

# SENATE BILL NO. 1029

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

4995S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 192.2225, 197.100, 197.256, 197.258, 197.415, 198.006, 198.022, 198.026, 198.036, 198.525, 198.526, and 198.545, RSMo, and to enact in lieu thereof twelve new sections relating to the oversight of health care facilities by the department of health and senior services, with existing penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 192.2225, 197.100, 197.256, 197.258,  
2 197.415, 198.006, 198.022, 198.026, 198.036, 198.525, 198.526,  
3 and 198.545, RSMo, are repealed and twelve new sections enacted  
4 in lieu thereof, to be known as sections 192.2225, 197.100,  
5 197.256, 197.258, 197.415, 198.006, 198.022, 198.026, 198.036,  
6 198.525, 198.526, and 198.545, to read as follows:

192.2225. 1. The department shall have the right to  
2 enter the premises of an applicant for or holder of a  
3 license at any time during the hours of operation of a  
4 center to determine compliance with provisions of sections  
5 192.2200 to 192.2260 and applicable rules promulgated  
6 pursuant thereto. Entry shall also be granted for  
7 investigative purposes involving complaints regarding the  
8 operations of an adult day care program. The department  
9 shall make at least **[two inspections]** **one inspection** per  
10 year, **[at least one of]** which shall be unannounced to the  
11 operator or provider. The department may make such other  
12 inspections, announced or unannounced, as it deems necessary  
13 to carry out the provisions of sections 192.2200 to 192.2260.

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

14           2. [The department may reduce the frequency of  
15 inspections to once a year if an adult day care program is  
16 found to be in substantial compliance. The basis for such  
17 determination shall include, but not be limited to, the  
18 following:

- 19           (1) Previous inspection reports;  
20           (2) The adult day care program's history of compliance  
21 with rules promulgated pursuant to this chapter; and  
22           (3) The number and severity of complaints received  
23 about the adult day care program.

24           3.] The applicant for or holder of a license shall  
25 cooperate with the investigation and inspection by providing  
26 access to the adult day care program, records and staff, and  
27 by providing access to the adult day care program to  
28 determine compliance with the rules promulgated pursuant to  
29 sections 192.2200 to 192.2260.

30           [4.] 3. Failure to comply with any lawful request of  
31 the department in connection with the investigation and  
32 inspection is a ground for refusal to issue a license or for  
33 the revocation of a license.

34           [5.] 4. The department may designate to act for it,  
35 with full authority of law, any instrumentality of any  
36 political subdivision of the state of Missouri deemed by the  
37 department to be competent to investigate and inspect  
38 applicants for or holders of licenses.

197.100. 1. Any provision of chapter 198 and chapter  
2 338 to the contrary notwithstanding, the department of  
3 health and senior services shall have sole authority, and  
4 responsibility for inspection and licensure of hospitals in  
5 this state including, but not limited to, all parts,  
6 services, functions, support functions and activities which  
7 contribute directly or indirectly to patient care of any

8 kind whatsoever. The department of health and senior  
9 services shall [annually] inspect each licensed hospital **in**  
10 **accordance with Title XVIII of the Social Security Act** and  
11 shall make any other inspections and investigations as it  
12 deems necessary for good cause shown. The department of  
13 health and senior services shall accept reports of hospital  
14 inspections from or on behalf of governmental agencies, the  
15 joint commission, and the American Osteopathic Association  
16 Healthcare Facilities Accreditation Program, provided the  
17 accreditation inspection was conducted within one year of  
18 the date of license renewal. Prior to granting acceptance  
19 of any other accrediting organization reports in lieu of the  
20 required licensure survey, the accrediting organization's  
21 survey process must be deemed appropriate and found to be  
22 comparable to the department's licensure survey. It shall  
23 be the accrediting organization's responsibility to provide  
24 the department any and all information necessary to  
25 determine if the accrediting organization's survey process  
26 is comparable and fully meets the intent of the licensure  
27 regulations. The department of health and senior services  
28 shall attempt to schedule inspections and evaluations  
29 required by this section so as not to cause a hospital to be  
30 subject to more than one inspection in any twelve-month  
31 period from the department of health and senior services or  
32 any agency or accreditation organization the reports of  
33 which are accepted for licensure purposes pursuant to this  
34 section, except for good cause shown.

35 2. Other provisions of law to the contrary  
36 notwithstanding, the department of health and senior  
37 services shall be the only state agency to determine life  
38 safety and building codes for hospitals defined or licensed  
39 pursuant to the provisions of this chapter, including but

40 not limited to sprinkler systems, smoke detection devices  
41 and other fire safety-related matters so long as any new  
42 standards shall apply only to new construction.

197.256. 1. A hospice shall apply for renewal of its  
2 certificate not less than once every twelve months. In  
3 addition, such hospice shall apply for renewal not less than  
4 thirty days before any change in ownership or management of  
5 the hospice. Such application shall be accompanied by the  
6 appropriate fee as set forth in subsection 1 of section  
7 197.254. Application shall be made upon a form prescribed  
8 by the department.

9 2. Upon receipt of the application and fee, if a fee  
10 is required, the department [shall] **may** conduct a survey to  
11 evaluate the quality of services rendered by an applicant  
12 for renewal. The department shall **inspect each licensed**  
13 **facility in accordance with Title XVIII of the Social**  
14 **Security Act and** approve the application and renew the  
15 certificate of any applicant which is in compliance with  
16 sections 197.250 to 197.280 and the rules made pursuant  
17 thereto and which passes the department's survey.

18 3. The certificate of any hospice which has not been  
19 renewed as required by this section shall be void.

20 4. The department shall require all certificated  
21 hospices to submit statistical reports. The content,  
22 format, and frequency of such reports shall be prescribed by  
23 the department.

197.258. 1. In addition to any survey pursuant to  
2 sections 197.250 to 197.280, the department may make such  
3 surveys as it deems necessary during normal business hours.  
4 The department shall survey every hospice [not less than  
5 once annually] **in accordance with Title XVIII of the Social**  
6 **Security Act.** The hospice shall permit the department's

7 representatives to enter upon any of its business premises  
8 during normal business hours for the purpose of a survey.

9 2. As a part of its survey of a hospice, the  
10 department may visit the home of any client of such hospice  
11 with such client's consent.

12 3. In lieu of any survey required by sections 197.250  
13 to 197.280, the department may accept in whole or in part  
14 the survey of any state or federal agency, or of any  
15 professional accrediting agency, if such survey:

16 (1) Is comparable in scope and method to the  
17 department's surveys; and

18 (2) Is conducted [within one year of initial  
19 application] **in accordance with Title XVIII of the Social**  
20 **Security Act** for **initial application** or renewal of the  
21 hospice's certificate.

22 4. The department shall not be required to survey any  
23 hospice providing service to Missouri residents through an  
24 office located in a state bordering Missouri if such  
25 bordering state has a reciprocal agreement with Missouri on  
26 hospice certification and the area served in Missouri by the  
27 agency is contiguous to the area served in the bordering  
28 state.

29 5. Any hospice which has its parent office in a state  
30 which does not have a reciprocal agreement with Missouri on  
31 hospice certification shall maintain a branch office in  
32 Missouri. Such branch office shall maintain all records  
33 required by the department for survey and shall be  
34 certificated as a hospice.

197.415. 1. The department shall review the  
2 applications and shall issue a license to applicants who  
3 have complied with the requirements of sections 197.400 to  
4 197.475 and have received approval of the department.

5           2. A license shall be renewed annually upon approval  
6 of the department when the following conditions have been  
7 met:

8           (1) The application for renewal is accompanied by a  
9 six-hundred-dollar license fee;

10           (2) The home health agency is in compliance with the  
11 requirements established pursuant to the provisions of  
12 sections 197.400 to 197.475 as evidenced by [a survey] an  
13 inspection by the department which shall occur[ at least  
14 every thirty-six months for agencies that have been in  
15 operation thirty-six consecutive months from initial  
16 inspection. The frequency of inspections for agencies in  
17 operation at least thirty-six consecutive months from the  
18 initial inspection shall be determined by such factors as  
19 number of complaints received and changes in management,  
20 supervision or ownership. The frequency of each survey  
21 inspection for any agency in operation less than thirty-six  
22 consecutive months from the initial inspection shall occur  
23 and be conducted at least every twelve months] **in accordance**  
24 **with Title XVIII of the Social Security Act;**

25           (3) The application is accompanied by a statement of  
26 any changes in the information previously filed with the  
27 department pursuant to section 197.410.

28           3. Each license shall be issued only for the home  
29 health agency listed in the application. Licenses shall be  
30 posted in a conspicuous place in the main offices of the  
31 licensed home health agency.

32           4. In lieu of any survey required by sections 197.400  
33 to 197.475, the department may accept in whole or in part  
34 written reports of the survey of any state or federal  
35 agency, or of any professional accrediting agency, if such  
36 survey:

37 (1) Is comparable in scope and method to the  
38 department's surveys; and

39 (2) Is conducted [within one year of initial  
40 application or within thirty-six months for the renewal of  
41 the home health license] **in accordance with Title XVIII of**  
42 **the Social Security Act** as required by subdivision (2) of  
43 subsection 2 of this section.

198.006. As used in sections 198.003 to 198.186,  
2 unless the context clearly indicates otherwise, the  
3 following terms mean:

4 (1) "Abuse", the infliction of physical, sexual, or  
5 emotional injury or harm;

6 (2) "Activities of daily living" or "ADL", one or more  
7 of the following activities of daily living:

8 (a) Eating;

9 (b) Dressing;

10 (c) Bathing;

11 (d) Toileting;

12 (e) Transferring; and

13 (f) Walking;

14 (3) "Administrator", the person who is in general  
15 administrative charge of a facility;

16 (4) "Affiliate":

17 (a) With respect to a partnership, each partner  
18 thereof;

19 (b) With respect to a limited partnership, the general  
20 partner and each limited partner with an interest of five  
21 percent or more in the limited partnership;

22 (c) With respect to a corporation, each person who  
23 owns, holds or has the power to vote five percent or more of  
24 any class of securities issued by the corporation, and each  
25 officer and director;

26 (d) With respect to a natural person, any parent,  
27 child, sibling, or spouse of that person;

28 (5) "Appropriately trained and qualified individual",  
29 an individual who is licensed or registered with the state  
30 of Missouri in a health care-related field or an individual  
31 with a degree in a health care-related field or an  
32 individual with a degree in a health care, social services,  
33 or human services field or an individual licensed under  
34 chapter 344 and who has received facility orientation  
35 training under 19 CSR [30-86042(18)] **30-86.047**, and dementia  
36 training under section 192.2000 and twenty-four hours of  
37 additional training, approved by the department, consisting  
38 of definition and assessment of activities of daily living,  
39 assessment of cognitive ability, service planning, and  
40 interview skills;

41 (6) "Assisted living facility", any premises, other  
42 than a residential care facility, intermediate care  
43 facility, or skilled nursing facility, that is utilized by  
44 its owner, operator, or manager to provide twenty-four-hour  
45 care and services and protective oversight to three or more  
46 residents who are provided with shelter, board, and who may  
47 need and are provided with the following:

48 (a) Assistance with any activities of daily living and  
49 any instrumental activities of daily living;

50 (b) Storage, distribution, or administration of  
51 medications; and

52 (c) Supervision of health care under the direction of  
53 a licensed physician, provided that such services are  
54 consistent with a social model of care;

55 Such term shall not include a facility where all of the  
56 residents are related within the fourth degree of



57 consanguinity or affinity to the owner, operator, or manager  
58 of the facility;

59 (7) "Community-based assessment", documented basic  
60 information and analysis provided by appropriately trained  
61 and qualified individuals describing an individual's  
62 abilities and needs in activities of daily living,  
63 instrumental activities of daily living, vision/hearing,  
64 nutrition, social participation and support, and cognitive  
65 functioning using an assessment tool approved by the  
66 department of health and senior services that is designed  
67 for community-based services and that is not the nursing  
68 home minimum data set;

69 (8) "Dementia", a general term for the loss of  
70 thinking, remembering, and reasoning so severe that it  
71 interferes with an individual's daily functioning, and may  
72 cause symptoms that include changes in personality, mood,  
73 and behavior;

74 (9) "Department", the Missouri department of health  
75 and senior services;

76 (10) "Emergency", a situation, physical condition or  
77 one or more practices, methods or operations which presents  
78 imminent danger of death or serious physical or mental harm  
79 to residents of a facility;

80 (11) "Facility", any residential care facility,  
81 assisted living facility, intermediate care facility, or  
82 skilled nursing facility;

83 (12) "Health care provider", any person providing  
84 health care services or goods to residents and who receives  
85 funds in payment for such goods or services under Medicaid;

86 (13) "Instrumental activities of daily living", or  
87 "IADL", one or more of the following activities:

88 (a) Preparing meals;

89 (b) Shopping for personal items;

90 (c) Medication management;

91 (d) Managing money;

92 (e) Using the telephone;

93 (f) Housework; and

94 (g) Transportation ability;

95 (14) "Intermediate care facility", any premises, other  
96 than a residential care facility, assisted living facility,  
97 or skilled nursing facility, which is utilized by its owner,  
98 operator, or manager to provide twenty-four-hour  
99 accommodation, board, personal care, and basic health and  
100 nursing care services under the daily supervision of a  
101 licensed nurse and under the direction of a licensed  
102 physician to three or more residents dependent for care and  
103 supervision and who are not related within the fourth degree  
104 of consanguinity or affinity to the owner, operator or  
105 manager of the facility;

106 (15) "Manager", any person other than the  
107 administrator of a facility who contracts or otherwise  
108 agrees with an owner or operator to supervise the general  
109 operation of a facility, providing such services as hiring  
110 and training personnel, purchasing supplies, keeping  
111 financial records, and making reports;

112 (16) "Medicaid", medical assistance under section  
113 208.151, et seq., in compliance with Title XIX, Public Law  
114 89-97, 1965 amendments to the Social Security Act (42 U.S.C.  
115 301, et seq.), as amended;

116 (17) "Neglect", the failure to provide, by those  
117 responsible for the care, custody, and control of a resident  
118 in a facility, the services which are reasonable and  
119 necessary to maintain the physical and mental health of the  
120 resident, when such failure presents either an imminent

121 danger to the health, safety or welfare of the resident or a  
122 substantial probability that death or serious physical harm  
123 would result;

124 (18) "Operator", any person licensed or required to be  
125 licensed under the provisions of sections 198.003 to 198.096  
126 in order to establish, conduct or maintain a facility;

127 (19) "Owner", any person who owns an interest of five  
128 percent or more in:

129 (a) The land on which any facility is located;

130 (b) The structure or structures in which any facility  
131 is located;

132 (c) Any mortgage, contract for deed, or other  
133 obligation secured in whole or in part by the land or  
134 structure in or on which a facility is located; or

135 (d) Any lease or sublease of the land or structure in  
136 or on which a facility is located.

137 Owner does not include a holder of a debenture or bond  
138 purchased at public issue nor does it include any regulated  
139 lender unless the entity or person directly or through a  
140 subsidiary operates a facility;

141 (20) "Protective oversight", an awareness twenty-four  
142 hours a day of the location of a resident, the ability to  
143 intervene on behalf of the resident, the supervision of  
144 nutrition, medication, or actual provisions of care, and the  
145 responsibility for the welfare of the resident, except where  
146 the resident is on voluntary leave;

147 (21) "Resident", a person who by reason of aging,  
148 illness, disease, or physical or mental infirmity receives  
149 or requires care and services furnished by a facility and  
150 who resides or boards in or is otherwise kept, cared for,

151 treated or accommodated in such facility for a period  
152 exceeding twenty-four consecutive hours;

153 (22) "Residential care facility", any premises, other  
154 than an assisted living facility, intermediate care  
155 facility, or skilled nursing facility, which is utilized by  
156 its owner, operator or manager to provide twenty-four-hour  
157 care to three or more residents, who are not related within  
158 the fourth degree of consanguinity or affinity to the owner,  
159 operator, or manager of the facility and who need or are  
160 provided with shelter, board, and with protective oversight,  
161 which may include storage and distribution or administration  
162 of medications and care during short-term illness or  
163 recuperation, except that, for purposes of receiving  
164 supplemental welfare assistance payments under section  
165 208.030, only any residential care facility licensed as a  
166 residential care facility II immediately prior to August 28,  
167 2006, and that continues to meet such licensure requirements  
168 for a residential care facility II licensed immediately  
169 prior to August 28, 2006, shall continue to receive after  
170 August 28, 2006, the payment amount allocated immediately  
171 prior to August 28, 2006, for a residential care facility II  
172 under section 208.030;

173 (23) "Skilled nursing facility", any premises, other  
174 than a residential care facility, an assisted living  
175 facility, or an intermediate care facility, which is  
176 utilized by its owner, operator or manager to provide for  
177 twenty-four-hour accommodation, board and skilled nursing  
178 care and treatment services to at least three residents who  
179 are not related within the fourth degree of consanguinity or  
180 affinity to the owner, operator or manager of the facility.  
181 Skilled nursing care and treatment services are those  
182 services commonly performed by or under the supervision of a

183 registered professional nurse for individuals requiring  
184 twenty-four-hours-a-day care by licensed nursing personnel  
185 including acts of observation, care and counsel of the aged,  
186 ill, injured or infirm, the administration of medications  
187 and treatments as prescribed by a licensed physician or  
188 dentist, and other nursing functions requiring substantial  
189 specialized judgment and skill;

190 (24) "Social model of care", long-term care services  
191 based on the abilities, desires, and functional needs of the  
192 individual delivered in a setting that is more home-like  
193 than institutional and promotes the dignity, individuality,  
194 privacy, independence, and autonomy of the individual. Any  
195 facility licensed as a residential care facility II prior to  
196 August 28, 2006, shall qualify as being more home-like than  
197 institutional with respect to construction and physical  
198 plant standards;

199 (25) "Vendor", any person selling goods or services to  
200 a health care provider;

201 (26) "Voluntary leave", an off-premise leave initiated  
202 by:

203 (a) A resident that has not been declared mentally  
204 incompetent or incapacitated by a court; or

205 (b) A legal guardian of a resident that has been  
206 declared mentally incompetent or incapacitated by a court.

198.022. 1. Upon receipt of an application for a  
2 license to operate a facility, the department shall review  
3 the application, investigate the applicant and the  
4 statements sworn to in the application for license and  
5 conduct any necessary inspections. A license shall be  
6 issued if the following requirements are met:

7 (1) The statements in the application are true and  
8 correct;

9           (2) The facility and the operator are in substantial  
10 compliance with the provisions of sections 198.003 to  
11 198.096 and the standards established thereunder;

12           (3) The applicant has the financial capacity to  
13 operate the facility;

14           (4) The administrator of an assisted living facility,  
15 a skilled nursing facility, or an intermediate care facility  
16 is currently licensed under the provisions of chapter 344;

17           (5) Neither the operator nor any principals in the  
18 operation of the facility have ever been convicted of a  
19 felony offense concerning the operation of a long-term  
20 health care facility or other health care facility or ever  
21 knowingly acted or knowingly failed to perform any duty  
22 which materially and adversely affected the health, safety,  
23 welfare or property of a resident, while acting in a  
24 management capacity. The operator of the facility or any  
25 principal in the operation of the facility shall not be  
26 under exclusion from participation in the Title XVIII  
27 (Medicare) or Title XIX (Medicaid) program of any state or  
28 territory;

29           (6) Neither the operator nor any principals involved  
30 in the operation of the facility have ever been convicted of  
31 a felony in any state or federal court arising out of  
32 conduct involving either management of a long-term care  
33 facility or the provision or receipt of health care;

34           (7) All fees due to the state have been paid.

35           2. Upon denial of any application for a license, the  
36 department shall so notify the applicant in writing, setting  
37 forth therein the reasons and grounds for denial.

38           3. The department may inspect any facility and any  
39 records and may make copies of records, at the facility, at  
40 the department's own expense, required to be maintained by

41 sections 198.003 to 198.096 or by the rules and regulations  
42 promulgated thereunder at any time if a license has been  
43 issued to or an application for a license has been filed by  
44 the operator of such facility. Copies of any records  
45 requested by the department shall be prepared by the staff  
46 of such facility within two business days or as determined  
47 by the department. The department shall not remove or  
48 disassemble any medical record during any inspection of the  
49 facility, but may observe the photocopying or may make its  
50 own copies if the facility does not have the technology to  
51 make the copies. In accordance with the provisions of  
52 section 198.525, the department shall make at least [two  
53 inspections] **one inspection** per year, [at least one of]  
54 which shall be unannounced to the operator. The department  
55 may make such other inspections, announced or unannounced,  
56 as it deems necessary to carry out the provisions of  
57 sections 198.003 to 198.136.

58 4. Whenever the department has reasonable grounds to  
59 believe that a facility required to be licensed under  
60 sections 198.003 to 198.096 is operating without a license,  
61 and the department is not permitted access to inspect the  
62 facility, or when a licensed operator refuses to permit  
63 access to the department to inspect the facility, the  
64 department shall apply to the circuit court of the county in  
65 which the premises is located for an order authorizing entry  
66 for such inspection, and the court shall issue the order if  
67 it finds reasonable grounds for inspection or if it finds  
68 that a licensed operator has refused to permit the  
69 department access to inspect the facility.

70 5. Whenever the department is inspecting a facility in  
71 response to an application from an operator located outside  
72 of Missouri not previously licensed by the department, the

73 department may request from the applicant the past five  
74 years compliance history of all facilities owned by the  
75 applicant located outside of this state.

198.026. 1. Whenever a duly authorized representative  
2 of the department finds upon an inspection of a facility  
3 that it is not in compliance with the provisions of sections  
4 198.003 to 198.096 and the standards established thereunder,  
5 the operator or administrator shall be informed of the  
6 deficiencies in an exit interview conducted with the  
7 operator or administrator, or his or her designee. The  
8 department shall inform the operator or administrator, in  
9 writing, of any violation of a class I standard at the time  
10 the determination is made. A written report shall be  
11 prepared of any deficiency for which there has not been  
12 prompt remedial action, and a copy of such report and a  
13 written correction order shall be sent to the operator or  
14 administrator by [certified mail or other] a delivery  
15 service that provides a dated receipt of delivery [at the  
16 facility address] within ten working days after the  
17 inspection, stating separately each deficiency and the  
18 specific statute or regulation violated.

19 2. The operator or administrator shall have five  
20 working days following receipt of a written report and  
21 correction order regarding a violation of a class I standard  
22 and ten working days following receipt of the report and  
23 correction order regarding violations of class II or class  
24 III standards to request any conference and to submit a plan  
25 of correction for the department's approval which contains  
26 specific dates for achieving compliance. Within five  
27 working days after receiving a plan of correction regarding  
28 a violation of a class I standard and within ten working  
29 days after receiving a plan of correction regarding a



30 violation of a class II or III standard, the department  
31 shall give its written approval or rejection of the plan.  
32 If there was a violation of any class I standard, immediate  
33 corrective action shall be taken by the operator or  
34 administrator and a written plan of correction shall be  
35 submitted to the department. The department shall give its  
36 written approval or rejection of the plan and if the plan is  
37 acceptable, a reinspection shall be conducted within twenty  
38 calendar days of the exit interview to determine if  
39 deficiencies have been corrected. If there was a violation  
40 of any class II standard and the plan of correction is  
41 acceptable, an unannounced reinspection shall be conducted  
42 between forty and ninety calendar days from the date of the  
43 exit conference to determine the status of all previously  
44 cited deficiencies. If there was a violation of class III  
45 standards sufficient to establish that the facility was not  
46 in substantial compliance, an unannounced reinspection shall  
47 be conducted within one hundred twenty days of the exit  
48 interview to determine the status of previously identified  
49 deficiencies.

50 3. If, following the reinspection, the facility is  
51 found not in substantial compliance with sections 198.003 to  
52 198.096 and the standards established thereunder or the  
53 operator is not correcting the noncompliance in accordance  
54 with the approved plan of correction, the department shall  
55 issue a notice of noncompliance, which shall be sent by  
56 [certified mail or other] a delivery service that provides a  
57 dated receipt of delivery to [each person disclosed to be an  
58 owner or] **the operator or administrator** of the facility,  
59 according to the most recent information or documents on  
60 file with the department.

61           4. The notice of noncompliance shall inform the  
62 operator or administrator that the department may seek the  
63 imposition of any of the sanctions and remedies provided for  
64 in section 198.067, or any other action authorized by law.

65           5. At any time after an inspection is conducted, the  
66 operator may choose to enter into a consent agreement with  
67 the department to obtain a probationary license. The  
68 consent agreement shall include a provision that the  
69 operator will voluntarily surrender the license if  
70 substantial compliance is not reached in accordance with the  
71 terms and deadlines established under the agreement. The  
72 agreement shall specify the stages, actions and time span to  
73 achieve substantial compliance.

74           6. Whenever a notice of noncompliance has been issued,  
75 the operator shall post a copy of the notice of  
76 noncompliance and a copy of the most recent inspection  
77 report in a conspicuous location in the facility, and the  
78 department shall send a copy of the notice of noncompliance  
79 to the department of social services, the department of  
80 mental health, and any other concerned federal, state or  
81 local governmental agencies.

          198.036. 1. The department may revoke a license in  
2 any case in which it finds that:

3           (1) The operator failed or refused to comply with  
4 class I or II standards, as established by the department  
5 pursuant to section 198.085; or failed or refused to comply  
6 with class III standards as established by the department  
7 pursuant to section 198.085, where the aggregate effect of  
8 such noncompliances presents either an imminent danger to  
9 the health, safety or welfare of any resident or a  
10 substantial probability that death or serious physical harm  
11 would result;

12           (2) The operator refused to allow representatives of  
13 the department to inspect the facility for compliance with  
14 standards or denied representatives of the department access  
15 to residents and employees necessary to carry out the duties  
16 set forth in this chapter and rules promulgated thereunder,  
17 except where employees of the facility are in the process of  
18 rendering immediate care to a resident of such facility;

19           (3) The operator knowingly acted or knowingly omitted  
20 any duty in a manner which would materially and adversely  
21 affect the health, safety, welfare or property of a resident;

22           (4) The operator demonstrated financial incapacity to  
23 operate and conduct the facility in accordance with the  
24 provisions of sections 198.003 to 198.096;

25           (5) The operator or any principals in the operation of  
26 the facility have ever been convicted of, or pled guilty or  
27 nolo contendere to a felony offense concerning the operation  
28 of a long-term health care facility or other health care  
29 facility, or ever knowingly acted or knowingly failed to  
30 perform any duty which materially and adversely affected the  
31 health, safety, welfare, or property of a resident while  
32 acting in a management capacity. The operator of the  
33 facility or any principal in the operation of the facility  
34 shall not be under exclusion from participation in the Title  
35 XVIII (Medicare) or Title XIX (Medicaid) program of any  
36 state or territory; or

37           (6) The operator or any principals involved in the  
38 operation of the facility have ever been convicted of or  
39 pled guilty or nolo contendere to a felony in any state or  
40 federal court arising out of conduct involving either  
41 management of a long-term care facility or the provision or  
42 receipt of health care.

43           2. Nothing in subdivision (2) of subsection 1 of this  
44 section shall be construed as allowing the department access  
45 to information not necessary to carry out the duties set  
46 forth in sections 198.006 to 198.186.

47           3. Upon revocation of a license, the director of the  
48 department shall so notify the operator in writing, setting  
49 forth the reason and grounds for the revocation. Notice of  
50 such revocation shall be sent [either by certified mail,  
51 return receipt requested,] **by a delivery service that**  
52 **provides a dated receipt of delivery** to the operator [at the  
53 address of the facility] **and administrator,** or served  
54 personally upon the operator **and administrator.** The  
55 department shall provide the operator notice of such  
56 revocation at least ten days prior to its effective date.

198.525. 1. [Except as otherwise provided pursuant to  
2 section 198.526,] In order to comply with sections 198.012  
3 and 198.022, the department of health and senior services  
4 shall inspect residential care facilities, assisted living  
5 facilities, intermediate care facilities, and skilled  
6 nursing **facilities,** including those facilities attached to  
7 acute care hospitals at least [twice] **once** a year.

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

13           3. For any inspection or survey of a facility licensed  
14 under this chapter, regardless of the purpose, the  
15 department shall require every newly hired inspector or  
16 surveyor at the time of hiring or, with respect to any  
17 currently employed inspector or surveyor as of August 28,  
18 2009, to disclose:

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

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

24 The disclosures under this subsection shall be disclosed to  
25 the department whenever the event giving rise to disclosure  
26 first occurs.

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

33           5. The information called for in this section shall be  
34 a public record under the provisions of subdivision (6) of  
35 section 610.010.

36           6. Any person may notify the department if facts exist  
37 that would lead a reasonable person to conclude that any  
38 inspector or surveyor has any personal or business  
39 affiliation that would result in a conflict of interest in  
40 conducting an inspection or survey for a facility. Upon  
41 receiving that notice, the department, when assigning an  
42 inspector or surveyor to inspect or survey a facility, for  
43 any purpose, shall take steps to verify the information and,  
44 if the department has probable cause to believe that it is  
45 correct, shall not assign the inspector or surveyor to the  
46 facility or any facility within its organization so as to  
47 avoid an appearance of prejudice or favor to the facility or  
48 bias on the part of the inspector or surveyor.

198.526. 1. [Except as provided in subsection 3 of  
2 this section,] The department of health and senior services  
3 shall inspect all facilities licensed by the department at  
4 least [twice] **once** each year. Such inspections shall be  
5 conducted:

6 (1) Without the prior notification of the facility; and

7 (2) At times of the day, on dates and at intervals  
8 which do not permit facilities to anticipate such  
9 inspections.

10 2. The department shall annually reevaluate the  
11 inspection process to ensure the requirements of subsection  
12 1 of this section are met.

13 3. [The department may reduce the frequency of  
14 inspections to once a year if a facility is found to be in  
15 substantial compliance. The basis for such determination  
16 shall include, but not be limited to, the following:

17 (1) Previous inspection reports;

18 (2) The facility's history of compliance with rules  
19 promulgated pursuant to this chapter;

20 (3) The number and severity of complaints received  
21 about the facility; and

22 (4) In the year subsequent to a finding of no class I  
23 violations or class II violations, the facility does not  
24 have a change in ownership, operator, or, if the department  
25 finds it significant, a change in director of nursing.

26 4.] Information regarding unannounced inspections  
27 shall be disclosed to employees of the department on a need-  
28 to-know basis only. Any employee of the department who  
29 knowingly discloses the time of an unannounced inspection in  
30 violation of this section is guilty of a class A misdemeanor  
31 and shall have his or her employment immediately terminated.

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

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

5 (1) "Deficiency", a facility's failure to meet a  
6 participation requirement or standard, whether state or  
7 federal, supported by evidence gathered from observation,  
8 interview, or record review;

9 (2) "Department", the department of health and senior  
10 services;

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

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

15 (5) "Independent third party", the federally  
16 designated Medicare Quality Improvement Organization in this  
17 state;

18 (6) "Plan of correction", a facility's response to  
19 deficiencies which explains how corrective action will be  
20 accomplished, how the facility will identify other residents  
21 who may be affected by the deficiency practice, what  
22 measures will be used or systemic changes made to ensure  
23 that the deficient practice will not reoccur, and how the  
24 facility will monitor to ensure that solutions are sustained;

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

27 3. The department of health and senior services shall  
28 contract with an independent third party to conduct informal  
29 dispute resolution (IDR) for facilities licensed under this  
30 chapter. The IDR process, including conferences, shall  
31 constitute an informal administrative process and shall not  
32 be construed to be a formal evidentiary hearing. Use of IDR

33 under this section shall not waive the facility's right to  
34 pursue further or additional legal actions.

35 4. The department shall establish an IDR process to  
36 determine whether a cited deficiency as evidenced by a  
37 statement of deficiencies against a facility shall be  
38 upheld. The department shall promulgate rules to  
39 incorporate by reference the provisions of 42 CFR 488.331  
40 regarding the IDR process and to include the following  
41 minimum requirements for the IDR process:

42 (1) Within ten working days of the end of the survey,  
43 the department shall by [certified mail] **a delivery service**  
44 **that provides dated receipt of delivery** transmit to the  
45 facility a statement of deficiencies committed by the  
46 facility. Notification of the availability of an IDR and  
47 IDR process shall be included in the transmittal;

48 (2) Within ten [calendar] **working** days of receipt of  
49 the statement of deficiencies, the facility shall return a  
50 plan of correction to the department. Within such ten-day  
51 period, the facility may request in writing an IDR  
52 conference to refute the deficiencies cited in the statement  
53 of deficiencies;

54 (3) Within ten working days of receipt for an IDR  
55 conference made by a facility, the QIO shall hold an IDR  
56 conference unless otherwise requested by the facility. The  
57 IDR conference shall provide the facility with an  
58 opportunity to provide additional information or  
59 clarification in support of the facility's contention that  
60 the deficiencies were erroneously cited. The facility may  
61 be accompanied by counsel during the IDR conference. The  
62 type of IDR held shall be at the discretion of the facility,  
63 but shall be limited to:



64 (a) A desk review of written information submitted by  
65 the facility; or

66 (b) A telephonic conference; or

67 (c) A face-to-face conference held at the headquarters  
68 of the QIO or at the facility at the request of the  
69 facility.

70 If the QIO determines the need for additional information,  
71 clarification, or discussion after conclusion of the IDR  
72 conference, the department and the facility shall be present.

73 5. Within ten days of the IDR conference described in  
74 subsection 4 of this section, the QIO shall make a  
75 determination, based upon the facts and findings presented,  
76 and shall transmit the decision and rationale for the  
77 outcome in writing to the facility and the department.

78 6. If the department disagrees with such  
79 determination, the department shall transmit the  
80 department's decision and rationale for the reversal of the  
81 QIO's decision to the facility within ten calendar days of  
82 receiving the QIO's decision.

83 7. If the QIO determines that the original statement  
84 of deficiencies should be changed as a result of the IDR  
85 conference, the department shall transmit a revised  
86 statement of deficiencies to the facility with the  
87 notification of the determination within ten calendar days  
88 of the decision to change the statement of deficiencies.

89 8. Within ten calendar days of receipt of the  
90 determination made by the QIO and the revised statement of  
91 deficiencies, the facility shall submit a plan of correction  
92 to the department.

93 9. The department shall not post on its website or  
94 enter into the Centers for Medicare & Medicaid Services

95 Online Survey, Certification and Reporting System, or report  
96 to any other agency, any information about the deficiencies  
97 which are in dispute unless the dispute determination is  
98 made and the facility has responded with a revised plan of  
99 correction, if needed.

100       10. Any rule or portion of a rule, as that term is  
101 defined in section 536.010, that is created under the  
102 authority delegated in this section shall become effective  
103 only if it complies with and is subject to all of the  
104 provisions of chapter 536 and, if applicable, section  
105 536.028. This section and chapter 536 are nonseverable and  
106 if any of the powers vested with the general assembly  
107 pursuant to chapter 536 to review, to delay the effective  
108 date, or to disapprove and annul a rule are subsequently  
109 held unconstitutional, then the grant of rulemaking  
110 authority and any rule proposed or adopted after August 28,  
111 2009, shall be invalid and void.

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