [section 231D.11](#) or the denial, suspension, or revocation of a certificate under [this chapter](#).

[2003 Acts, ch 165, §10; 2005 Acts, ch 61, §10, 17; 2007 Acts, ch 215, §197; 2008 Acts, ch 1048, §3, 4; 2014 Acts, ch 1040, §26, 28; 2015 Acts, ch 80, §14](#)

2014 amendment to section takes effect July 1, 2014, and applies to an adult day services program desiring to request an informal conference under chapter 231D on or after January 1, 2015; 2014 Acts, ch 1040, §28

Section amended

231D.10A Informal conference — formal contest — judicial review.

1. Within twenty business days after issuance of the final findings, the adult day services program shall notify the director if the program desires to contest the findings and do either of the following:

a. Request an informal conference with an independent reviewer pursuant to [subsection 2](#).

2. Upon the conclusion of an informal conference, if the adult day services program desires to further contest an affirmed or modified regulatory insufficiency, it may do so by giving notice of intent to formally contest the regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer.

b. Request a contested case hearing in the manner provided by [chapter 17A](#) for contested cases. The formal hearing shall be conducted in accordance with [chapter 17A](#) and rules adopted by the department.

2. a. The department shall provide an independent reviewer to hold an informal conference with an adult day services program within ten working days after receiving a request from the program pursuant to [subsection 1](#), paragraph “a”. At the conclusion of the informal conference, the independent reviewer may affirm, modify, or dismiss a contested regulatory insufficiency. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the department and to the program.

b. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of an adult day services program in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

3. An adult day services program that has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by [chapter 17A](#).

[2014 Acts, ch 1040, §27, 28; 2015 Acts, ch 80, §15](#)

Section takes effect July 1, 2014, and applies to an adult day services program desiring to request an informal conference under chapter 231D on or after January 1, 2015; 2014 Acts, ch 1040, §28

Section amended

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 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 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 participant.

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

c. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of [this chapter](#) or of the rules

adopted pursuant to [this chapter](#). As used in this paragraph, “*lawful enforcement*” includes but is not limited to:

- (1) Contacting or interviewing any participant in an adult day services program in private at any reasonable hour and without advance notice.
- (2) Examining any relevant records of an adult day services program.
- (3) Preserving evidence of any violation of [this chapter](#) or of the rules adopted pursuant to [this chapter](#).

[2003 Acts, ch 165, §11; 2005 Acts, ch 61, §11, 17; 2007 Acts, ch 215, §198, 199](#)

Referred to in [§231D.10](#)

231D.12 Retaliation by adult day services program prohibited.

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

2. Any attempt to discharge a participant from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department 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 participant is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

[2003 Acts, ch 165, §12; 2005 Acts, ch 61, §12, 17; 2006 Acts, ch 1010, §74; 2007 Acts, ch 215, §200](#)

Referred to in [§231D.17](#)

231D.13 Nursing assistant and medication aide — certification.

The department, 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.

[2003 Acts, ch 165, §13; 2007 Acts, ch 215, §201](#)

231D.13A Medication setup — administration and storage of medications.

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

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

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

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

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

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

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

f. If medication setup is provided by the program at the request of the participant or the participant’s legal representative, or if medication administration is delegated to the program

by the participant or the participant's legal representative, appropriate staff of the program may transfer the medications in the participant's presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.

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

[2005 Acts, ch 61, §13, 17](#); [2015 Acts, ch 56, §20](#)

Subsection 2, paragraph a amended

231D.14 Criminal records investigation check.

An adult day services program shall comply with [section 135C.33](#).

[2003 Acts, ch 165, §14](#)

231D.15 Fire and safety standards.

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

[2003 Acts, ch 165, §15](#); [2007 Acts, ch 215, §202](#)

231D.16 Transition provision.

1. Adult day services programs that are serving at least two but not more than five persons and that are not voluntarily accredited by a recognized accrediting entity shall comply with [this chapter](#).

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

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

[2003 Acts, ch 165, §16](#); [2005 Acts, ch 61, §14, 17](#); [2015 Acts, ch 30, §74](#)

Subsection 1 amended

231D.17 Written contractual agreement required.

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

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

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

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

c. The procedure followed for nonpayment of fees.

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

e. The term of the written contractual agreement.

f. A statement that the adult day services program shall notify the participant or the

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

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

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

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

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

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

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

k. A statement of the prohibition against retaliation as prescribed in [section 231D.12](#).

l. The emergency response policy.

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

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

o. The refund policy.

p. A statement regarding billing and payment procedures.

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

[2005 Acts, ch 61, §15, 17; 2007 Acts, ch 215, §203](#)

231D.18 Involuntary transfer.

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

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

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

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with [chapter 17A](#), procedures to be followed, including the opportunity for hearing, when the transfer of a participant results from a monitoring evaluation or complaint investigation conducted by the department.

[2005 Acts, ch 61, §16, 17; 2007 Acts, ch 215, §204, 205](#)

231D.19 Limitations on admission and retention of participants.

An adult day services program shall not knowingly admit or retain a participant who meets any of the following criteria:

1. Is under the age of eighteen.
 2. Requires routine three-person assistance with standing, transfer, or evacuation.
 3. Poses a danger to the participant, other participants, or the adult day services program staff. “*Pose a danger*” may include but is not limited to the following situations:
 - a. The participant chronically elopes despite intervention.
 - b. The participant is sexually or physically aggressive or abusive.
 - c. The participant’s verbal abuse is unmanageable by staff.
 - d. The participant is in the acute stage of alcoholism, drug addiction, or mental illness.
- [2014 Acts, ch 1009, §1](#)

CHAPTER 67
GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS,
AND ADULT DAY SERVICES

481—67.1(231B,231C,231D) Definitions. The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

“Activities of daily living” means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

“Ambulatory” or *“ambulation”* means physically and cognitively able to walk without aid of another person.

“Applicable requirements” means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

“Assignment” means the distribution of work for which each staff member, regardless of certification or licensure status, is responsible during a given work period and includes a nurse directing an individual to do something the individual is already authorized to do.

“Assistance” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

“Blueprint” means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

“Certified staff” means certified nursing assistants (CNAs) and certified medication assistants (CMAs) employed by the program.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and includes memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Department” means the department of inspections and appeals.

“Director” means the director of the department of inspections and appeals.

“Direct supervision” means the provision of guidance and oversight of a delegated nursing task through the physical presence of the licensed nurse to observe and direct certified and noncertified staff.

“Elope” means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

“Global Deterioration Scale” or *“GDS”* means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

“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. “Health-related care” includes nurse-delegated assistance.

“Human service professional” means an individual with a bachelor’s degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years of the required education. For example, an individual with an associate’s degree in a human service field and two years of experience in a human service field is a human service professional.

“Impaired decision-making ability” means a lack of capacity to make safe and prudent decisions regarding one’s own routine safety as determined by the program manager or nurse or means having a GDS score of five or above.

“Independent reviewer” means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

“Indirect supervision” means the provision of guidance and oversight of a delegated nursing task through means other than direct supervision, including written and verbal communication.

“Instrumental activities of daily living” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“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 containers into suitable medication dispensing containers, reminder containers, or medication cups.

“Modification” means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program’s facility.

“Monitoring” means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

“Noncertified staff” means unlicensed and uncertified personnel employed by the program.

“Nurse delegation” means the action of a registered nurse, advanced registered nurse practitioner, or licensed practical nurse to direct competent certified and noncertified staff to perform selected nursing tasks in selected situations. The decision of a nurse to delegate is based on the delegation process, including assessment, planning, implementation, supervision, and evaluation of the tenant, nursing tasks, personnel, and the situation. The nurse, as a licensed professional, retains accountability for the delegation process and the decision to delegate. Licensed practical nurses may delegate within the scope of their license with the supervision of a registered nurse.

“Occupancy agreement” or *“contractual agreement”* means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

“Part-time or intermittent care” means licensed nursing services and professional therapies that are provided in combination with nurse-delegated assistance with medications or activities of daily living and do not exceed 28 hours per week or, for adult day services, 4 hours per day.

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

“Physician extender” means nurse practitioners, clinical nurse specialists, and physician assistants.

“Preponderance of the evidence” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

“Program” means one or more of the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

“Program staff” means all employees of the program, regardless of certification or licensure status.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific program standards equivalent to the program standards established by the department.

“Regulatory insufficiency” means a violation of an applicable requirement.

“Remodeling” means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

“*Restraints*” means any chemical or manual method which restricts freedom of movement or normal access to one’s body or any physical or mechanical device, material or equipment which is attached or adjacent to the tenant’s body that the tenant cannot remove easily and which restricts freedom of movement or normal access to one’s body.

“*Routine*” means more often than not or on a regular customary basis.

“*Self-administration*” means a tenant’s taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant’s use of an automatic pill dispenser.

“*Service plan*” means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

“*Significant change*” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

“*Substantial compliance*” means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

“*Tenant*” means an individual who receives services through a program. In the context of adult day services, “tenant” means a participant as defined in 481—Chapter 70.

“*Tenant advocate*” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“*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. In the context of adult day services, “tenant’s legal representative” means a participant’s legal representative as defined in 481—Chapter 70.

“*Waiver*” means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 0961C, IAB 8/21/13, effective 9/25/13; ARC 1055C, IAB 10/2/13, effective 1/1/14; ARC 1994C, IAB 5/27/15, effective 7/1/15; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports. A program’s policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

67.2(1) The program’s policies and procedures on incident reports, at a minimum, shall include the following:

- a. The program shall have available incident report forms for use by program staff.
- b. An incident report shall be in detail and shall be provided on an incident report form.
- c. The person in charge at the time of the incident shall prepare and sign the report.
- d. The incident report shall include statements from individuals, if any, who witnessed the incident.
- e. All accidents or unusual occurrences within the program’s building or on the premises that affect tenants shall be reported as incidents.
- f. A copy of the completed incident report shall be kept on file on the program’s premises for a minimum of three years.

67.2(2) The program’s policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

- a. Reporting requirements for staff and employees, and
- b. Requirements that the victim and alleged abuser be separated.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

481—67.3(231B,231C,231D) Tenant rights. All tenants have the following rights:

67.3(1) To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

67.3(2) To receive care, treatment and services which are adequate and appropriate.

67.3(3) To receive respect and privacy in the tenant's medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for the records' release to any individual, including family members, except as needed in case of the tenant's transfer to a health care facility or as required by law or a third-party payment contract.

67.3(4) To be free from mental and physical abuse.

67.3(5) To receive from the manager and staff of the program a reasonable response to all requests.

67.3(6) To associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.

67.3(7) To manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs.

67.3(8) To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program's staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

67.3(9) To be free from restraints.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—67.4(231B,231C,231D) Program notification to the department. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

67.4(1) Of any accident causing major injury. For the purposes of this rule, "major injury" shall also mean a substantial injury.

a. "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant's prognosis.

b. The following are not reportable accidents:

- (1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

67.4(2) When damage to the program is caused by a natural or other disaster.

67.4(3) When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

67.4(4) When a tenant elopes from a program.

67.4(5) When a tenant attempts suicide, regardless of injury.

67.4(6) When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

67.4(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

481—67.5(231B,231C,231D) Medications. Each program shall follow its own written medication policy, which shall include the following:

67.5(1) The program shall not prohibit a tenant from self-administering medications.

67.5(2) A tenant shall self-administer medications unless:

a. The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

b. The tenant delegates medication setup to someone other than the program.

c. The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in Iowa Code section 231C.16A and subrule 67.9(4). The program's registered nurse must agree to the medication plan.

67.5(3) A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

67.5(4) When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

67.5(5) When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

67.5(6) When medications are administered traditionally by the program:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by certified and noncertified staff in accordance with subrule 67.9(4) or a physician assistant (PA) in accordance with 645—Chapter 327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, pharmacist, or physician assistant (PA).

b. Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

c. The program shall maintain a list of each tenant's medications and document the medications administered.

d. Medications shall be administered as prescribed by the tenant's physician, advanced registered nurse practitioner or physician assistant.

67.5(7) Narcotics protocol shall be determined by the program's registered nurse.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 0961C, IAB 8/21/13, effective 9/25/13; ARC 1050C, IAB 10/2/13, effective 11/6/13; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—67.6(231B,231C,231D) Another business or activity located in a program.

67.6(1) A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

67.6(2) A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

67.6(3) A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.

67.7(1) *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

67.7(2) *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

a. A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

b. The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

c. The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

67.7(3) *Factors for consideration for waiver of criteria for retention of a tenant.* In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

a. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

b. The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

c. The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

d. The tenant has been diagnosed with a terminal illness and has been admitted to hospice, and the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

67.7(4) *Conditional waiver.* A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

a. If a waiver has been in effect for six months, a monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

b. The department may seek additional information during the period to determine if a waiver should be granted.

67.7(5) *Appeals.* The denial of a waiver request may be appealed by the program pursuant to Iowa Code chapter 17A.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—67.8(231B,231C,231D) All other waiver requests. Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.

[ARC 8174B, IAB 9/23/09, effective 1/1/10]

481—67.9(231B,231C,231D) Staffing.

67.9(1) *Number of staff.* A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

67.9(2) *Emergency procedures.* All program staff shall be able to implement the accident, fire safety, and emergency procedures.

67.9(3) *Training documentation.* The program shall have training records and staffing schedules on file and shall maintain documentation of training received by program staff, including training of certified and noncertified staff on nurse-delegated procedures.

67.9(4) *Nurse delegation procedures.* The program's registered nurse shall ensure certified and noncertified staff are competent to meet the individual needs of tenants. Nurse delegation shall, at a minimum, include the following:

a. The program's newly hired registered nurse shall within 60 days of beginning employment as the program's registered nurse document a review to ensure that staff are sufficiently trained and competent in all tasks that are assigned or delegated.

b. Within 30 days of beginning employment, all program staff shall receive training by the program's registered nurse(s).

c. Training for noncertified staff shall include, at a minimum, the provision of activities of daily living and instrumental activities of daily living.

d. Certified and noncertified staff shall receive training regarding service plan tasks (e.g., wound care, pain management, rehabilitation needs and hospice care) in accordance with medical or nursing directives and the acuity of the tenants' health, cognitive or functional status.

e. The program's registered nurse(s) shall provide direct or indirect supervision of all certified and noncertified staff as necessary in the professional judgment of the program's registered nurse and in accordance with the needs of the tenants and certified and noncertified staff.

f. Services shall be provided to tenants in accordance with the training provided.

g. The program shall have in place a system by which certified or noncertified staff communicate in writing occurrences that differ from the tenant's normal health, functional and cognitive status. The program's registered nurse or designee shall train certified and noncertified staff on reporting to the program's registered nurse or designee and documenting occurrences that differ from the tenant's normal health, functional and cognitive status. The written communication required by this paragraph shall be retained by the program for a period of not less than three years, and shall be accessible to the department upon request.

h. In the absence of the program's registered nurse due to vacation or other temporary circumstances, the nurse assuming the duties of the program's registered nurse shall have access to staff training in relation to tenant needs.

67.9(5) Prohibited services. A program staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the program staff member is related to the tenant by blood, marriage, or adoption.

67.9(6) Dependent adult abuse training. Program staff shall receive training relating to the identification and reporting of dependent adult abuse as required by Iowa Code section 235B.16.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 0961C, IAB 8/21/13, effective 9/25/13; ARC 0963C, IAB 8/21/13, effective 9/25/13; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—67.10(17A,231B,231C,231D) Monitoring.

67.10(1) Frequency of monitoring. The department shall monitor a certified program at least once during the program's certification period.

67.10(2) Accessibility of records and program areas. All records and areas of the program deemed necessary to determine compliance with the applicable requirements shall be accessible to the department for purposes of monitoring.

67.10(3) Standard for determining whether a regulatory insufficiency exists. The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.

67.11(1) Complaints. The process for filing a complaint is as follows:

a. Any person with concerns regarding the operation or service delivery of a program may file a complaint with the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address: https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant, if known, to the appropriate investigatory entity.

c. The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

67.11(2) Program-reported incident reports. When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

a. The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Complaints" tab;

b. Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

c. The complaint hotline, 1-877-686-0027; or

d. Facsimile sent to (515)281-7106.

67.11(3) Time frames for investigation of complaints or program-reported incident reports. Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.

67.11(4) Standard for determining whether a complaint is substantiated. The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

67.11(5) Notification of program and complainant. The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation.

67.11(6) Notification of accrediting entity. In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

67.11(7) Notification of complainant when complaint not investigated. The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.12(17A,231B,231D) Adult day services and elder group homes—preliminary report, plan of correction and request for reconsideration. Rescinded ARC 1701C, IAB 10/29/14, effective 1/1/15.

481—67.13(17A,231B,231C,231D,85GA,HF2365) Exit interview, final report, plan of correction.

67.13(1) Exit interview. The department shall provide an exit interview in person or by telephone at the conclusion of a monitoring, during which the department shall inform the program's representative of all issues and areas of concern related to insufficient practices. A second exit interview shall be provided if the department identifies additional issues or areas of concern. The program shall have 2 working days from the date of the exit interview to submit additional or rebuttal information to the department.

67.13(2) Final report. The department shall issue the final report of a monitoring within 10 working days after completion of the on-site monitoring or the receipt by the department of additional or rebuttal information, by personal service, electronically or by certified mail. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

67.13(3) *Plan of correction.* Within 10 working days following receipt of the final report, the program shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall include:

- (1) Elements detailing how the program will correct each regulatory insufficiency;
- (2) The date by which the regulatory insufficiency will be corrected;
- (3) What measures will be taken to ensure the problem does not recur;
- (4) How the program plans to monitor performance to ensure compliance; and
- (5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days from receipt of the final report pursuant to subrule 67.13(2) without approval of the department.

b. Review of plan. The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan.

67.13(4) *Monitoring revisit.* The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14; ARC 1701C, IAB 10/29/14, effective 1/1/15]

481—67.14(17A,231B,231C,231D,85GA,HF2365) Response to final report. Within 20 working days after the issuance of the final report and assessment of civil penalty, if any, the program shall respond in the following manner.

67.14(1) *If not contesting final report.* If the program does not desire to seek an informal conference or contest the final report and civil penalty, if assessed, the program shall remit to the department of inspections and appeals the amount of the civil penalty, if assessed. If a program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if the requirements of subrule 67.17(5) are met.

67.14(2) *If contesting the final report.* If the program desires to contest the final report and civil penalty, if assessed, the program shall notify the department of inspections and appeals in writing that it desires to contest the final report and civil penalty and shall do one of the following:

- a.* Request an informal conference with an independent reviewer pursuant to subrule 67.14(3); or
- b.* Request a contested case hearing in the manner provided by Iowa Code chapter 17A for contested cases.

67.14(3) *Informal conference.*

a. Request for informal conference. The request for an informal conference must be in writing and include the following:

- (1) Identification of the regulatory insufficiency(ies) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for monitor's notes for the regulatory insufficiencies being disputed, if desired.

b. Submission of documentation. The program shall submit the following within 10 working days from the date of the program's written request for an informal conference:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the program's position. The program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the program has shown good cause, the independent reviewer shall consider what circumstances kept the program from submitting the supporting documentation within the required time frame.

c. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour. The program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the program's presentation. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested by the independent reviewer during the informal conference, the program will have 2 working days to deliver the additional materials to the independent reviewer.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the program may be given one opportunity to reschedule the face-to-face conference.

d. Results. The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.

(3) The program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.

(4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.

67.14(4) Procedure after informal conference. After the conclusion of an informal conference:

a. If the program does not desire to further contest an affirmed or modified final report, the program shall, within 5 working days after receipt of the written decision of the independent reviewer, remit to the department of inspections and appeals the civil penalty, if assessed.

b. If the program does desire to further contest an affirmed or modified final report, the program shall, within 5 working days after receipt of the written decision of the independent reviewer, notify the department of inspections and appeals in writing that it desires to formally contest the final report.

67.14(5) Contested case hearings. Contested case hearings shall be conducted by the department's administrative hearings division pursuant to Iowa Code chapter 17A and 481—Chapter 10.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14; ARC 1701C, IAB 10/29/14, effective 1/1/15; ARC 2142C, IAB 9/16/15, effective 10/21/15]

481—67.15(17A,231B,231C,231D) Denial, suspension or revocation of a certificate.

67.15(1) Notice and request for hearing. 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 actions. A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice, unless the applicant or certificate holder gives the department written notice requesting a hearing within the 30-day period. If a timely request for hearing is made, the notice shall be deemed suspended pending the outcome of the hearing, unless subrule 67.15(3) or 67.15(4) applies. If an enforcement action has been implemented immediately in accordance with subrule 67.15(3) or 67.15(4), the enforcement action remains in effect regardless of a request for hearing.

67.15(2) Hearings. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.15(3) Immediate suspension of a certificate. When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the

department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

67.15(4) Immediate imposition of enforcement action. When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing, but the immediate enforcement action remains in effect regardless of the request for hearing. [ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.16(17A,231B,231C,231D) Conditional certification.

67.16(1) Conditional certification. In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certificate for a period of up to one year. Notwithstanding subrule 67.15(4), a conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

a. The department shall specify the reasons for the conditional certificate in the notice issuing the conditional certificate.

b. The department may place conditions upon a certificate, such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

c. Failure by the program to adhere to the plan of correction or conditions placed on the certificate may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

d. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Prior to lifting a conditional certificate, the department may conduct a monitoring to verify substantial compliance. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

67.16(2) Appeal of conditional certificate. A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10. [ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.17(17A,231B,231C,231D) Civil penalties.

67.17(1) When civil penalties may be issued. Civil penalties may be issued when the director finds that any of the following has occurred:

a. A program that does not comply with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

b. A program that continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

c. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

d. A program that discriminates or retaliates in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by Iowa Code chapter 231B, 231C or 231D and the corresponding administrative rules may be assessed a civil penalty of not more than \$5,000.

67.17(2) Duplicate civil penalties prohibited. The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

67.17(3) Factors in determining the amount of a civil penalty. The department shall consider the following factors when determining the amount of a civil penalty:

- a. The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);
- b. The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediately previous certification period);
- c. The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;
- d. The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;
- e. The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;
- f. The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;
- g. The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;
- h. The rights of tenants to make informed decisions;
- i. Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

67.17(4) Civil penalties due. The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in accordance with rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394). If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

67.17(5) Reduction of civil penalty amount by 35 percent. If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

- a. The program does not request a formal hearing pursuant to rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394), or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and
- b. The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

[ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.18(17A,231B,231C,231D) Judicial review. Judicial review shall be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 10.

[ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.19(135C,231B,231C,231D) Criminal, dependent adult abuse, and child abuse record checks.

67.19(1) Definitions. The following definitions apply for the purposes of this rule.

“*Background check*” or “*record check*” means criminal history, child abuse and dependent adult abuse record checks.

“*Direct services*” means services provided through person-to-person contact. “Direct services” excludes services provided by individuals such as building contractors, repair workers, or others who are in a program for a very limited purpose, who are not in the program on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

“*Employed in a program*” or “*employment within a program*” means all of the following, if the provider is regulated by the state or receives any federal or state funding:

1. An employee of an assisted living program certified under Iowa Code chapter 231C, if the employee provides direct services to consumers;
2. An employee of an elder group home certified under Iowa Code chapter 231B, if the employee provides direct services to consumers;

3. An employee of an adult day services program certified under Iowa Code chapter 231D, if the employee provides direct services to consumers.

“*Employee*” means any individual who is paid, either by the program or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

“*Evaluation*” means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants the person’s being prohibited from employment in a program.

“*Indirect services*” means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

“*Program,*” for purposes of this rule, means all of the following, if the provider is regulated by the state or receives any federal or state funding:

1. An assisted living program certified under Iowa Code chapter 231C;
2. An elder group home certified under Iowa Code chapter 231B; and
3. An adult day services program certified under Iowa Code chapter 231D.

67.19(2) *Explanation of “crime.”* For purposes of this rule, the term “crime” does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

67.19(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A program shall ask each person seeking employment by the program, “Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions in this state or any other state?” The person shall also be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted.

b. Conducting a background check. The program may access the single contact repository (SING) to perform the required background check. If the SING is used, the program shall submit the person’s maiden name, if applicable, with the background check request. If SING is not used, the program must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services.

c. If a person considered for employment has been convicted of a crime. If a person being considered for employment in a program has been convicted of a crime under a law of any state, the department of public safety shall notify the program that upon the request of the program the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the program.

d. If a person considered for employment has a record of founded child abuse or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a program has a record of founded child or dependent adult abuse, the department of human services shall notify the program that upon the request of the program the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the program.

e. Employment pending evaluation. The program may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person’s employment.

- (1) The person is being considered for employment other than employment involving the operation of a motor vehicle;
- (2) The person does not have a record of founded child or dependent adult abuse;
- (3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2, subsection 1; and

(4) The program has requested an evaluation to determine whether the crime warrants prohibition of the person's employment.

67.19(4) *Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the program.

67.19(5) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a program unless an evaluation has been performed by the department of human services.

67.19(6) *Transfer of an employee to another program owned or operated by the same person.* If an employee transfers from one program to another program owned or operated by the same person, without a lapse in employment, the program is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

67.19(7) *Transfer of ownership of a program.* If the ownership of a program is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The program may continue to employ such employee pending the performance of the background check and any related evaluation.

67.19(8) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a certified program and is hired by another certified program shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other certified program if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the prior evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation.

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 67.19(8) "a" may be authorized.

67.19(9) *Employee notification of criminal convictions or founded abuse after employment.* If a person employed by an employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within seven calendar days of notification. “Verify,” for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.19(3) “*c*” and “*d*.”

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

d. A person who is required by this subrule to inform the person’s employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

67.19(10) *Program receipt of credible information that an employee has been convicted of a crime or founded for abuse.* If the program receives credible information, as determined by the program, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 67.19(9), the program shall take the following actions:

a. The program shall act to verify credible information within seven calendar days of receipt. “Verify,” for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the program shall follow the requirements of paragraphs 67.19(3) “*c*” and “*d*.”

67.19(11) *Proof of background checks for temporary employment agencies and contractors.* Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request.

This rule is intended to implement Iowa Code sections 231B.2(1), 231C.3(1), 231D.2(2), and 135C.33 and 2013 Iowa Acts, Senate File 347.

[ARC 0963C, IAB 8/21/13, effective 9/25/13; ARC 1547C, IAB 7/23/14, effective 8/27/14]

481—67.20(17A,231C,231D) Emergency removal of tenants. If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

67.20(1) The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

- a.* To alert them to the need to transfer tenants from a program;
- b.* To request assistance in identifying alternative programs or other appropriate settings; and
- c.* To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

67.20(2) The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.20(1).

67.20(3) The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.21(231C) Nursing assistant work credit.

67.21(1) A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

67.21(2) A program shall complete and submit to the department a direct care worker registry application for each certified nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

67.21(3) A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.22(231B,231C,231D) Public or confidential information.

67.22(1) Public information.

a. Public disclosure of findings. The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department’s Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do. The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

b. Open records. The following records are open records available for inspection:

- (1) Certification applications, certification status, and accompanying materials;
- (2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;
- (3) Reports from the state fire marshal;
- (4) Plans of correction submitted by a program;
- (5) Official notices of certification sanctions, including enforcement actions;
- (6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B,231C,231D);
- (7) Waivers, including the department’s approval and denial letter and any letter requesting the waiver.

67.22(2) Confidential information. Confidential information includes the following:

- a.* Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;
- b.* Names of all complainants;
- c.* Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and
- d.* Social security numbers or employer identification numbers (EIN).

67.22(3) *Redaction of confidential information.* If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

[ARC 8174B, IAB 9/23/09, effective 1/1/10; ARC 1055C, IAB 10/2/13, effective 1/1/14]

481—67.23(231B,231C,231D) Training related to Alzheimer’s disease and similar forms of irreversible dementia. Rescinded ARC 1547C, IAB 7/23/14, effective 8/27/14.

These rules are intended to implement Iowa Code chapters 231B, 231C as amended by 2013 Iowa Acts, Senate File 394, and 231D.

[Filed ARC 8174B (Notice ARC 7877B, IAB 6/17/09), IAB 9/23/09, effective 1/1/10]

[Filed ARC 0961C (Notice ARC 0809C, IAB 6/26/13), IAB 8/21/13, effective 9/25/13]

[Filed ARC 0963C (Notice ARC 0808C, IAB 6/26/13), IAB 8/21/13, effective 9/25/13]

[Filed ARC 1050C (Notice ARC 0907C, IAB 8/7/13), IAB 10/2/13, effective 11/6/13]

[Filed ARC 1055C (Notice ARC 0941C, IAB 8/7/13), IAB 10/2/13, effective 1/1/14]

[Filed ARC 1547C (Notice ARC 1472C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]

[Filed ARC 1701C (Notice ARC 1616C, IAB 9/3/14), IAB 10/29/14, effective 1/1/15]

[Filed ARC 1994C (Notice ARC 1942C, IAB 4/1/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 2142C (Notice ARC 2067C, IAB 7/22/15), IAB 9/16/15, effective 10/21/15]

[Filed ARC 2463C (Notice ARC 2200C, IAB 10/14/15), IAB 3/16/16, effective 4/20/16]

CHAPTER 70
ADULT DAY SERVICES

481—70.1(231D) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231D, the following definitions apply.

“*Accredited*” means that the program has received accreditation from an accreditation entity recognized in subrule 70.14(1).

“*Adult day services*” or “*adult day services program*” or “*program*” means an organized program providing a variety of health-related care, social services, and other related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

“*Applicable requirements*” means Iowa Code chapter 231D, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

“*CARF*” means the Commission on Accreditation of Rehabilitation Facilities.

“*Change of ownership*” means the purchase, transfer, assignment or lease of a certified adult day services program and includes a change in the management company responsible for the day-to-day operation of the program, if the management company is ultimately responsible for any enforcement action taken by the department.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“*Contractual agreement*” means a written agreement between the program and the participant or legal representative.

“*Dementia-specific adult day services program*” means an adult day services program certified under this chapter that:

1. Serves fewer than 55 participants and has 5 or more participants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more participants and 10 percent or more of the participants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Functional impairment*” means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

“*Medically unstable*” means that a participant has a condition or conditions:

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the participant for more than 21 days by a registered nurse.

For example, a participant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the participant receive frequent supervision may be considered medically unstable.

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from the accreditation entity recognized in subrule 70.14(1).

“*Participant*” means an individual who is the recipient of services provided by an adult day services program.

“*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.

“*Unmanageable incontinence*” means a condition that requires staff provision of total care for an incontinent participant who lacks the ability to assist in bladder or bowel continence care.

“*Unmanageable verbal abuse*” means repeated verbalizations against participants or staff that persist despite all interventions and negatively affect the program. “Unmanageable verbal abuse” includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

“*Visiting day(s)*” means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing eligibility for the program and personal satisfaction.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1927C, IAB 4/1/15, effective 5/6/15]

481—70.2(231D) Program certification. A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

70.2(1) Posting requirements. A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

70.2(2) Dementia-specific programs and door alarms. If a program meets the definition of a dementia-specific adult day services program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—70.30(231D) and in subrule 70.32(2), which includes the requirements relating to door alarms.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.3(231D) Certification of a nonaccredited program—application process.

70.3(1) The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

70.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

70.3(3) The appropriate fee as stated in Iowa Code section 231D.4 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

70.3(4) The department shall consider the application when all supporting documents and fees are received.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.4(231D) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

70.4(1) A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in each of the following, as applicable:

- a. The real estate owner or lessor;
- b. The lessee; and
- c. The management company responsible for the day-to-day operation of the program.

The program shall notify the department of any changes in the list no later than ten working days after the effective date of the change.

70.4(2) A statement disclosing whether the individuals listed in subrule 70.4(1) have been convicted of a felony or an aggravated or serious misdemeanor or found to be in violation of the child abuse or dependent adult abuse laws of any state.

70.4(3) A statement disclosing whether any of the individuals listed in subrule 70.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1, or licensed hospital as defined in Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services to prevent abuse or neglect of residents, patients, tenants or participants.

70.4(4) The policy and procedure for evaluation of each participant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant shall be included.

70.4(5) The policy and procedure for service plans.

70.4(6) The policy and procedure for addressing medication needs of participants.

70.4(7) The policy and procedure for accidents and emergency response.

70.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

70.4(9) The policy and procedure for activities.

70.4(10) The policy and procedure for transportation.

70.4(11) The policy and procedure for staffing and training.

70.4(12) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

70.4(13) The policy and procedure for managing risk and upholding participant autonomy when participant decision making results in poor outcomes for the participant or others.

70.4(14) The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

70.4(15) The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 70.32(2).

70.4(16) The participant contractual agreement and all attachments.

70.4(17) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

70.4(18) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

70.4(19) The fee set forth in Iowa Code section 231D.4.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1927C, IAB 4/1/15, effective 5/6/15]

481—70.5(231D) Initial certification process for a nonaccredited program.

70.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether the proposed program meets applicable requirements.

70.5(2) If, based upon the review of the complete application, including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept participants.

70.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

70.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

70.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

70.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

70.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.6(231D) Expiration of the certification of a nonaccredited program.

70.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

70.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.7(231D) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

70.7(1) Submit one copy of the completed application, including the information required in rule 481—70.4(231D), associated documentation, and the recertification fee as listed in Iowa Code section 231D.4 to the department at the address stated in subrule 70.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

70.7(2) Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.8(231D) Notification of recertification for a nonaccredited program.

70.8(1) The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

70.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

70.8(3) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

70.8(4) If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

70.8(5) If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

70.8(6) If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

70.8(7) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.9(231D) Certification or recertification of an accredited program—application process.

70.9(1) An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and

Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from the recognized accrediting entity.

c. Apply for certification or recertification within 90 calendar days following verification of compliance with the requirements of the state fire marshal division of the department of public safety pursuant to this chapter.

d. Submit the appropriate fees as set forth in Iowa Code section 231D.4.

70.9(2) The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.10(231D) Certification or recertification of an accredited program—application content. An application for certification or recertification of an accredited program shall include the following:

70.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in each of the following, as applicable:

a. The real estate owner or lessor;

b. The lessee; and

c. The management company responsible for the day-to-day operation of the program.

The program shall notify the department of any changes in the list no later than ten working days after the effective date of the change.

70.10(2) A statement disclosing whether the individuals listed in subrule 70.10(1) have been convicted of a felony or an aggravated or serious misdemeanor or found to be in violation of the child abuse or dependent adult abuse laws of any state.

70.10(3) A statement disclosing whether any of the individuals listed in subrule 70.10(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services to prevent abuse or neglect of residents, patients, tenants or participants.

70.10(4) A copy of the current accreditation outcome from the recognized accrediting entity.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1927C, IAB 4/1/15, effective 5/6/15]

481—70.11(231D) Initial certification process for an accredited program.

70.11(1) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether the accredited program meets applicable requirements and whether certification will be issued.

70.11(2) If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

70.11(3) If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

70.11(4) Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.12(231D) Recertification process for an accredited program.

70.12(1) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

70.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231D.4 to the department at the address stated in subrule 70.9(1) at least 90 calendar days prior to the expiration of the program's certification.

70.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

70.12(4) The department shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

b. If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

70.12(5) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.13(231D) Listing of all certified programs. The department shall maintain a list of all certified programs, which is available online at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Entities Book" tab.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.14(231D) Recognized accrediting entity.

70.14(1) The department designates CARF as a recognized accrediting entity for programs.

70.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

70.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

70.14(4) An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.15(231D) Requirements for an accredited program. Each accredited program that is certified by the department shall:

70.15(1) Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

70.15(2) Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

70.15(3) Notify the department immediately of the expiration, suspension, revocation or other loss of the program's accreditation.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.16(231D) Maintenance of program accreditation.

70.16(1) An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

a. The program complies with the requirements outlined in rule 481—70.15(231D).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

70.16(2) A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

70.16(3) A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.
[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.17(231D) Change of ownership—notification to the department.

70.17(1) Certification, unless conditionally issued, suspended or revoked, may be transferable. If the program's certification has been conditionally issued, the department must approve a change of ownership prior to the transfer of the certification.

70.17(2) In order to transfer certification, the applicant must:

a. Meet the requirements of the rules, regulations and standards contained in Iowa Code chapter 231D and 481—Chapter 67 and this chapter; and

b. At least 30 days prior to the change of ownership of the program, make application on forms provided by the department.

70.17(3) The department may conduct a monitoring within 90 days following a change in the program's ownership to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

[ARC 1927C, IAB 4/1/15, effective 5/6/15]

481—70.18(231D) Plan reviews of a building for a new program.

70.18(1) Before a building is constructed or remodeled for use in a new program, the state fire marshal division of the department of public safety shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

70.18(2) A program applicant shall submit blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

70.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

70.18(4) The state fire marshal division of the department of public safety shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

70.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the state fire marshal division of the department of public safety to state how any noncompliance will be resolved.

70.18(6) Upon final notification by the state fire marshal division of the department of public safety that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

70.18(7) The state fire marshal division of the department of public safety shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.19(231D) Plan review prior to the remodeling of a building for a certified program.

70.19(1) Before a building for a certified program is remodeled, the state fire marshal division of the department of public safety shall review the blueprints for compliance with requirements set forth in

rule 481—70.35(231D). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

70.19(2) A certified program shall submit blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

70.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

70.19(4) The state fire marshal division of the department of public safety shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

70.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the state fire marshal division of the department of public safety in 20 working days to state how any noncompliance will be resolved.

70.19(6) Upon final notification by the state fire marshal division of the department of public safety that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

70.19(7) The state fire marshal division of the department of public safety shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.20(231D) Cessation of program operation.

70.20(1) If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department of the date on which the program will cease operation, which includes seeking decertification.

70.20(2) If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department at least 90 days prior to expiration of the certification.

70.20(3) At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly discharge or transition of all participants within the 90-day period specified by subrule 70.20(2).

70.20(4) The department may conduct a monitoring during the 90-day period to ensure the safety of participants during the discharge process or transition process.

70.20(5) The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.21(231D) Contractual agreement.

70.21(1) The contractual agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the participant or the participant's legal representative to understand.

70.21(2) In addition to the requirements of Iowa Code section 231D.17, the written contractual agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for reporting dependent adult abuse.
- c. A copy of the program's statement on participants' rights.
- d. A statement that the program will notify the participant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

e. A copy of the program's admission and discharge criteria.

70.21(3) The contractual agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

70.21(4) A copy of the contractual agreement shall be provided to the participant or the participant's legal representative, if any, and a copy shall be kept by the program.

70.21(5) A copy of the most current contractual agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the contractual agreement is available to all persons upon request.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.22(231D) Evaluation of participant.

70.22(1) *Evaluation prior to participation.* A program shall evaluate each prospective participant's functional, cognitive and health status prior to the participant's signing the contractual agreement and participating in the program, with the exception of visiting day(s), to determine the participant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall be appropriate to the population served. When the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the participant subsequently returns to the participant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

70.22(2) *Evaluation within 30 days of participation and with significant change.* A program shall evaluate each participant's functional, cognitive and health status within 30 days of the participant's beginning participation in the program. A program shall also evaluate each participant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the participant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the participant has not exhibited a significant change.

70.22(3) *Requirements for visiting day(s).* Evaluation of the participant is not required during visiting day(s), but the program shall provide the participant or the participant's legal representative with a written explanation of the expectations for the visiting day(s).

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.23(231D) Criteria for admission and retention of participants.

70.23(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a participant who:

- a. Requires routine, three-person assistance with standing, transfer or evacuation; or
- b. Is dangerous to self or other participants or staff, including but not limited to a participant who:
 - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse; or
 - (2) Is in an acute stage of alcoholism, drug addiction, or mental illness; or
- c. Is under the age of 18.

70.23(2) *Disclosure of additional participation and discharge criteria.* A program may have additional participation or discharge criteria if the criteria are disclosed in the written contractual agreement prior to the participant's participation in the program.

70.23(3) *Assistance with discharge from the program.* A program shall provide assistance to a participant and the participant's legal representative, if applicable, to ensure a safe and orderly discharge from the program when the participant exceeds the program's criteria for admission and retention.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1547C, IAB 7/23/14, effective 8/27/14]

481—70.24(231D) Involuntary discharge from the program.

70.24(1) *Program initiation of discharge.* If a program initiates the involuntary discharge of a participant and the action is not the result of a monitoring, including a complaint investigation or

program-reported incident investigation, by the department and if the participant or participant's legal representative contests the discharge, the following procedures shall apply:

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

b. If, following the internal appeal process, the program upholds the discharge decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the discharge.

70.24(2) *Discharge pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more participants are identified as exceeding the admission and retention criteria for participants and need to be discharged as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. Notification of the program. Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any participant who exceeds admission and retention criteria.

b. Notification of others. Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. Program agreement with the department's finding. If the program agrees with the department's finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(1) shall be utilized for appeals.

d. Program disagreement with the department's finding. If the program does not agree with the department's finding that the participant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the participant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified participant, the department shall consider the response and make a final finding regarding the continued retention of a participant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision.

(4) Effect of the filing of an appeal. If an appeal is filed, the participant who exceeds admission and retention criteria shall be allowed to continue to participate in the program until all administrative appeals have been exhausted. Appeals filed that relate to the participant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the participant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a participant in a program. To allow a participant to continue to participate in the program, the program may request a waiver of criteria for retention of a participant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.25(231D) Participant documents.

70.25(1) Documentation for each participant shall be maintained by the program and shall include:

- a.* A participation record including the participant's name, birth date, and home address; identification numbers; date of beginning participation; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b.* Application forms;
- c.* The initial evaluations and updates;
- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the participant to receive emergency medical care as necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advance health care directives as applicable;
- l.* A complete copy of the participant's contractual agreement, including any updates;
- m.* A written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the participant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the participant's medical record);
- p.* A copy of waivers of admission or retention criteria, if any;
- q.* When the participant is unable to advocate on the participant's own behalf or the participant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and
- r.* Authorizations for the release of information, if any.

70.25(2) The program records relating to a participant shall be retained for a minimum of three years after the discharge or death of the participant.

70.25(3) All records shall be protected from loss, damage and unauthorized use.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.26(231D) Service plans.

70.26(1) A service plan shall be developed for each participant based on the evaluations conducted in accordance with subrules 70.22(1) and 70.22(2) and shall be designed to meet the specific service needs of the individual participant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

70.26(2) Prior to the participant's signing the contractual agreement and participating in the program, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative. All persons who develop the plan and the participant or the participant's legal representative shall sign the plan.

70.26(3) When a participant needs personal care or health-related care, the service plan shall be updated within 30 days of the participant's participation and as needed with significant change, but not less than annually.

a. If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

b. If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

c. If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

70.26(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The participant's identified needs and preferences for assistance;

b. Any services and care to be provided pursuant to the contractual agreement;

c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.27(231D) Nurse review. If a participant does not receive personal or health-related care, but an observed significant change in the participant's condition occurs, a nurse review shall be conducted. If a participant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

70.27(1) To monitor, at least every 90 days, or after a significant change in the participant's condition, any participant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

70.27(2) To ensure that health care professionals' orders are current for participants who receive health care professional-directed care from the program; and

70.27(3) To assess and document the health status of each participant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the participant's health status; and

70.27(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—70.26(231D), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a participant, nurse review is not required.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.28(231D) Food service.

70.28(1) The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals, unless otherwise noted in the contractual agreement.

70.28(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

70.28(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

a. A minimum of 33 $\frac{1}{3}$ percent if the program provides one meal per day;

b. A minimum of 66 $\frac{2}{3}$ percent if the program provides two meals per day; and

c. One hundred percent if the program provides three meals per day.

70.28(4) Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A

current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

70.28(5) Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

- (1) Obtaining certification as a dietary manager; or
- (2) Obtaining certification as a food protection professional; or
- (3) Successfully completing an ANSI-accredited certified food protection manager program meeting the requirements for a food protection program included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another program may be substituted if the program's curriculum includes substantially similar competencies to a program that meets the requirements of the Food Code and the provider of the program files with the department a statement indicating that the program provides substantially similar instruction as it relates to sanitation and safe food handling.

b. If the person is in the process of completing a course or certification listed in paragraph "*a.*" the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

70.28(6) Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F. The department will not require the program to be licensed as a food establishment if the program limits food activities to the following:

a. All main meals and planned menu items must be prepared offsite and transferred to the program kitchen for service to participants.

b. Baked goods that do not require temperature control for safety and single-service juice or milk may be stored in the program's kitchen and provided as part of a continental breakfast.

c. Ingredients used for food-related activities with participants may be stored in the program's kitchen. Participant activities may include the preparation and cooking of food items in the program's kitchen if the activity occurs on an irregular or sporadic basis and the items prepared are not part of the program's menu.

d. Appropriately trained staff may prepare in the program's kitchen individual quantities of participant-requested menu-substitution food items that require limited or no preparation, such as peanut butter or cheese sandwiches or a single-service can of soup. The food items necessary to prepare the menu substitution may be stored in the program's kitchen. These food items may not be cooked in the program's kitchen but may be reheated in a microwave. A two- or four-slice toaster may be used for participant-requested menu-substitution items, but no bare-hand contact is permitted.

e. Warewashing may be done in the program's kitchen as long as the program utilizes a commercial dishwasher and documents daily testing of sanitizer chemical ppm and proper water temperatures. Verification by the department of these practices may be conducted during on-site visits.

70.28(7) Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1376C, IAB 3/19/14, effective 4/23/14; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.29(231D) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

70.29(1) No fewer than two staff persons who monitor participants shall be awake and on duty during all hours of operation when two or more participants are participating in the program.

70.29(2) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

70.29(3) A program that serves one or more participants with cognitive disorders or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participants.

70.29(4) The program shall notify the department in writing within ten business days of a change in the program's manager.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 1927C, IAB 4/1/15, effective 5/6/15]

481—70.30(231D) Dementia-specific education for program personnel.

70.30(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

70.30(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging participants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

70.30(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

70.30(4) An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 70.30(1).

70.30(5) Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of participants in the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.31(231D) Managed risk policy and managed risk consensus agreements. The program shall have a managed risk policy. The managed risk policy shall be provided to the participant along with the contractual agreement. The managed risk policy shall include the following:

70.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the participant and the process for managing risk and for upholding participant autonomy when participant decision making results in poor outcomes for the participant or others; and

70.31(2) A consensus-based process to address specific risk situations. Program staff and the participant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the participant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the participant's file.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.32(231D) Life safety—emergency policies and procedures and structural safety requirements.

70.32(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- a.* An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b.* Fire safety procedures;
- c.* Other general or personal emergency procedures;
- d.* Provisions for amending or revising the emergency plan;
- e.* Provisions for periodic training of all employees;
- f.* Procedures for fire drills;
- g.* Regulations regarding smoking;
- h.* Monitoring and testing of smoke-control systems;
- i.* Participant evacuation procedures; and
- j.* Procedures for reporting and documentation.

70.32(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

- a.* Written procedures regarding alarm systems and appropriate staff response when a participant's service plan indicates a risk of elopement or a participant exhibits wandering behavior.
- b.* Written procedures regarding appropriate staff response if a participant with cognitive disorder or dementia is missing.
- c.* The program shall obtain approval from the state fire marshal division before the installation of any delayed-egress specialized locking systems.

70.32(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

70.32(4) The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall control the maximum water temperature for participants with cognitive impairment or dementia or at a participant's request.

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.33(231D) Transportation. When transportation services are provided directly or under contract with the program:

70.33(1) The vehicle shall be accessible and appropriate to the participants who use it, with consideration for any physical disabilities and impairments.

70.33(2) Every participant transported shall have a seat in the vehicle, except for a participant who remains in a wheelchair during transport.

70.33(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

70.33(4) Wheelchairs shall be secured when the vehicle is in motion.

70.33(5) During loading and unloading of a participant, the driver shall be in the proximate area of the participants in a vehicle.

70.33(6) The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

70.33(7) Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.34(231D) Activities.

70.34(1) The program shall provide appropriate activities for each participant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

70.34(2) Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and participation policies.

70.34(3) A written schedule of activities shall be developed at least monthly and made available to participants and their legal representatives.

70.34(4) Participants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

[ARC 8177B, IAB 9/23/09, effective 1/1/10]

481—70.35(231D) Structural requirements.

70.35(1) The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

70.35(2) There shall be at least one toilet for every ten participants and staff members.

70.35(3) Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

70.35(4) There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

70.35(5) Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

70.35(6) Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

70.35(7) A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

70.35(8) A storage area(s) shall be provided for storage of program supplies and participants' possessions, which shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

70.35(9) The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

70.35(10) The program shall meet other building and public safety codes, including rules pertaining to accessibility contained in the state building code in 661—Chapter 302 and provisions of the state building code relating to persons with disabilities.

70.35(11) The program shall meet the requirements in subrule 70.32(4).

[ARC 8177B, IAB 9/23/09, effective 1/1/10; ARC 2463C, IAB 3/16/16, effective 4/20/16]

481—70.36(231D) Identification of veteran's benefit eligibility.

70.36(1) Within 30 days of a participant's participation in an adult day services program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the participant or the participant's personal representative whether the participant is a veteran or whether the participant is the spouse, widow or dependent of a veteran and shall document the response.

70.36(2) If the program determines that the participant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the participant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

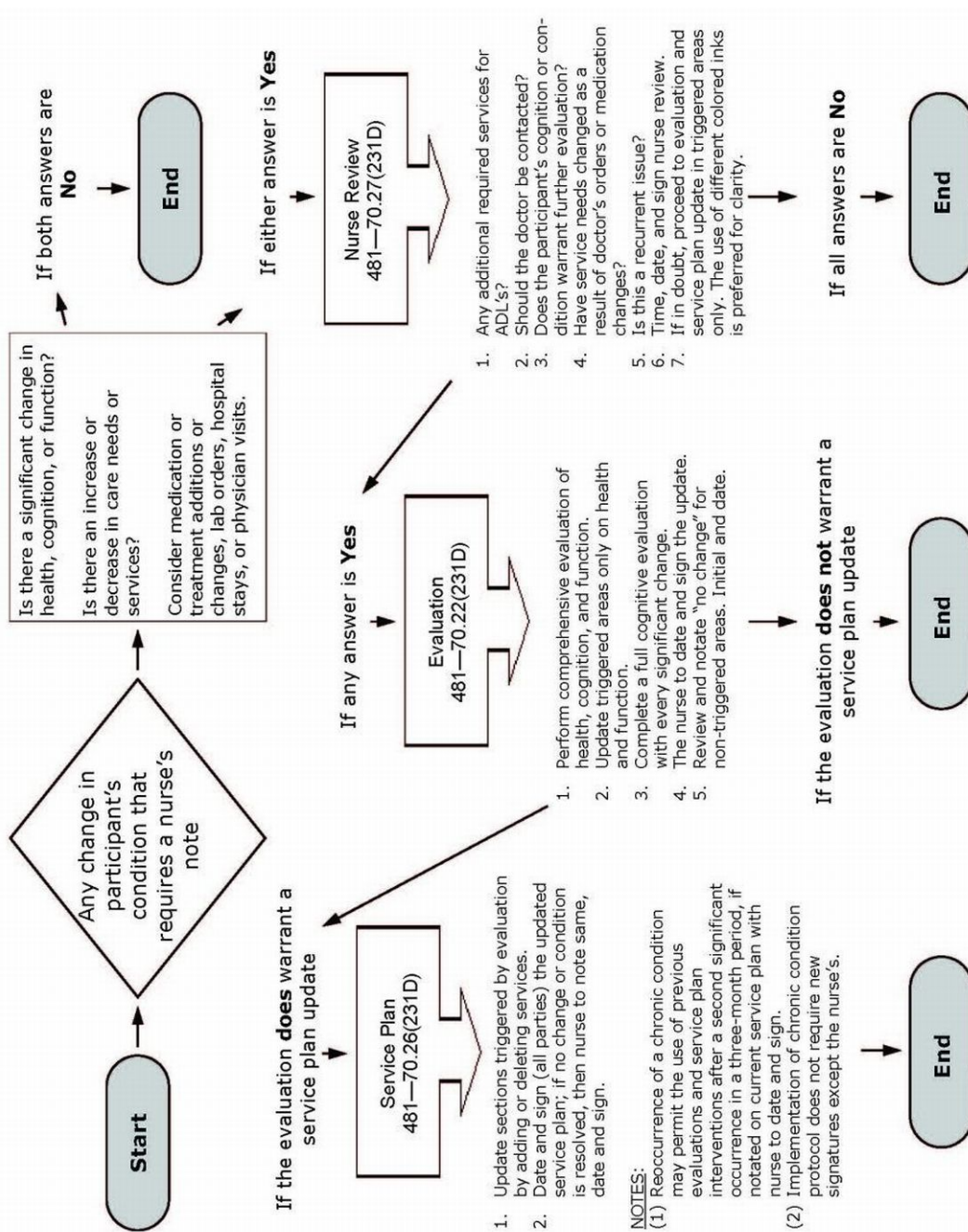
70.36(3) If a participant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source

before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 231D.

Table A



[Filed ARC 8177B (Notice ARC 7959B, IAB 7/15/09), IAB 9/23/09, effective 1/1/10]
 [Filed ARC 1376C (Notice ARC 1291C, IAB 1/22/14), IAB 3/19/14, effective 4/23/14]
 [Filed ARC 1547C (Notice ARC 1472C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]
 [Filed ARC 1927C (Notice ARC 1860C, IAB 2/4/15), IAB 4/1/15, effective 5/6/15]
 [Filed ARC 2463C (Notice ARC 2200C, IAB 10/14/15), IAB 3/16/16, effective 4/20/16]