

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 395
AN ACT

To repeal sections 198.074, 198.075, 198.096, 198.525, 198.527, and 208.819, RSMo, and to enact in lieu thereof ten new sections relating to long-term care facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 198.074, 198.075, 198.096, 198.525,
2 198.527, and 208.819, RSMo, are repealed and ten new sections
3 enacted in lieu thereof, to be known as sections 198.074,
4 198.075, 198.096, 198.187, 198.525, 198.527, 198.545, 208.016,
5 208.819, and 1, to read as follows:

6 198.074. 1. Effective August 28, 2007, all new facilities
7 licensed under this chapter on or after August 28, 2007, or any
8 **[facilities completing a]** section of a facility licensed under
9 this chapter in which a major renovation [to the facility] has
10 been completed on or after August 28, 2007, as defined and
11 approved by the department, **[and which are licensed under this**
12 **chapter]** shall install and maintain an approved sprinkler system
13 in accordance with National Fire Protection Association (NFPA)
14 13.

15 2. Facilities that were initially licensed and had an
16 approved sprinkler system prior to August 28, 2007, shall

1 continue to meet all laws, rules, and regulations for testing,
2 inspection and maintenance of the sprinkler system that were in
3 effect for such facilities on August 27, 2007.

4 3. Multi-level assisted living facilities that accept or
5 retain any individual with a physical, cognitive, or other
6 impairment that prevents the individual from safely evacuating
7 the facility with minimal assistance shall install and maintain
8 an approved sprinkler system in accordance with NFPA 13.
9 Single-story assisted living facilities that accept or retain any
10 individual with a physical, cognitive, or other impairment that
11 prevents the individual from safely evacuating the facility with
12 minimal assistance shall install and maintain an approved
13 sprinkler system in accordance with NFPA 13R.

14 4. All residential care and assisted living facilities with
15 more than twenty residents not included in subsection 3 of this
16 section, which are initially licensed under this chapter prior to
17 August 28, 2007, and that do not have installed an approved
18 sprinkler system in accordance with NFPA 13R or 13 prior to
19 August 28, 2007, shall install and maintain an approved sprinkler
20 system in accordance with NFPA 13R or 13 by December 31, 2012,
21 unless the facility meets the safety requirements of Chapter 33
22 of existing residential board and care occupancies of NFPA 101
23 life safety code.

24 5. All skilled nursing and intermediate care facilities not
25 required prior to August 28, 2007, to install and maintain an
26 approved sprinkler system shall install and maintain an approved
27 sprinkler system in accordance with NFPA 13 by December 31, 2012,
28 unless the facility receives an exemption from the department and

1 presents evidence in writing from a certified sprinkler system
2 representative or licensed engineer that the facility is unable
3 to install an approved National Fire Protection Association 13
4 system due to the unavailability of water supply requirements
5 associated with this system [or the facility meets the safety
6 requirements of Chapter 33 of existing residential board and care
7 occupancies of NFPA 101 life safety code].

8 6. Facilities that take a substantial step, as specified in
9 [subsection 7] subsections 4 and 5 of this section, to install an
10 approved NFPA 13R or 13 system prior to December 31, 2012, may
11 apply to the [department] state treasurer's office for a loan in
12 accordance with section 198.075 to install such system. However,
13 such loan shall not be available if by December 31, 2009, the
14 average total reimbursement for the care of persons eligible for
15 Medicaid public assistance in an assisted living facility and
16 residential care facility is equal to or exceeds fifty-two
17 dollars per day. The average total reimbursement includes room,
18 board, and care delivered by the facility, but shall not include
19 payments to the facility for care or services not provided by the
20 facility. If a facility under this subsection does not have an
21 approved sprinkler system installed by December 31, 2012, such
22 facility shall be required to install and maintain an approved
23 sprinkler system in accordance with NFPA 13 by December 31, 2013.
24 Such loans received under this subsection and in accordance with
25 section 198.075, shall be paid in full as follows:

26 (1) Ten years for those facilities approved for the loan
27 and whose average total reimbursement rate for the care of
28 persons eligible for Medicaid public assistance is equal to

1 forty-eight and no more than forty-nine dollars per day;

2 (2) Eight years for those facilities approved for the loan
3 and whose average total reimbursement rate for the care of
4 persons eligible for Medicaid public assistance is greater than
5 forty-nine and no more than fifty-two dollars per day; or

6 (3) Five years for those facilities approved for the loan
7 and whose average total reimbursement rate for the care of
8 persons eligible for Medicaid public assistance is greater than
9 fifty-two dollars per day.

10 (4) No payments or interest shall be due until the average
11 total reimbursement rate for the care of persons eligible for
12 Medicaid public assistance is equal to or greater than
13 forty-eight dollars.

14 7. (1) All facilities licensed under this chapter shall be
15 equipped with a complete fire alarm system in compliance with
16 NFPA 101, Life Safety Code for Detection, Alarm, and
17 Communication Systems [as referenced in NFPA 72], or shall
18 maintain a system that was approved by the department when such
19 facility was constructed so long as such system is a complete
20 fire alarm system. A complete fire alarm system shall include,
21 but not be limited to, interconnected smoke detectors [throughout
22 the facility], automatic transmission to the fire department,
23 dispatching agency, or central monitoring company, manual pull
24 stations at each required exit and attendant's station, heat
25 detectors, and audible and visual alarm indicators. If a
26 facility submits a plan of compliance for installation of a
27 sprinkler system required by this chapter, such facility shall
28 install a complete fire alarm system that complies with NFPA 72

1 upon installation of the sprinkler system. Until such time that
2 the sprinkler system is installed in the facility which has
3 submitted a plan of compliance, each resident room or any room
4 designated for sleeping in the facility shall be equipped with at
5 least one battery-powered smoke alarm installed, tested, and
6 maintained in accordance with NFPA 72. In addition, any such
7 facility shall be equipped with heat detectors interconnected to
8 the fire alarm system which are installed, tested, and maintained
9 in accordance with NFPA 72 in all areas subject to nuisance
10 alarms, including but not limited to, kitchens, laundries,
11 bathrooms, mechanical air handling rooms, and attic spaces.

12 (2) In addition, each floor accessed by residents shall be
13 divided into at least two smoke sections by one-hour rated smoke
14 partitions. No smoke section shall exceed one hundred fifty feet
15 in length. If neither the length nor the width of the floor
16 exceeds seventy-five feet, no smoke-stop partition shall be
17 required. Facilities with a complete fire alarm system and smoke
18 sections meeting the requirements of this subsection prior to
19 August 28, 2007, shall continue to meet such requirements.
20 Facilities initially licensed on or after August 28, 2007, shall
21 comply with such requirements beginning August 28, 2007, or on
22 the effective date of licensure.

23 (3) Except as otherwise provided in this subsection, the
24 requirements for complete fire alarm systems and smoke sections
25 shall be enforceable on December 31, 2008.

26 8. The requirements of this section shall be construed to
27 supersede the provisions of section 198.058 relating to the
28 exemption of facilities from construction standards.

1 9. [Fire safety inspections of facilities licensed under
2 this chapter for compliance with this section shall be conducted
3 annually by the state fire marshal if such inspections are not
4 available to be conducted by local fire protection districts or
5 fire departments. The provisions of this section shall be
6 enforced by the state fire marshal or by the local fire
7 protection district or fire department, depending on which entity
8 conducted the inspection.

9 10.] By July 1, 2008, all facilities licensed under this
10 chapter shall submit a plan for compliance with the provisions of
11 this section to the state fire marshal.

12 198.075. 1. There is hereby created in the state treasury
13 the "Fire Safety Standards Loan Fund", for implementing the
14 provisions of [subsection 3] subsections 4 and 5 of section
15 198.074. Moneys deposited in the fund shall be considered state
16 funds under article IV, section 15 of the Missouri Constitution.
17 The state treasurer shall be custodian of the fund and may
18 disburse moneys from the fund in accordance with sections 30.170
19 and 30.180, RSMo. Any moneys remaining in the fund at the end of
20 the biennium shall revert to the credit of the general revenue
21 fund. The state treasurer shall invest moneys in the fund in the
22 same manner as other funds are invested. Any interest and moneys
23 earned on such investments shall be credited to the fund.

24 2. Qualifying facilities shall make an application to the
25 [department of health and senior services] state treasurer's
26 office upon forms provided by the [department] state treasurer's
27 office. Upon receipt of an application for a loan, the
28 [department] state treasurer's office shall review the

1 application [and advise the governor] before state funds are
2 allocated for a loan. For purposes of this section, a
3 "qualifying facility" shall mean a facility licensed under this
4 chapter that is in substantial compliance. "Substantial
5 compliance" shall mean a facility that has no uncorrected
6 deficiencies and is in compliance with department of health and
7 senior services rules and regulations governing such facility.

8 3. The fund shall be a loan of which the interest rate
9 shall not exceed two and one-half percent.

10 4. The fund shall be administered by the [department of
11 health and senior services] state treasurer's office.

12 198.096. 1. The operator of any facility who holds in
13 trust personal funds of residents as provided in section 198.090
14 shall obtain and file with the department a bond in a form
15 approved by the department in an amount equal to one and one-half
16 times the average monthly balance or average total of the monthly
17 balances, rounded to the nearest one thousand dollars, in the
18 residents' personal funds account or accounts kept pursuant to
19 subdivision (3) of subsection 1 of section 198.090 for the
20 preceding [calendar year] twelve months. In the case of a new
21 facility or of an operator not previously holding in trust the
22 personal funds of residents, the department shall determine the
23 amount of bond to be required, taking into consideration the size
24 and type of facility, the number of residents, and the experience
25 of comparable facilities.

26 2. The required bond shall be conditioned to secure to
27 every resident or former resident, or the estate of a former
28 resident, the return of any moneys held in trust of which the

1 resident has been wrongfully deprived by acts of the operator or
2 any affiliates or employees of the operator. The liability of
3 the surety to any and all persons shall not exceed the stated
4 amount of the bond regardless of the period of time the bond has
5 been in effect.

6 3. Whenever the director determines that the amount of any
7 bond which is filed pursuant to this subsection is insufficient
8 to adequately protect the money of residents which is being
9 handled, or whenever the amount of any such bond is impaired by
10 any recovery against the bond, the director may require the
11 operator to file an additional bond in such amount as necessary
12 to adequately protect the money of residents being handled.

13 4. In the event that any such bond includes a provision
14 allowing the surety to cancel after notice, the bond shall
15 provide for a minimum of sixty days' notice to the department.

16 5. The operator may, in lieu of a bond, place a cash
17 deposit equal to the amount of the bond required in this section
18 with an insured lending institution pursuant to a noncancelable
19 escrow agreement with the lending institution if the written
20 agreement is submitted to and approved by the department. No
21 escrow agreement shall be approved without verification of cash
22 deposit.

23 198.187. Any long-term care facility licensed under this
24 chapter may request criminal background checks under chapter 43,
25 RSMo, of a resident in such facility.

26 198.525. 1. Except as otherwise provided pursuant to
27 section 198.526, in order to comply with sections 198.012 and
28 198.022, the department of health and senior services shall

1 inspect residential care facilities, assisted living facilities,
2 intermediate care facilities, and skilled nursing, including
3 those facilities attached to acute care hospitals at least twice
4 a year.

5 2. The department shall not assign an individual to inspect
6 or survey a long-term care facility licensed under this chapter,
7 for any purpose, in which the inspector or surveyor was an
8 employee of such facility within the preceding two years.

9 3. For any inspection or survey of a facility licensed
10 under this chapter, regardless of the purpose, the department
11 shall require every newly hired inspector or surveyor at the time
12 of hiring or, with respect to any currently employed inspector or
13 surveyor as of August 28, 2009, to disclose:

14 (1) The name of every Missouri licensed long-term care
15 facility in which he or she has been employed; and

16 (2) The name of any member of his or her immediate family
17 who has been employed or is currently employed at a Missouri
18 licensed long-term care facility.

19
20 The disclosures under this subsection shall be disclosed to the
21 department whenever the event giving rise to disclosure first
22 occurs.

23 4. For purposes of this section, the phrase "immediate
24 family member" shall mean husband, wife, natural or adoptive
25 parent, child, sibling, stepparent, stepchild, stepbrother,
26 stepsister, father-in-law, mother-in-law, son-in-law, daughter-
27 in-law, brother-in-law, sister-in-law, grandparent or grandchild.

28 5. The information called for in this section shall be a

1 public record under the provisions of subdivision (6) of section
2 610.010, RSMo.

3 6. Any person may notify the department if facts exist that
4 would lead a reasonable person to conclude that any inspector or
5 surveyor has any personal or business affiliation that would
6 result in a conflict of interest in conducting an inspection or
7 survey for a facility. Upon receiving that notice, the
8 department, when assigning an inspector or surveyor to inspect or
9 survey a facility, for any purpose, shall take steps to verify
10 the information and, if the department has probable cause to
11 believe that it is correct, shall not assign the inspector or
12 surveyor to the facility or any facility within its organization
13 so as to avoid an appearance of prejudice or favor to the
14 facility or bias on the part of the inspector or surveyor.

15 198.527. To ensure uniformity of application of regulation
16 standards in long-term care facilities throughout the state, the
17 department of [social] health and senior services shall:

18 (1) Evaluate the requirements for inspectors or surveyors
19 of facilities, including the eligibility, training and testing
20 requirements for the position.

21 Based on the evaluation, the department shall develop and
22 implement additional training and knowledge standards for
23 inspectors and surveyors;

24 (2) Periodically evaluate the performance of the inspectors
25 or surveyors regionally and statewide to identify any deviations
26 or inconsistencies in regulation application. At a minimum, the
27 Missouri on-site surveyor evaluation process, and the number and
28 type of actions overturned by the informal dispute resolution

1 process under section 198.545 and formal appeal shall be used
2 [in] as part of the evaluation. Based on such evaluation, the
3 department shall develop standards and a retraining process for
4 the region, state, or individual inspector or surveyor, as
5 needed;

6 (3) In addition to the provisions of subdivisions (1) and
7 (2) of this section, the department shall develop a single
8 uniform comprehensive and mandatory course of instruction for
9 inspectors/surveyors on the practical application of enforcement
10 of statutes, rules and regulations. Such course shall also be
11 open to attendance by administrators and staff of facilities
12 licensed pursuant to this chapter.

13 198.545. 1. This section shall be known and may be cited
14 as the "Missouri Informal Dispute Resolution Act".

15 2. As used in this section, the following terms shall mean:

16 (1) "Deficiency", a facility's failure to meet a
17 participation requirement or standard, whether state or federal,
18 supported by evidence gathered from observation, interview, or
19 record review;

20 (2) "Department", the department of health and senior
21 services;

22 (3) "Facility", a long-term care facility licensed under
23 this chapter;

24 (4) "IDR", informal dispute resolution as provided for in
25 this section;

26 (5) "Independent third party", the federally designated
27 Medicare Quality Improvement Organization in this state;

28 (6) "Plan of correction", a facility's response to

1 deficiencies which explains how corrective action will be
2 accomplished, how the facility will identify other residents who
3 may be affected by the deficiency practice, what measures will be
4 used or systemic changes made to ensure that the deficient
5 practice will not reoccur, and how the facility will monitor to
6 ensure that solutions are sustained;

7 (7) "QIO", the federally designated Medicare Quality
8 Improvement Organization in this state.

9 3. The department of health and senior services shall
10 contract with an independent third party to conduct informal
11 dispute resolution (IDR) for facilities licensed under this
12 chapter. The IDR process, including conferences, shall
13 constitute an informal administrative process and shall not be
14 construed to be a formal evidentiary hearing. Use of IDR under
15 this section shall not waive the facility's right to pursue
16 further or additional legal actions.

17 4. The department shall establish an IDR process to
18 determine whether a cited deficiency as evidenced by a statement
19 of deficiencies against a facility shall be upheld. The
20 department shall promulgate rules to incorporate by reference the
21 provisions of 42 CFR 488.331 regarding the IDR process and to
22 include the following minimum requirements for the IDR process:

23 (1) Within ten working days of the end of the survey, the
24 department shall by certified mail transmit to the facility a
25 statement of deficiencies committed by the facility.

26 Notification of the availability of an IDR and IDR process shall
27 be included in the transmittal;

28 (2) Within ten calendar days of receipt of the statement of

1 deficiencies, the facility shall return a plan of correction to
2 the department. Within such ten-day period, the facility may
3 request in writing an IDR conference to refute the deficiencies
4 cited in the statement of deficiencies;

5 (3) Within ten working days of receipt for an IDR
6 conference made by a facility, the QIO shall hold an IDR
7 conference unless otherwise requested by the facility. The IDR
8 conference shall provide the facility with an opportunity to
9 provide additional information or clarification in support of the
10 facility's contention that the deficiencies were erroneously
11 cited. The facility may be accompanied by counsel during the IDR
12 conference. The type of IDR held shall be at the discretion of
13 the facility, but shall be limited to:

14 (a) A desk review of written information submitted by the
15 facility; or

16 (b) A telephonic conference; or

17 (c) A face-to-face conference held at the headquarters of
18 the QIO or at the facility at the request of the facility.

19
20 If the QIO determines the need for additional information,
21 clarification, or discussion after conclusion of the IDR
22 conference, the department and the facility shall be present.

23 5. Within ten days of the IDR conference described in
24 subsection 4 of this section, the QIO shall make a determination,
25 based upon the facts and findings presented, and shall transmit
26 the decision and rationale for the outcome in writing to the
27 facility and the department.

28 6. If the department disagrees with such determination, the

1 department shall transmit the department's decision and rationale
2 for the reversal of the QIO's decision to the facility within ten
3 calendar days of receiving the QIO's decision.

4 7. If the QIO determines that the original statement of
5 deficiencies should be changed as a result of the IDR conference,
6 the department shall transmit a revised statement of deficiencies
7 to the facility with the notification of the determination within
8 ten calendar days of the decision to change the statement of
9 deficiencies.

10 8. Within ten calendar days of receipt of the determination
11 made by the QIO and the revised statement of deficiencies, the
12 facility shall submit a plan of correction to the department.

13 9. The department shall not post on its web site or enter
14 into the Centers for Medicare & Medicaid Services Online Survey,
15 Certification and Reporting System, or report to any other
16 agency, any information about the deficiencies which are in
17 dispute unless the dispute determination is made and the facility
18 has responded with a revised plan of correction, if needed.

19 10. Any rule or portion of a rule, as that term is defined
20 in section 536.010, RSMo, that is created under the authority
21 delegated in this section shall become effective only if it
22 complies with and is subject to all of the provisions of chapter
23 536, RSMo, and, if applicable, section 536.028, RSMo. This
24 section and chapter 536, RSMo, are nonseverable and if any of the
25 powers vested with the general assembly pursuant to chapter 536,
26 RSMo, to review, to delay the effective date, or to disapprove
27 and annul a rule are subsequently held unconstitutional, then the
28 grant of rulemaking authority and any rule proposed or adopted

1 after August 28, 2009, shall be invalid and void.

2 208.016. In determining the amount of an institutionalized
3 MO HealthNet individual's income that is to be applied to payment
4 for the costs of care in the institution, there shall be deducted
5 a personal needs allowance of no less than thirty dollars per
6 month or the minimum amount required by 42 U.S.C. 1396a(q) (2) if
7 more than thirty dollars. Beginning January 1, 2010, the
8 personal needs allowance shall be increased by an amount equal to
9 the product of the percentage of the Social Security benefit cost
10 of living adjustment and the average amount that MO HealthNet
11 participants are required to contribute to the cost of
12 institutionalized care. The annual increase in the personal
13 needs allowance shall be rounded to the nearest whole dollar and
14 shall not exceed five dollars in any year. Once the personal
15 needs allowance reaches fifty dollars, there shall be no further
16 increases unless authorized by annual appropriation.

17 208.819. 1. Subject to appropriations, persons
18 institutionalized in nursing homes who are [Medicaid] MO
19 HealthNet eligible and who wish to move back into the community
20 shall be eligible for a one-time [Missouri] transition [to
21 independence] grant. The [Missouri] transition [to independence]
22 grant shall be limited to up to [fifteen] twenty-four hundred
23 dollars to offset the initial down payments [and], setup costs,
24 and other expenditures associated with housing a senior or person
25 with disabilities needing home and community-based services as
26 such person moves out of a nursing home. Such grants shall be
27 established and administered by the division of [vocational
28 rehabilitation] senior and disability services in consultation

1 with the department of social services. The division of
2 [vocational rehabilitation] senior and disability services and
3 the department of social services shall cooperate in actively
4 seeking federal and private grant moneys to further fund this
5 program; except that, such federal and private grant moneys shall
6 not limit the general assembly's ability to appropriate moneys
7 for the [Missouri] transition [to independence] grants.

8 2. The [division of medical services within the department
9 of social services, the] department of health and senior services
10 and the [division of vocational rehabilitation within the
11 department of elementary and secondary education] department of
12 mental health shall work together to develop information and
13 training on community-based service options for residents
14 transitioning into the community[. Representatives of
15 disability-related community organizations shall complete such
16 training before initiating contact with institutionalized
17 individuals] and shall promulgate rules as necessary. Any rule
18 or portion of a rule, as that term is defined in section 536.010,
19 RSMo, that is created under the authority delegated in this
20 section shall become effective only if it complies with and is
21 subject to all of the provisions of chapter 536, RSMo, and, if
22 applicable, section 536.028, RSMo. This section and chapter 536,
23 RSMo, are nonseverable and if any of the powers vested with the
24 general assembly pursuant to chapter 536, RSMo, to review, to
25 delay the effective date, or to disapprove and annul a rule are
26 subsequently held unconstitutional, then the grant of rulemaking
27 authority and any rule proposed or adopted after August 28, 2009,
28 shall be invalid and void.

1 Section 1. Upon receipt of a properly completed referral
2 for MO HealthNet-funded home and community-based care containing
3 a nurse assessment or physician's order, the department of health
4 and senior services shall:

5 (1) Review the recommendations regarding services and
6 process the referral within fifteen business days;

7 (2) Issue a prior-authorization for home and community-
8 based services when information contained in the referral is
9 sufficient to establish eligibility for MO HealthNet-funded long-
10 term care and determine the level of service need as required
11 under state and federal regulations;

12 (3) Arrange for the provision of services by an in-home
13 provider;

14 (4) Reimburse the in-home provider for one authorized nurse
15 visit to complete the nurse assessment and a minimum of one and
16 no more than two authorized nurse visits to make a properly
17 completed referral;

18 (5) Notify the referring entity upon the authorization of
19 MO HealthNet eligibility and provide MO HealthNet reimbursement
20 for personal care benefits effective the date of the assessment
21 or physician's order, and MO HealthNet reimbursement for waiver
22 services effective the date the state reviews and approves the
23 care plan;

24 (6) Notify the referring entity within five business days
25 of receiving the referral if additional information is required
26 to process the referral; and

27 (7) Inform the provider and contact the individual when
28 information is insufficient or the proposed care plan requires

1 additional evaluation by state staff that is not obtained from
2 the referring entity to schedule an in-home assessment to be
3 conducted by the state staff within thirty days.

4