

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

**Rule making related to regulation of elder group homes,
assisted living programs, and adult day services**

The Inspections and Appeals Department hereby amends Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Chapter 68, “Elder Group Homes,” Chapter 69, “Assisted Living Programs,” and Chapter 70, “Adult Day Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104, 231B.2, 231C.3 and 231D.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 231B, 231C and 231D.

Purpose and Summary

The Department completed a review of Chapters 67 and 69 in conjunction with input received from industry stakeholders. The amendments to Chapter 67 expressly direct programs that handle, store, or administer controlled substances to be registered with the Iowa Board of Pharmacy pursuant to 657—Chapter 10, “Controlled Substances,” in accordance with the Board’s standing interpretation of its rules; revise the types of personnel permitted to administer medications from any certified or noncertified staff in accordance with nurse delegation procedures to certified medication aides or medication managers; modify the time frames for investigation of complaints or program-reported incidents depending on the severity of the potential regulatory insufficiency; clarify the contents of the plan of correction with respect to detailing how regulatory insufficiencies will be corrected; and remove citations to previously rescinded rules.

The amendments to Chapter 69 clarify the policies and procedures that programs shall have in place, including requiring that programs have a policy and procedure for extraordinary lifesaving measures; clarify that annual updates to service plans shall include a process of reviewing, updating if necessary, and signing and dating the service plan; require that perishable or potentially hazardous foods be cooked to and held at recommended and safe temperatures; update managed risk policy and consensus agreements so that they may be used when tenant decision making could result in poor tenant outcomes; and also make nonsubstantive changes to make rules easier to read.

The amendments to Chapters 68 and 70 update internal citations to Chapter 67 resulting from the amendments noted above.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 15, 2020, as **ARC 4867C**. The Department received questions and comments from two sources. One commenter submitted questions related to implementation of Item 2 and the intent of Item 4. Another commenter submitted a suggested change to the language of Item 4. A change has been made to Item 4 to clarify the intent of the amendment.

Adoption of Rule Making

This rule making was adopted by the Department on February 21, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 15, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 481—67.2(231B,231C,231D) as follows:

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) and 67.2(2) No change.

67.2(3) The program shall follow the policies and procedures established by the program.

ITEM 2. Amend rule 481—67.5(231B,231C,231D) as follows:

481—67.5(231B,231C,231D) Medications.

67.5(1) If a program handles, stores, or administers controlled substances, the program shall be registered with the Iowa board of pharmacy as a care facility in accordance with 657—Chapter 10.

67.5(2) Each program shall follow its own written medication policy, which shall include the following:

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

~~67.5(2)~~ **b.** A tenant shall self-administer medications unless:

~~a.~~ **(1)** 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.~~ **(2)** The tenant delegates medication setup to someone other than the program.

~~c.~~ **(3)** 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) c. 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) d. 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) e. 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) f. When medications are administered traditionally by the program:

~~a. (1)~~ 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)~~ an individual who has successfully completed a department-approved medication aide or medication manager course and passed the respective department-approved medication aide or manager examination, or by 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. (2)~~ 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. (3)~~ The program shall maintain a list of each tenant's medications and document the medications administered.

~~d. (4)~~ Medications and treatments shall be administered as prescribed by the tenant's physician, advanced registered nurse practitioner or physician assistant.

67.5(7) g. Narcotics protocol, including destruction and reconciliation, shall be determined by the program's registered nurse.

ITEM 3. Amend subrule 67.11(3) as follows:

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 the following time frames:~~ within 2 working days of receipt of the complaint or incident report if there is the possibility of immediate danger, including that the potential regulatory insufficiency has caused or is likely to cause serious injury, harm, impairment, or death to a resident; or within 20 working days of receipt of the complaint or incident report if the potential regulatory insufficiency has caused or may cause harm that negatively impacts a tenant's mental, physical, or psychosocial status or function and is of such consequence to the tenant's well-being that a rapid response is warranted; or within 45 working days of receipt of the complaint or incident report for any other complaint or incident investigation, including a potential regulatory insufficiency that may have caused harm of limited consequence and does not significantly impair the tenant's mental, physical, or psychosocial status or function.

ITEM 4. Amend subparagraph **67.13(3)“a”(1)** as follows:

(1) Elements detailing how the program will correct each regulatory insufficiency, including at the system level;

ITEM 5. Amend subrules 67.17(4) and 67.17(5) as follows:

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.

ITEM 6. Amend subparagraph **67.22(1)“b”(6)** as follows:

(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);

ITEM 7. Amend paragraph **68.16(1)“j”** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4) 481—paragraph 67.5(2) “d”~~;

ITEM 8. Amend subrule 69.2(2) as follows:

69.2(2) Dementia-specific programs and door alarms. If a program meets the definition of a dementia-specific assisted living 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—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1) “d,” and subrules 69.32(2) and 69.32(3), which include the requirements relating to door alarms and specialized locking systems, within 90 days of receiving the final report from the second sequential certification monitoring.

ITEM 9. Amend rule 481—69.4(231C) as follows:

481—69.4(231C) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

69.4(1) to 69.4(19) No change.

69.4(20) The policy and procedure for addressing sexual relationships between tenants and staff ~~or~~, and between tenants with dementia greater than Stage 5 on the Global Deterioration Scale.

69.4(21) The policy and procedure for extraordinary lifesaving measures, such as cardiopulmonary resuscitation (CPR).

69.4(22) The program shall follow the policies and procedures established.

ITEM 10. Amend rule 481—69.22(231C) as follows:

481—69.22(231C) Evaluation of tenant.

69.22(1) Evaluation prior to occupancy. A program shall evaluate each prospective tenant’s functional, cognitive and health status prior to the tenant’s signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant’s eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale (GDS) shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant’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~~, a human service professional, or a licensed practical nurse via nurse delegation.

69.22(2) Evaluation within 30 days of occupancy ~~and with significant change.~~ A program shall evaluate each tenant’s functional, cognitive and health status within 30 days of occupancy. The evaluation shall be conducted by a health care professional, a human service professional, or a licensed practical nurse via nurse delegation when the tenant has not exhibited a significant change.

69.22(3) Evaluation annually and with significant change. A program shall ~~also~~ evaluate each tenant’s functional, cognitive and health status as needed with significant change, but not less than

annually, to determine the tenant'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, a human service professional, or a licensed practical nurse via nurse delegation~~ when the tenant has not exhibited a significant change. A licensed practical nurse ~~may~~ shall not complete the evaluation ~~via nurse delegation~~ when the tenant has ~~not~~ exhibited a significant change.

ITEM 11. Amend paragraph **69.25(1)“j”** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)“d”;

ITEM 12. Adopt the following new paragraph **69.26(3)“e”**:

e. The service plan shall be reviewed, updated if necessary, and signed and dated by all parties at least annually.

ITEM 13. Adopt the following new subrule 69.28(8):

69.28(8) All perishable or potentially hazardous food shall be cooked to recommended temperatures and held at safe temperatures of 41°F (5°C) or below, or 135°F (57°C) or above.

ITEM 14. Amend subrule 69.31(1) as follows:

69.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making ~~results~~ could result in poor outcomes for the tenant or others; and

ITEM 15. Amend paragraph **70.25(1)“j”** as follows:

j. Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)“d”;

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/11/20.