Missouri Revised Statutes

Chapter 198
Nursing Homes and Facilities

August 28, 2022

Citation of law.

Sections 198.003 to 198.186 shall be known and may be cited as the "Omnibus Nursing Home Act".

(L. 1979 S.B. 328, et al. § 2)

Assisted living facilities, statutory references to residential care facilities to be changed by revisor of statutes.

198.005. The term "residential care facility I" shall be referred to as a "residential care facility", and the term "residential care facility II" shall be referred to as "assisted living facility". The revisor of statutes shall make the appropriate changes to all such references in the revised statutes, except that references to residential care facilities as defined in section 210.481, or residential facilities licensed by the department of mental health shall not be changed.

(L. 2006 S.B. 616)

Definitions.

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

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

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

(a) Eating;

(b) Dressing;

(c) Bathing;

(d) Toileting;

(e) Transferring; and

(f) Walking;

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

(4) "Affiliate":

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

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

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

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

(5) "Appropriately trained and qualified individual", an individual who is licensed or registered with the state of Missouri in a health care-related field or an individual with a degree in a health care-related field or an individual with a degree in a health care, social services, or human services field or an individual licensed under chapter 344 and who has received facility orientation training under 19 CSR 30-86.047, and dementia training under section 192.2000 and twenty-four hours of additional training, approved by the department, consisting of definition and assessment of activities of daily living, assessment of cognitive ability, service planning, and interview skills;

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

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

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

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

Such term shall not include a facility where all of the residents are related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility;

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

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

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

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

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

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

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

(a) Preparing meals;

(b) Shopping for personal items;

(c) Medication management;

(d) Managing money;

(e) Using the telephone;

(f) Housework; and

(g) Transportation ability;

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

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

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

(17) "Neglect", the failure to provide, by those responsible for the care, custody, and control of a resident in a facility, the services which are reasonable and necessary to maintain the physical and mental health of the resident, when such failure presents either an imminent danger to the health, safety or welfare of the resident or a substantial probability that death or serious physical harm would result;

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

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

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

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

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

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

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

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

(21) "Resident", a person who by reason of aging, illness, disease, or physical or mental infirmity receives or requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

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

(23) "Skilled nursing facility", any premises, other than a residential care facility, an assisted living facility, or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four-hour

accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four-hours-a-day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill;

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

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

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

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

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

(L. 1979 S.B. 328, et al. § 3, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 2003 S.B. 534 merged with S.B. 556 & 311, A.L. 2006 S.B. 616, A.L. 2022 H.B. 2331 merged with S.B. 710)

*Reprinted due to statutory reference to section 660.050 changed to section 192.2000 to comply with section 3.060 .

Department to administer--promulgation of rules, procedure--cooperation of other agencies.

198.009. 1. The provisions of sections 198.003 to 198.186 shall be administered by the department. The department shall have authority to promulgate rules and regulations for the purposes of administering sections 198.003 to 198.186 . All such rules and regulations shall be promulgated in accordance with this section and chapter 536. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024 .

2. All agencies of the state or any of its political subdivisions shall assist and cooperate with the department whenever necessary to carry out the department's responsibility under sections 198.003 to 198.186 .

(L. 1979 S.B. 328, et al. § 4, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

Provisions of sections 198.003 to 198.136 not to apply, when--exempt entities may be licensed.

198.012. 1. The provisions of sections 198.003 to 198.136 shall not apply to any of the following entities:

(1) Any hospital, facility or other entity operated by the state or the United States;

(2) Any facility or other entity otherwise licensed by the state and operating exclusively under such license and within the limits of such license, unless the activities and services are or are held out as being activities or services normally provided by a licensed facility under sections 198.003 to 198.186 , 198.200 , 208.030 , and 208.159 , except hospitals licensed under the provisions of chapter 197;

(3) Any hospital licensed under the provisions of chapter 197, provided that the assisted living facility, intermediate care facility or skilled nursing facility are physically attached to the acute care hospital; and provided further that the department of health and senior services in promulgating rules, regulations and standards pursuant to section 197.080 , with respect to such facilities, shall establish requirements and standards for such hospitals consistent with the intent of this chapter, and sections 198.067 , 198.070 , 198.090 , 198.093 and 198.139 to 198.180 shall apply to every assisted living facility, intermediate care facility or skilled nursing facility regardless of physical proximity to any other health care facility;

(4) Any facility licensed pursuant to sections 630.705 to 630.760 which provides care, treatment, habilitation and rehabilitation exclusively to persons who have a primary diagnosis of mental disorder, mental illness, or developmental disabilities, as defined in section 630.005 ;

(5) Any provider of care under a life care contract, except to any portion of the provider's premises on which the provider offers services provided by an intermediate care facility or skilled nursing facility as defined in section 198.006 . For the purposes of this section, "provider of care under a life care contract" means any person contracting with any individual to furnish specified care and treatment to the individual for the life of the individual, with significant prepayment for such care and treatment.

2. Nothing in this section shall prohibit any of these entities from applying for a license under sections 198.003 to 198.136.

(L. 1979 S.B. 328, et al. § 5, A.L. 1980 H.B. 1724, A.L. 1982 S.B. 698, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1989 H.B. 210, A.L. 2011 H.B. 555 merged with H.B. 648)

CROSS REFERENCE:

Missouri veterans homes, nursing home license not required, 42.130

License, when required--duration--content--effect of change of ownership--temporary permits--penalty for violation.

198.015. 1. No person shall establish, conduct or maintain a residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility in this state without a valid license issued by the department. Any person violating this subsection is guilty of a class A misdemeanor. Any person violating this subsection wherein abuse or neglect of a resident of the facility has occurred is guilty of a class E felony. The department of health and senior services shall investigate any complaint concerning operating unlicensed facilities. For complaints alleging abuse or neglect, the department shall initiate an investigation within twenty-four hours. All other complaints regarding unlicensed facilities shall be investigated within forty-five days.

2. If the department determines the unlicensed facility is in violation of sections 198.006 to 198.186, the department shall immediately notify the local prosecuting attorney or attorney general's office.

3. Each license shall be issued only for the premises and persons named in the application. A license, unless sooner revoked, shall be issued for a period of up to two years, in order to coordinate licensure with certification in accordance with section 198.045.

4. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, the current operator shall notify the department of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

(1) With respect to a partnership, a change in the majority interest of general partners;

(2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;

(3) With respect to a corporation, a change in the persons who own, hold or have the power to vote the majority of any class of securities issued by the corporation.

5. Licenses shall be posted in a conspicuous place on the licensed premises.

6. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.

7. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.

8. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.

9. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

(L. 1979 S.B. 328, et al. § 6, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 1999 S.B. 326, A.L. 2003 S.B. 556 & 311, A.L. 2014 S.B. 491)

Effective 1-01-17

CROSS REFERENCES:

License for administrator of assisted living facilities required, limitations, 344.020

Skilled nursing care facilities, a license for assisted living facilities insufficient, 344.020

Information on home- and community-based services to be provided prior to admission.

198.016. Prior to admission of a MO HealthNet individual into a long-term care facility, the prospective resident or his or her next of kin, legally authorized representative, or designee shall be informed of the home- and community-based services available in this state and shall have on record that such home- and community-based services have been declined as an option.

(L. 2010 S.B. 1007)

Applications for license, how made--fees--affidavit--documents required to be filed--nursing facility quality of care fund created--facilities may not be licensed by political subdivisions, but they may inspect.

198.018. 1. Applications for a license shall be made to the department by the operator upon such forms and including such information and documents as the department may reasonably require by rule or regulation for the purposes of administering sections 198.003 to 198.186 , section 198.200 , and sections 208.030 and 208.159 .

2. The applicant shall submit all documents required by the department under this section attesting by signature that the statements contained in the application are true and correct to the best of the applicant's knowledge and belief, and that all required documents are either included with the application or are currently on file with the department.

3. The application shall be accompanied by a license fee in an amount established by the department. The fee established by

the department shall not exceed six hundred dollars, and shall be a graduated fee based on the licensed capacity of the applicant and the duration of the license. A fee of not more than fifty dollars shall be charged for any amendments to a license initiated by an applicant. In addition, facilities certified to participate in the Medicaid or Medicare programs shall pay a certification fee of up to one thousand dollars annually, payable on or before October first of each year. The amount remitted for the license fee, fee for amendments to a license, or certification fee shall be deposited in the state treasury to the credit of the "Nursing Facility Quality of Care Fund", which is hereby created. All investment earnings of the nursing facility quality of care fund shall be credited to such fund. All moneys in the nursing facility quality of care fund shall, upon appropriation, be used by the department of health and senior services for conducting inspections and surveys, and providing training and technical assistance to facilities licensed under the provisions of this chapter. The unexpended balance in the nursing facility quality of care fund at the end of the biennium is exempt from the provisions of sections 33.080 . The unexpended balance in the nursing facility quality of care fund shall not revert to the general revenue fund, but shall accumulate in the nursing facility quality of care fund from year to year.

4. Within ten working days of the effective date of any document that replaces, succeeds, or amends any of the documents required by the department to be filed pursuant to this section, an operator shall file with the department a copy of such document. The operator shall attest by signature that the document is true and correct. If the operator knowingly fails to file a required document or provide any information amending any document within the time provided for in this section, a circuit court may, upon application of the department or the attorney general, assess a penalty of up to fifty dollars per document for each day past the required date of filing.

5. If an operator fails to file documents or amendments to documents as required pursuant to this section and such failure is part of a pattern or practice of concealment, such failure shall be sufficient grounds for revocation of a license or disapproval of an application for a license.

6. Any facility defined in subdivision (6), (14), (22), or (23) of section 198.006 that is licensed by the state of Missouri pursuant to the provisions of section 198.015 may not be licensed, certified or registered by any other political subdivision of the state of Missouri whether or not it has taxing power, provided, however, that nothing in this subsection shall prohibit a county or city, otherwise empowered under law, to inspect such facility for compliance with local ordinances of food service or fire safety.

(L. 1979 S.B. 328, et al. § 7, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 2007 S.B. 397, A.L. 2014 H.B. 1299 Revision)

Licensure applications, department duties — department may copy records at its expense — removal of records prohibited — inspection, when — court order to inspect — out-of-state applicants, compliance history may be requested.

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

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

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

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

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

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

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

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

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

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. Copies of any records requested by the department shall be prepared by the staff of such facility within two business days or as determined by the department. The department shall not remove or disassemble any medical record during any inspection of the facility, but may observe the photocopying or may make its own copies if the facility does not have the technology to make the copies. In accordance with the provisions of section 198.525, the department shall make at least one inspection per year,

which shall be unannounced to the operator. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.

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

5. Whenever the department is inspecting a facility in response to an application from an operator located outside of Missouri not previously licensed by the department, the department may request from the applicant the past five years compliance history of all facilities owned by the applicant located outside of this state.

(L. 1979 S.B. 328, et al. § 8, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 2003 S.B. 556 & 311, A.L. 2022 H.B. 2331 merged with S.B. 710)

Noncompliance, how determined--procedure to correct--notice--reinspection--probationary license.

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

2. The operator or administrator shall have five working days following receipt of a written report and correction order regarding a violation of a class I standard and ten working days following receipt of the report and correction order regarding violations of class II or class III standards to request any conference and to submit a plan of correction for the department's approval which contains specific dates for achieving compliance. Within five working days after receiving a plan of correction regarding a violation of a class I standard and within ten working days after receiving a plan of correction regarding a violation of a class II or III standard, the department shall give its written approval or rejection of the plan. If there was a violation of any class I standard, immediate corrective action shall be taken by the operator or administrator and a written plan of correction shall be submitted to the department. The department shall give its written approval or rejection of the plan and if the plan is acceptable, a reinspection shall be conducted within twenty calendar days of the exit interview to determine if deficiencies have been corrected. If there was a violation of any class II standard and the plan of correction is acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar days from the date of the exit conference to determine the status of all previously cited deficiencies. If there was a violation of class III standards sufficient to establish that the facility was not in substantial compliance, an unannounced reinspection shall be conducted within one hundred twenty days of the exit interview to determine the status of previously identified deficiencies.

3. If, following the reinspection, the facility is found not in substantial compliance with sections 198.003 to 198.096 and the standards established thereunder or the operator is not correcting the noncompliance in accordance with the approved plan of correction, the department shall issue a notice of noncompliance, which shall be sent by a delivery service that provides a dated receipt of delivery to the operator or administrator of the facility, according to the most recent information or documents on file with the department.

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

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

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

(L. 1979 S.B. 328, et al. § 9, A.L. 1984 S.B. 451, A.L. 1988 S.B. 602, A.L. 1994 H.B. 1335 & 1381, A.L. 2014 H.B. 1299 Revision, A.L. 2022 H.B. 2331 merged with S.B. 710)

On-site revisit not required, when.

198.027. If a facility submits satisfactory documentation that establishes correction of any deficiency contained within the written report of deficiency required by section 198.026 , an on-site revisit of such deficiency may not be required.

(L. 2003 S.B. 556 & 311)

Noncompliance--notice to operator and public, when--notice of noncompliance posted.

198.029. The provisions of section 198.026 notwithstanding, whenever a duly authorized representative of the department finds upon inspection of a licensed facility, and the director of the department finds upon review, that the facility or the operator is not in substantial compliance with a standard or standards the violations of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result and which is not immediately corrected, the department shall:

(1) Give immediate written notice of the noncompliance to the operator, administrator or person managing or supervising the conduct of the facility at the time the noncompliance is found;

(2) Make public the fact that a notice of noncompliance has been issued to the facility. Copies of the notice shall be sent to appropriate hospitals and social service agencies;

(3) Send a copy of the notice of noncompliance to the department of social services, the department of mental health, and any other concerned federal, state or local government agencies. The facility shall post in a conspicuous location in the facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

(L. 1979 S.B. 328, et al. § 10, A.L. 2014 H.B. 1299 Revision)

Posting of inspection reports at the facility.

198.030. Every residential care facility, assisted living facility, intermediate care facility, and skilled nursing facility shall post the most recent inspection report of the facility in a conspicuous place. If the operator determines that the inspection report of the facility contains individually identifiable health information, the operator may redact such information prior to posting the inspection report.

(L. 2003 S.B. 556 & 311)

*Editorial change required by § 198.005 .

Records, what confidential, what subject to disclosure--procedure--central registry to receive complaints of abuse and neglect, procedure--hotline caller log to be maintained.

198.032. 1. Nothing contained in sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

(1) The department or any person or agency designated by the department;

(2) The attorney general;

(3) The department of mental health for residents placed through that department;

(4) Any appropriate law enforcement agency;

(5) The resident, the resident's guardian, or any other person designated by the resident; and

(6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090 .

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with section 198.070 , and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record and maintain a hotline caller log for the reporting of suspected abuse and neglect in long-term care facilities. Any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording. The department shall in all cases attempt to obtain the name of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The department shall also attempt to obtain the address of any person making a report. The identity of the person making the report shall remain confidential.

(L. 1979 S.B. 328, et al. § 11, A.L. 1987 S.B. 277, A.L. 2003 S.B. 556 & 311)

Revocation of license--grounds--notice required.

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

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

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

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

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

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

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

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

3. Upon revocation of a license, the director of the department shall so notify the operator in writing, setting forth the reason and grounds for the revocation. Notice of such revocation shall be sent by a delivery service that provides a dated receipt of delivery to the operator and administrator, or served personally upon the operator and administrator. The department shall provide the operator notice of such revocation at least ten days prior to its effective date.

(L. 1979 S.B. 328, et al. § 12, A.L. 2003 S.B. 556 & 311, A.L. 2022 H.B. 2331 merged with S.B. 710)

License refused or revoked--review by administrative hearing commission--judicial review.

198.039. 1. Any person aggrieved by an official action of the department either refusing to issue a license or revoking a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045 , et seq., except that the petition must be filed with the administrative hearing commission within fifteen days after the mailing or delivery of notice to the operator. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

2. The administrative hearing commission may stay the revocation of such license, pending the commission's findings and determination in the cause, upon such conditions as the commission deems necessary and appropriate including the posting of bond or other security except that the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, if upon application of the department the commission finds reason to believe that continued operation of a facility pending the commission's final determination would present an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. In any case in which the department has refused to issue a license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance or revocation of a license. Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the facility is located. Review shall be had, except as modified herein, in accordance with the provisions of sections 621.189 and 621.193 .

(L. 1979 S.B. 328, et al. § 13)

Medical supervision for residents relying on spiritual healing not required.

198.042. Nothing in sections 198.003 to 198.096 , or the rules and regulations adopted pursuant thereto, shall be construed as authorizing the medical supervision, regulation or control of the remedial care or treatment of those residents who rely solely upon treatment by prayer or spiritual means in accordance with creed or tenets of any well-recognized church or religious denomination. All remaining rules and regulations and minimum standards not in conflict with this section shall apply.

(L. 1979 S.B. 328, et al. § 14)

Participation in Medicare or Medicaid optional--survey for certification at same time as license inspection.

198.045. Participation in reimbursement programs under either Medicare or Medicaid, Title XVIII and Title XIX of the Social Security Act, (Title 42, United States Code, Sec. 1395x or 1396d), or other federal laws, shall be at the option of the individual facility. A skilled nursing facility or an intermediate

care facility which chooses to participate in such programs shall be surveyed for certification for reimbursement and inspected for state licensure at the same time.

(L. 1979 S.B. 328, et al. § 15)

Different classifications of facility may exist on same premises, when.

198.048. A skilled nursing, intermediate care, assisted living facility, or residential care facility may exist on the same premises under the following circumstances:

(1) The skilled nursing, intermediate care, assisted living facility or residential care facility is an identifiable unit thereof, such as an entire ward or contiguous wards, wing or floor of a building or a separate contiguous building and such identifiable unit is approved in writing by the department;

(2) The identifiable unit meets all the reasonable standards for such facility;

(3) Central services and facilities such as management services, nursing and other patient-care services, building maintenance and laundry which are shared with other units are determined to be sufficient to meet the reasonable standards for such a facility.

(L. 1979 S.B. 328, et al. § 16, A.L. 1984 S.B. 451)

*Reprinted due to editorial change required by § 198.005.

Records of facilities--when examined or audited--retention, how long--to accompany resident on transfer, when.

198.052. 1. The state auditor, at the request of the department or on his own initiative, may examine and audit any records relating to the operation of any facility.

2. The director of the department may examine and audit, or cause to be examined and audited, any records relating to the operation of any facility.

3. Each facility shall retain all financial information, data and records relating to the operation and reimbursement of the facility for a period of not less than seven years.

4. Notwithstanding anything to the contrary in sections 198.003 to 198.186 , 198.200 , 202.905, 208.030 , or 208.159 , the state auditor shall have the right to examine the records of any facility which he deems necessary in connection with any examination conducted pursuant to his statutory authority, and to disclose the results of any such examination including the identity of any facility examined, provided that the identity of any resident of any such facility shall not be divulged or made known by the state auditor.

5. All financial information, data and records of facilities under the provisions of sections 198.003 to 198.186 , 198.200 , 202.905, 208.030 , or 208.159 shall be open upon request for inspection, examination and audit by the director of the department, the state auditor, appropriate committees of the general assembly, and their designees, at all reasonable times.

6. Each facility shall retain medical records of each resident for five years after he leaves the facility. In the event the resident is less than twenty-one years of age, the records shall be retained for five years after the age of twenty-one years is reached. The time limitations of this subsection shall not apply when longer time limitations are specified in standards for facilities certified under Medicare or Medicaid, Title XVIII and Title XIX of the Social Security Act, (Title 42, United States Code, Sec. 1395x or 1396d).

7. In the event a new operator takes over a facility's operation, the original medical records of the residents of such facility shall be retained in the facility by the new operator.

8. In the event a resident is transferred from the facility, the resident shall be accompanied by a copy of his medical records.

(L. 1979 S.B. 328, et al. § 17)

Assisted living facilities, notification of posting of latest Vaccine Informational Sheet.

198.053. No later than October first of each year, in accordance with the latest recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, each assisted living facility, as such term is defined in section 198.006, shall notify residents and staff where in the facility that the latest edition of the Vaccine Informational Sheet published by the Centers for Disease Control and Prevention has been posted. Nothing in this section shall be construed to require any assisted living facility to provide or pay for any vaccination against influenza, allow the department of health to promulgate any rules to implement this section, or cite any facility for acting in good faith to post the Vaccine Informational Sheet.

(L. 2017 S.B. 501)

Influenza vaccination for employees, facilities to assist in obtaining.

198.054. Each year between October first and March first, all long-term care facilities licensed under this chapter shall assist their health care workers, volunteers, and other employees who have direct contact with residents in obtaining the vaccination for the influenza virus by either offering the vaccination in the facility or providing information as to how they may independently obtain the vaccination, unless contraindicated, in accordance with the latest recommendations of the Centers for Disease Control and Prevention and subject to availability of the vaccine. Facilities are encouraged to document that each health care worker, volunteer, and employee has been offered assistance in receiving a vaccination against the influenza virus and has either accepted or declined.

(L. 2016 S.B. 608)

*Effective 10-14-16, see § 21.250. S.B. 608 was vetoed July 5, 2016. The veto was overridden on September 14, 2016.

Inspection by department valid for certain mental health patients, when.

198.055. A facility may provide accommodations, board, health care or treatment, or personal services for residents placed through the department of mental health. Inspections made pursuant to provisions of sections 198.003 to 198.096 shall also serve as the inspections required under the provisions of chapter 630 except for inspections and visits to determine appropriateness of resident placement, to develop and review treatment plans, and to monitor the conditions and status of residents.

(L. 1979 S.B. 328, et al. § 18, A.L. 1984 S.B. 451)

Certain facilities exempt from construction standards, when.

198.058. Any facility licensed under chapter 197 or chapter 198, which is in operation before September 28, 1979, or whose application is on file, or whose construction plans have been approved by the department before September 28, 1979, shall be exempt from construction standards developed by the department subsequent to the date such facility became first licensed and including those construction standards developed after September 28, 1979, for buildings or other physical units which were in existence or under construction on September 28, 1979. Such facilities shall be licensed in accordance with all other standards and regulations promulgated under sections 198.003 to 198.096 .

(L. 1979 S.B. 328, et al. § 19, A.L. 2010 H.B. 1965)

Penalty for providing services without license--penalty for interfering with enforcement of law.

198.061. 1. No person shall, jointly or severally, offer, advertise or hold out to the public, services subject to section 198.015 without a currently valid appropriate license issued by the department to render the particular services.

2. No person, jointly or severally, shall interfere with or prevent any duly authorized representative of the department or the attorney general from lawful enforcement of sections 198.003 to 198.186 , 198.200, 202.905, 208.030 , or 208.159 .

3. Any person violating any provision of this section shall be guilty of a class C misdemeanor.

(L. 1979 S.B. 328, et al. § 20)

Duplicate payments--how determined--procedures for repayment.

198.064. 1. No operator shall retain any duplicate payment for the care of a resident received from any state agency or agencies. For the purposes of this section a duplicate payment is one which results in a total payment to the operator in excess of the per diem or monthly rate authorized by the agency or agencies. The operator shall report all such duplicate payments to the paying agency or agencies within five business days after such duplicate payment is discovered or reasonably should have been discovered.

2. The operator shall repay the excess amount in accordance with such procedures as the paying agency or agencies shall reasonably require, together with interest at the rate of one and five-tenths percent per month from the date the duplicate payment was discovered or reasonably should have been discovered.

(L. 1979 S.B. 328, et al. § 21)

Sanctions for violations authorized.

198.066. To encourage compliance with the provisions of this chapter and any rules promulgated thereto, the department of health and senior services shall impose sanctions commensurate with the seriousness of the violation which occurred. For class I, II, or III violations, the following remedies may be imposed:

(1) A plan of correction;

(2) Additional directed staff training;

(3) State monitoring;

(4) A directed plan of correction;

(5) Denial of payment for new Medicaid admissions;

(6) A probationary license and consent agreement as described in section 198.026 ;

(7) Recovery of civil monetary penalties pursuant to section 198.067 ;

(8) Denial of payment for all new admissions;

(9) Receivership pursuant to section 198.105 ; or

(10) License revocation.

(L. 2003 S.B. 556 & 311)

Noncompliance with law--injunction, when--civil penalties, how calculated, where deposited.

198.067. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096 , to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no less than fifteen days after the filing of the action.

2. The department may bring an action in circuit court to recover a civil penalty against the licensed operator of the

facility as provided by this section. Such action shall be brought in the circuit court for the county in which the facility is located. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of Section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is liable to the state for civil penalties of up to twenty-five thousand dollars for each day that the violations existed or continue to exist. Violations shall be presumed to continue to exist from the time they are found until the time the department of health and senior services finds them to have been corrected. When applicable, the amount of the penalty shall be determined as follows:

(1) For each violation of a class I standard when applicable pursuant to subdivision (6) of this subsection, not less than one thousand dollars nor more than ten thousand dollars;

(2) For each violation of a class II standard, not less than two hundred fifty dollars nor more than one thousand dollars;

(3) For each violation of a class III standard, not less than fifty dollars nor more than two hundred fifty dollars;

(4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;

(5) For each specific class I violation by the same operator at a particular facility which has been previously cited within the past twenty-four months and for each specific class II or III violation by the same operator at a particular facility which has been previously cited within the past twelve months, double the amount last imposed;

(6) In accordance with the provisions of this section, if the department imposes a civil monetary penalty for a class I violation, the liability for such penalty shall be incurred immediately upon the imposition of the penalty for the violation regardless of any subsequent correction of the violation by the facility. For class II or III violations, if the department imposes a civil monetary penalty, the liability for such penalty shall be incurred if a breach of a specific state or federal standard or statute remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code. A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040 .

4. Any individual who willfully and knowingly certifies pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment. Any individual who willfully and knowingly causes another individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.

5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.

6. Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the elderly home-delivered meals trust fund as established in section 143.1002 . Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the nursing facility quality of care fund established in section 198.418 to be used for the sole purpose of supporting quality care improvement projects within the office of state ombudsman for long-term care facility residents, established pursuant to section 192.2305 *. The remaining fifty percent of the penalties collected pursuant to this section shall be deposited into the nursing facility quality of care fund to be used by the department for the sole purpose of developing a program to assist qualified nursing facilities to improve the quality of service to their residents. The director of the department shall, by rule, develop a definition of qualified facilities and shall establish procedures for the selection of qualified facilities. Any rule or portion of a rule, as that term is defined in section 536.010 , that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028 . This section and chapter 536 are nonseverable and if any** of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void. Such penalties shall not be considered a charitable contribution for tax purposes.

7. To recover any civil penalty, the moving party shall prove by clear and convincing evidence that the violation occurred.

8. The licensed operator of a facility against whom an action to recover a civil penalty is brought pursuant to this section may confess judgment as provided in section 511.070 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

9. The amount of any civil penalty assessed by the circuit court pursuant to this section shall be reduced by the amount of any civil monetary penalty which the licensed operator of the facility may establish it has paid pursuant to the laws of

the United States for the breach of the same federal standards for which the state action is brought.

10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this section, any facility which is cited with a violation of a class I standard pursuant to subsection 1 of section 198.085 , when such violation results in serious physical injury or abuse of a sexual nature pursuant to subdivision (1) of section 198.006 , to any resident of that facility shall be liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section, "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

11. The department shall not impose a fine for self-reporting class II and class III violations so long as each violation is corrected within a specified period of time as determined by the department and there is no reoccurrence of the particular violation for twelve months following the date of the first self-reporting.

12. If a facility is sold or changes its operator, any civil penalty assessed shall not be sold, transferred, or otherwise assigned to the successor operator but shall remain the sole liability of the operator at the time of the violation.

(L. 1979 S.B. 328, et al. § 22, A.L. 1989 S.B. 203 & 270, A.L. 1996 H.B. 781, A.L. 1999 H.B. 316, et al. merged with S.B. 326, A.L. 2003 S.B. 556 & 311)

*Reprinted due to statutory reference to section 660.603 changed to section 192.2305 to comply with section 3.060 .

**Word "an" appears in original rolls.

Resident returned to facility from a medical facility, physician orders, duty of facility.

198.069. For any resident of an assisted living facility who is released from a hospital or skilled nursing facility and returns to an assisted living facility as a resident, such resident's assisted living facility shall immediately, upon return, implement physician orders in the hospital or discharge summary, and within twenty-four hours of the patient's return to the facility, review and document such review of any physician orders related to the resident's hospital discharge care plan or the skilled nursing facility discharge care plan and modify the individual service plan for the resident accordingly. The department of health and senior services may adjust personal care units authorized as described in subsection 14 of section 208.152 upon the effective date of the physicians orders to reflect the services required by such orders.

(L. 2007 S.B. 577)

Abuse or neglect of residents--reports, when, by whom--contents of report--failure to report, penalty--investigation, referral of complaint, removal of resident--confidentiality of report--immunity, exception--prohibition against retaliation--penalty--employee list--self-reporting of incidents, investigations, when.

198.070. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with the care of a person sixty years of age or older or an eligible adult, as defined in section 192.2400, has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

2. (1) The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

(2) In the event of suspected sexual assault of the resident, in addition to the report to be made to the department, a report shall be made to the appropriate local law enforcement agency in accordance with federal law under the provisions of 42 U.S.C. Section 1320b-25.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to the penalties imposed by this section, any administrator who knowingly conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in section 556.061 , is guilty of a class E felony.

5. In addition to those persons required to report pursuant to subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or neglected may report such information to the department.

6. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and, as soon as possible

during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated unless such person is the alleged perpetrator of the abuse or neglect. As provided in section 192.2425 , substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.

7. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

8. Reports shall be confidential, as provided pursuant to section 192.2500.

9. Anyone, except any person who has abused or neglected a resident in a facility, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith or with malicious purpose. It is a crime under section 565.189 for any person to knowingly file a false report of elder abuse or neglect.

10. Within five working days after a report required to be made pursuant to this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

12. Any person who abuses or neglects a resident of a facility is subject to criminal prosecution under section 565.184 .

13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed in any facility and who have been finally determined by the department pursuant to section 192.2490 to have knowingly or recklessly abused or neglected a resident. For purposes of this section only, "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

14. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot-line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

(L. 1979 S.B. 328, et al. § 23, A.L. 1984 S.B. 451, A.L. 1987 S.B. 277, A.L. 1988 S.B. 602, A.L. 1990 H.B. 1370, et al., A.L. 1992 S.B. 573 & 634, A.L. 1994 H.B. 1335 & 1381, A.L. 1999 H.B. 316, et al. merged with S.B. 326, A.L. 2003 S.B. 556 & 311, A.L. 2014 S.B. 491, A.L. 2018 H.B. 1635)

Effective 8-28-18

Death of a resident, persons to contact prior to transfer of deceased.

198.071. The staff of a residential care facility, an assisted living facility, an intermediate care facility, or a skilled nursing facility shall attempt to contact the resident's immediate family or a resident's responsible party, and shall contact the attending physician and notify the local coroner or medical examiner immediately upon the death of any resident of the facility prior to transferring the deceased resident to a funeral home.

(L. 2003 S.B. 556 & 311)

*Editorial change required by § 198.005 .

Persons eligible for care in residential care facility or assisted living facility--assisted living facility licenses granted, requirements--facility admission, requirements, disclosures--rulemaking authority.

198.073. 1. A residential care facility shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.

2. Notwithstanding the provisions of subsection 1 of this section, those persons previously qualified for residence who

may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a residential care facility or assisted living facility if approved by a physician.

3. Any facility licensed as a residential care facility II on August 27, 2006, shall be granted a license as an assisted living facility, as defined in section 198.006 , on August 28, 2006, regardless of the laws, rules, and regulations for licensure as an assisted living facility as long as such facility continues to meet all laws, rules, and regulations that were in place on August 27, 2006, for a residential care facility II. At such time that the average total reimbursement, not including residents' cost-of-living increases in their benefits from the Social Security Administration after August 28, 2006, for the care of persons eligible for Medicaid in an assisted living facility is equal to or exceeds forty-one dollars per day, all facilities with a license as an assisted living facility shall meet all laws, rules, and regulations for licensure as an assisted living facility. Nothing in this section shall be construed to allow any facility that has not met the requirements of subsections 4 and 6 of this section to care for any individual with a physical, cognitive, or other impairment that prevents the individual from safely evacuating the facility.

4. Any facility licensed as an assisted living facility, as defined in section 198.006 , except for facilities licensed under subsection 3 of this section, may admit or retain an individual for residency in an assisted living facility only if the individual does not require hospitalization or skilled nursing placement, and only if the facility:

(1) Provides for or coordinates oversight and services to meet the needs of the resident as documented in a written contract signed by the resident, or legal representative of the resident;

(2) Has twenty-four-hour staff appropriate in numbers and with appropriate skills to provide such services;

(3) Has a written plan for the protection of all residents in the event of a disaster, including keeping residents in place, evacuating residents to areas of refuge, evacuating residents from the building if necessary, or other methods of protection based on the disaster and the individual building design;

(4) Completes a pre-move-in screening with participation of the prospective resident;

(5) Completes for each resident a community-based assessment, as defined in subdivision (7) of section 198.006 :

(a) Upon admission;

(b) At least semiannually; and

(c) Whenever a significant change has occurred in the resident's condition which may require a change in services;

(6) Based on the assessment in subsection 7 of this section and subdivision (5) of this subsection, develops an individualized service plan in partnership with the resident, or legal representative of the resident, that outlines the needs and preferences of the resident. The individualized service plan will be reviewed with the resident, or legal representative of the resident, at least annually, or when there is a significant change in the resident's condition which may require a change in services. The signatures of an authorized representative of the facility and the resident, or the resident's legal representative, shall be contained on the individualized service plan to acknowledge that the service plan has been reviewed and understood by the resident or legal representative;

(7) Makes available and implements self-care, productive and leisure activity programs which maximize and encourage the resident's optimal functional ability;

(8) Ensures that the residence does not accept or retain a resident who:

(a) Has exhibited behaviors that present a reasonable likelihood of serious harm to himself or herself or others;

(b) Requires physical restraint;

(c) Requires chemical restraint. As used in this paragraph, the following terms mean:

a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms;

b. "Convenience", any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interest;

c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing residents;

(d) Requires skilled nursing services as defined in subdivision (23) of section 198.006 for which the facility is not licensed or able to provide;

(e) Requires more than one person to simultaneously physically assist the resident with any activity of daily living, with the exception of bathing and transferring;

(f) Is bed-bound or similarly immobilized due to a debilitating or chronic condition; and

(9) Develops and implements a plan to protect the rights, privacy, and safety of all residents and to protect against the financial exploitation of all residents;

(10) Complies with the training requirements of subsection 7 of section 192.2000 *.

5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of this section shall be made for residents on hospice, provided the resident, designated representative, or both, and the assisted living provider, physician, and licensed hospice provider all agree that such program of care is appropriate for the resident.

6. If an assisted living facility accepts or retains any individual with a physical, cognitive, or other impairment that prevents the individual from safely evacuating the facility with minimal assistance, the facility shall:

(1) Have sufficient staff present and awake twenty-four hours a day to assist in the evacuation;

(2) Include an individualized evacuation plan in the service plan of the resident; and

(3) Take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds; and

(4) Use a personal electronic monitoring device for any resident whose physician recommends the use of such device.

7. An individual admitted or readmitted to the facility shall have an admission physical examination by a licensed physician. Documentation should be obtained prior to admission but shall be on file not later than ten days after admission and shall contain information regarding the individual's current medical status and any special orders or procedures that should be followed. If the individual is admitted directly from a hospital or another long-term care facility and is accompanied on admission by a report that reflects his or her current medical status, an admission physical shall not be required.

8. Facilities licensed as an assisted living facility shall disclose to a prospective resident, or legal representative of the resident, information regarding the services the facility is able to provide or coordinate, the costs of such services to the resident, and the resident conditions that will require discharge or transfer, including the provisions of subdivision (8) of subsection 4 of this section.

9. After January 1, 2008, no entity shall hold itself out as an assisted living facility or advertise itself as an assisted living facility without obtaining a license from the department to operate as an assisted living facility. Any residential care facility II licensed under this chapter that does not use the term assisted living in the name of its licensed facility on or before May 1, 2006, shall be prohibited from using such term after August 28, 2006, unless such facility meets the requirements for an assisted living facility in subsection 4 of this section. Any facility licensed as an intermediate care facility prior to August 28, 2006, that provides the services of an assisted living facility, as described in paragraphs (a), (b), and (c) of subdivision (6) of section 198.006 , utilizing the social model of care, may advertise itself as an assisted living facility without obtaining a license from the department to operate as an assisted living facility.

10. The department of health and senior services shall promulgate rules to ensure compliance with this section. Any rule or portion of a rule, as that term is defined in section 536.010 , that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028 . This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

(L. 1979 S.B. 328, et al. § 24, A.L. 1984 S.B. 451, A.L. 1992 H.B. 899 merged with S.B. 573 & 634 merged with S.B. 721, A.L. 1999 S.B. 326, A.L. 2006 S.B. 616, A.L. 2007 H.B. 952 & 674)

*Reprinted due to statutory reference to subsection 8 of section 660.050 changed to subsection 7 of section 192.2000 to comply with section 3.060 .

Sprinkler system requirements--fire alarm system requirements.

198.074. 1. Effective August 28, 2007, all new facilities licensed under this chapter on or after August 28, 2007, or any section of a facility licensed under this chapter in which a major renovation has been completed on or after August 28, 2007, as defined and approved by the department, shall install and maintain an approved sprinkler system in accordance with National Fire Protection Association (NFPA) 13.

2. Facilities that were initially licensed and had an approved sprinkler system prior to August 28, 2007, shall continue to meet all laws, rules, and regulations for testing, inspection and maintenance of the sprinkler system that were in effect for such facilities on August 27, 2007.

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

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

5. All skilled nursing and intermediate care facilities not required prior to August 28, 2007, to install and maintain an approved sprinkler system shall install and maintain an approved sprinkler system in accordance with NFPA 13 by December 31, 2012, unless the facility receives an exemption from the department and presents evidence in writing from a certified sprinkler system representative or licensed engineer that the facility is unable to install an approved National Fire

Protection Association 13 system due to the unavailability of water supply requirements associated with this system.

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

(1) Ten years for those facilities approved for the loan and whose average total reimbursement rate for the care of persons eligible for Medicaid public assistance is equal to forty-eight and no more than forty-nine dollars per day;

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

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

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

7. (1) All facilities licensed under this chapter shall be equipped with a complete fire alarm system in compliance with NFPA 101, Life Safety Code for Detection, Alarm, and Communication Systems, or shall maintain a system that was approved by the department when such facility was constructed so long as such system is a complete fire alarm system. A complete fire alarm system shall include, but not be limited to, interconnected smoke detectors, automatic transmission to the fire department, dispatching agency, or central monitoring company, manual pull stations at each required exit and attendant's station, heat detectors, and audible and visual alarm indicators. If a facility submits a plan of compliance for installation of a sprinkler system required by this chapter, such facility shall install a complete fire alarm system that complies with NFPA 72 upon installation of the sprinkler system. Until such time that the sprinkler system is installed in the facility which has submitted a plan of compliance, each resident room or any room designated for sleeping in the facility shall be equipped with at least one battery-powered smoke alarm installed, tested, and maintained in accordance with NFPA 72. In addition, any such facility shall be equipped with heat detectors interconnected to the fire alarm system which are installed, tested, and maintained in accordance with NFPA 72 in all areas subject to nuisance alarms, including but not limited to kitchens, laundries, bathrooms, mechanical air handling rooms, and attic spaces.

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

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

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

9. Fire safety inspections of skilled nursing and intermediate care facilities licensed under this chapter for compliance with this section shall be conducted annually by the department. All department inspectors who inspect facilities for compliance under this section shall complete a fire inspector course, as developed by the division of fire safety within the department of public safety, by December 31, 2012. Fire safety inspections of residential care and assisted living facilities licensed under this chapter for compliance with this section shall be conducted annually by the state fire marshal. The provisions of this section shall be enforced by the department or the state fire marshal, depending on which entity conducted the inspection.

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

(L. 2007 H.B. 952 & 674, A.L. 2009 H.B. 395)

Fire safety standards loan fund created, use of moneys.

198.075. 1. There is hereby created in the state treasury the "Fire Safety Standards Loan Fund", for implementing the provisions of subsections 4 and 5 of section 198.074 . Moneys deposited in the fund shall be considered state funds under article IV, section 15 of the Missouri Constitution. The state

treasurer shall be custodian of the fund and may disburse moneys from the fund in accordance with sections 30.170 and 30.180 . Any moneys remaining in the fund at the end of the biennium shall revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

2. Qualifying facilities shall make an application to the state treasurer's office upon forms provided by the state treasurer's office. Upon receipt of an application for a loan, the state treasurer's office shall review the application before state funds are allocated for a loan. For purposes of this section, a "qualifying facility" shall mean a facility licensed under this chapter that is in substantial compliance. "Substantial compliance" shall mean a facility that has no uncorrected deficiencies and is in compliance with department of health and senior services rules and regulations governing such facility.

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

4. The fund shall be administered by the state treasurer's office.

(L. 2007 H.B. 952 & 674, A.L. 2009 H.B. 395)

Department of social services to establish standards and regulations for residential care facilities and assisted living facilities.

198.076. The department shall promulgate reasonable standards and regulations for all residential care facilities and all assisted living facilities. The standards and regulations shall take into account the level of care provided and the number and type of residents served by the facility to insure maximum flexibility. These standards and regulations shall relate to:

(1) The number and qualifications of employed and contract personnel having responsibility for any of the services provided for residents;

(2) The equipment, facilities, services and supplies essential to the health and welfare of the residents;

(3) Fire safety, including resident smoking in designated areas only, unannounced fire drills, fire safety training, and notification to the department of fires and fire watches;

(4) Sanitation in the facility;

(5) Diet, which shall be based on good nutritional practice;

(6) Personal funds and property of residents;

(7) Resident rights and resident grievance procedures appropriate to the levels of care, size and type of facility;

(8) Record keeping appropriate to the levels of care, size and type of facility;

(9) Construction of the facility;

(10) Care of residents.

(L. 1979 S.B. 328, et al. § 25, A.L. 1984 S.B. 451, A.L. 2007 H.B. 952& 674)

Department to maintain facility compliance records.

198.077. For any residential care facility, assisted living facility, intermediate care facility or skilled nursing facility, if the department of health and senior services maintains records of site inspections and violations of statutes, rules, or the terms or conditions of any license issued to such facility, the department shall also maintain records of compliance with such statutes, rules, or terms or conditions of any license, and shall specifically record in such records any actions taken by the facility that are above and beyond what is minimally required for compliance.

(L. 1999 H.B. 316, et al. § 4 merged with S.B. 326 § 15, A.L. 2014 H.B. 1299 Revision)

Department to establish standards and regulations for intermediate care and skilled nursing facilities.

198.079. The department shall promulgate reasonable standards and regulations for all intermediate care facilities and all skilled nursing facilities. The standards and regulations shall take into account the level of care provided and the type of residents served by the facility. These standards and regulations shall relate to:

(1) The number and qualifications of employed and contract personnel having responsibility for any of the services provided for residents;

(2) The equipment, facilities, services and supplies essential to the health and welfare of the residents;

(3) Fire safety, including resident smoking in designated areas only, unannounced fire drills, fire safety training, and notification to the department of fires and fire watches;

(4) Sanitation in the facility;

(5) Diet, which shall be related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident;

(6) Personal funds and property of residents;

(7) Resident rights and resident grievance procedures;

(8) Record keeping, including clinical and personnel records;

(9) The construction of the facility, including plumbing, heating, ventilation and other housing conditions which shall insure the health, safety and comfort of residents and protection from fire hazards;

(10) Care of residents;

(11) Social and rehabilitative service;

(12) Staff training and continuing education.

(L. 1979 S.B. 328, et al. § 26, A.L. 2007 H.B. 952 & 674)

Assessment procedures developed--rulemaking authority.

198.080. The department of health and senior services shall develop flexible assessment procedures for individuals in long-term care and those considering long-term care services which follow the individual through the continuum of care, including periodic reassessment. By January 1, 2002, the department of health and senior services shall promulgate rules and regulations to implement the new assessment system and shall make a report to the appropriate house and senate committees of the general assembly regarding the new assessment system. Any rule or portion of a rule, as that term is defined in section 536.010 , that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028 . This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

(L. 1999 S.B. 326 § 3, A.L. 2014 H.B. 1299 Revision)

CROSS REFERENCE:

Rulemaking authority, 198.534

Nursing assistant training programs, requirements--training incomplete, special requirements and supervision for assistant beginning duties—competency evaluation—additional training.

198.082. 1. Each certified nursing assistant hired to work in a skilled nursing or intermediate care facility after January 1, 1980, shall have successfully completed a nursing assistant training program approved by the department or shall enroll in and begin the first available approved training program which is scheduled to commence within ninety days of the date of the certified nursing assistant's employment and which shall be completed within four months of employment. Training programs shall be offered at any facility licensed by the department of health and senior services; any skilled nursing or intermediate care unit in a Missouri veterans home, as defined in section 42.002; or any hospital, as defined in section 197.020. Training programs shall be reasonably accessible to the enrollees in each class. The program may be established by a skilled nursing or intermediate care facility, unit, or hospital; by a professional organization; or by the department, and training shall be given by the personnel of the facility, unit, or hospital; by a professional organization; by the department; by any community college; or by the vocational education department of any high school

2. As used in this section the term "certified nursing assistant" means an employee who has completed the training required under subsection 1 of this section, who has passed the certification exam, and who is assigned by a skilled nursing or intermediate care facility, unit, or hospital to provide or assist in the provision of direct resident health care services under the supervision of a nurse licensed under the nursing practice law, chapter 335.

3. This section shall not apply to any person otherwise regulated or licensed to perform health care services under the laws of this state. It shall not apply to volunteers or to members of religious or fraternal orders which operate and administer the facility, if such volunteers or members work without compensation.

4. The training program requirements shall be defined in regulation by the department and shall require at least seventy-five classroom hours of training and one hundred hours supervised and on-the-job training. On-the-job training sites shall include supervised practical training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse. The training shall be completed within four months of employment and may consist of normal employment as nurse assistants or hospital nursing support staff under the supervision of a licensed nurse.

5. Certified nursing assistants who have not successfully completed the nursing assistant training program prior to employment may begin duties as a certified nursing assistant and may provide direct resident care only if under the direct supervision of a licensed nurse prior to completion of the seventy-five classroom hours of the training program.

6. The competency evaluation shall be performed in a facility, as defined in 42 CFR Sec. 483.5, or laboratory setting comparable to the setting in which the individual shall function as a certified nursing assistant.

7. Persons completing the training requirements of unlicensed assistive personnel under 19 CSR 30-20.125 or its successor regulation, and who have completed the competency evaluation, shall be allowed to sit for the certified nursing assistant examination and be deemed to have fulfilled the classroom and clinical standards for designation as a certified nursing assistant.

8. The department of health and senior services may offer additional training programs and certifications to students who are already certified as nursing assistants according to regulations promulgated by the department and curriculum approved by the board.

(L. 1979 S.B. 328, et al. § 27, A.L. 1988 S.B. 602, A.L. 2003 S.B. 556 & 311, A.L. 2019 S.B. 514)

Categories of standards for each type of licensed facility.

198.085. In establishing standards for each type of facility, the department shall classify the standards into three categories for each type of licensed facility as follows:

(1) Class I standards are standards the violation of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which have an indirect or a potential impact on the health, safety or welfare of any resident.

(L. 1979 S.B. 328, et al. § 28, A.L. 1984 S.B. 451, A.L. 1995 H.B. 574)

Uniformity of application of regulation standards, department's duties.

198.087. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of health and senior services shall:

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the Missouri on-site surveyor evaluation process, and the number and type of actions overturned by the informal dispute resolution process and formal appeal shall be used in the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

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

(4) Evaluate the implementation and compliance of the provisions of subdivision (3) of subsection 1 of section 198.012 in which rules, requirements, regulations and standards pursuant to section 197.080 for assisted living facilities, intermediate care facilities and skilled nursing facilities attached to an acute care hospital are consistent with the intent of this chapter; and

(5) Develop rules and regulations requiring the exchange of information, including regulatory violations, between the department and the department of social services to ensure the protection of individuals who are served by health care providers regulated by either * department.

(L. 1999 S.B. 326 § 11, A.L. 2006 S.B. 616, A.L. 2010 H.B. 1965, A.L. 2014 H.B. 1299 Revision)

*Word "the" appears here in original rolls.

Facilities to establish policies and procedures, scope, content--rights of residents--complaint--procedure.

198.088. 1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(c) Except in the case of an emergency, the resident, his next of kin, attending physician, and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources;

(3) Policies define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and describe the mechanism for monitoring and controlling their use;

(4) Policies define procedures for submittal of complaints and recommendations by residents and for assuring response and disposition;

(5) There are written policies governing access to, duplication of, and dissemination of information from the resident's records;

(6) Each resident admitted to the facility:

(a) Is fully informed of his rights and responsibilities as a resident. Prior to or at the time of admission, a list of resident rights shall be provided to each resident, or his designee, next of kin, or legal guardian. A list of resident rights shall be posted in a conspicuous location in the facility and copies shall be available to anyone upon request;

(b) Is fully informed in writing, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under the federal or state programs or not covered by the facility's basic per diem rate;

(c) Is fully informed by a physician of his health and medical condition unless medically contraindicated, as documented by a physician in his resident record, and is afforded the opportunity to participate in the planning of his total care and medical treatment and to refuse treatment, and participates in experimental research only upon his informed written consent;

(d) Is transferred or discharged only for medical reasons or for his welfare or that of other residents, or for nonpayment for his stay. No resident may be discharged without notice of his right to a hearing and an opportunity to be heard on the issue of whether his immediate discharge is necessary. Such notice shall be given in writing no less than thirty days in advance of the discharge except in the case of an emergency discharge. In emergency discharges a written notice of discharge and right to a hearing shall be given as soon as practicable and an expedited hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

(e) Is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) May manage his personal financial affairs, and, to the extent that the facility assists in such management, has his personal financial affairs managed in accordance with section 198.090 ;

(g) Is free from mental and physical abuse, and free from chemical and physical restraints except as follows:

a. When used as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being;

b. When authorized in writing by a physician for a specified period of time; and

c. When necessary in an emergency to protect the resident from injury to himself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician. When restraints are indicated, devices that are least restrictive, consistent with the resident's total treatment program, shall be used;

(h) Is ensured confidential treatment of all information contained in his records, including information contained in an automatic data bank, and his written consent shall be required for the release of information to persons not otherwise authorized under law to receive it;

(i) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

(j) Is not required to perform services for the facility;

(k) May communicate, associate and meet privately with persons of his choice, unless to do so would infringe upon the rights of other residents, and send and receive his personal mail unopened;

(l) May participate in activities of social, religious and community groups at his discretion, unless contraindicated for reasons documented by a physician in the resident's medical record;

(m) May retain and use his personal clothing and possessions as space permits;

(n) If married, is ensured privacy for visits by his or her spouse; if both are residents in the facility, they are permitted to share a room; and

(o) Is allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of his own choice;

(7) The resident or his designee, next of kin or legal guardian receives an itemized bill for all goods and services actually rendered;

(8) A written account, available to residents and their families, is maintained on a current basis for each resident with written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident.

2. Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision. Each resident shall be given a copy of a statement of his rights and responsibilities, including a copy of the facility's rules and regulations. Each facility shall prepare a written plan to ensure the respect of each resident's rights and privacy and shall provide appropriate staff training to implement the plan.

3. (1) Each facility shall establish written procedures approved by the department by which complaints and grievances of residents may be heard and considered. The procedures shall provide for referral to the department of any complaints or grievances not resolved by the facility's grievance procedure.

(2) Each facility shall designate one staff member, employed full time, referred to in this subsection as the "designee", to receive all grievances when they are first made.

(3) If anyone wishes to complain about treatment, conditions, or violations of rights, he shall write or cause to be written his grievance or shall state it orally to the designee no later than fourteen days after the occurrence giving rise to the grievance. When the department receives a complaint that does not contain allegations of abuse or neglect or allegations which would, if substantiated, constitute violation of a class I or class II standard as defined in section 198.085 , and the complainant indicates that the complaint was not filed with the facility prior to the reporting of it to the department, the department may in such instances refer the complaint to the staff person who is designated by the facility to receive all grievances when they are first made. In such instances the department shall assure appropriate response from the facility, assure resolution at a subsequent on-site visit and provide a report to the complainant. The designee shall confer with persons involved in the occurrence and with any other witnesses and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) The department shall establish and implement procedures for the making and transmission of complaints to the department by any person alleging violation of the provisions of sections 198.003 to 198.186 , 198.200 , 208.030 , and 208.159 and the standards established thereunder. The department shall promptly review each complaint. In the case of a refusal to investigate, the department shall promptly notify the complainant of its refusal and the reasons therefor; and in every other case, the department shall, following investigation, notify the complainant of its investigation and any proposed action.

4. Whenever the department finds upon investigation that there have been violations of the provisions of sections 198.003 to 198.186 , 198.200 , 208.030 , and 208.159 or the standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090 .

(L. 1979 S.B. 328, et al. § 29, A.L. 1988 S.B. 602, A.L. 1989 S.B. 203 & 270, A.L. 1994 H.B. 1335 & 1381)

Personal possessions may be held in trust, requirements, disposal of--written statements required when, penalty--prohibitions, penalties--misappropriation, report, investigation--employee disqualification list.

198.090. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's personal needs. In providing this service the operator shall:

(1) At the time of admission, provide each resident or such resident's next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;

(2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by such resident's designee, or guardian in the case of an adjudged incompetent;

(3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the department of health and senior services may be kept in a petty cash fund for the resident's personal needs;

(4) Keep a written account, available to a resident and such resident's designee or guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

(5) Provide each resident or such resident's designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;

(6) Within five days of the discharge of a resident, provide the resident, or such resident's designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of his or her funds and all his or her personal possessions;

(7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on such resident's behalf by the department of

social services, provide the department a complete account of all the resident's personal funds within sixty days from the date of death. The total amount paid to the decedent or expended upon such decedent's behalf by the department shall be a debt due the state and recovered from the available funds upon the department's claim on such funds. The department shall make a claim on the funds within sixty days from the date of the accounting of the funds by the facility. The nursing facility shall pay the claim made by the department of social services from the resident's personal funds within sixty days. Where the name and address are reasonably ascertainable, the department of social services shall give notice of the debt due the state to the person whom the recipient had designated to receive the quarterly accounting of all financial transactions made under this section, or the resident's guardian or conservator or the person or persons listed in nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds are available after the department's claim, the remaining provisions of this section shall apply to the balance, unless the funds belonged to a person other than the resident, in which case the funds shall be paid to that person;

(8) Upon the death of a resident who has not been a recipient of aid, assistance, care, services, or who has not had moneys expended on such resident's behalf by the department of social services or the department has not made a claim on the funds, provide the fiduciary of resident's estate, at the fiduciary's request, a complete account of all the resident's personal funds and possessions and deliver to the fiduciary all possessions of the resident and the balance of the resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such funds or possessions, the operator shall notify the department that the funds remain unclaimed. Such unclaimed funds or possessions shall be disposed of as follows:

(a) If the unclaimed funds or possessions have a value totaling one hundred and fifty dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund to be used for the benefit of all residents of the facility by providing the residents social or educational activities. The facility shall keep an accounting of the acquisitions and expenditure of these funds; or

(b) If the unclaimed funds or possessions have a value greater than one hundred and fifty dollars, the funds or possessions shall be immediately presumed to be abandoned property under sections 447.500 to 447.585 and the procedures provided for in those sections shall apply notwithstanding any other provisions of those sections which require a period greater than two years for a presumption of abandonment;

(9) Upon ceasing to be the operator of a facility, all funds and property held in trust pursuant to this section shall be transferred to the new operator in accordance with sound accounting principles, and a closeout report signed by both the outgoing operator and the successor operator shall be prepared. The closeout report shall include a list of current balances of all funds held for residents respectively and an inventory of all property held for residents respectively. If the outgoing operator refuses to sign the closeout report, such operator shall state in writing the specific reasons for his or her failure to so sign, and the successor operator shall complete the report and attach an affidavit stating that the information contained therein is true to the best of his or her knowledge and belief. Such report shall be retained with all other records and accounts required to be maintained under this section;

(10) Not be required to invest any funds received from or on behalf of a resident, nor to increase the principal of any such funds.

2. Any owner, operator, manager, employee, or affiliate of an owner or operator who receives any personal property or anything else of value from a resident, shall, if the thing received has a value of ten dollars or more, make a written statement giving the date it was received, from whom it was received, and its estimated value. Statements required to be made pursuant to this subsection shall be retained by the operator and shall be made available for inspection by the department, or by the department of mental health when the resident has been placed by that department, and by the resident, and such resident's designee or legal guardian. Any person who fails to make a statement required by this subsection is guilty of a class C misdemeanor.

3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in one calendar year receive any personal property or anything else of value from the residents of any facility which have a total estimated value in excess of one hundred dollars.

4. Subsections 2 and 3 of this section shall not apply if the property or other thing of value is held in trust in accordance with subsection 1 of this section, is received in payment for services rendered or pursuant to the terms of a lawful contract, or is received from a resident who is related to the recipient within the fourth degree of consanguinity or affinity.

5. Any operator who fails to maintain records or who fails to maintain any resident's personal funds in an account separate from the facility's funds as required by this section shall be guilty of a class C misdemeanor.

6. Any operator, or any affiliate or employee of an operator, who puts to his or her own use or the use of the facility or otherwise diverts from the resident's use any personal funds of the resident shall be guilty of a class A misdemeanor.

7. Any person having reasonable cause to believe that a misappropriation of a resident's funds or property has occurred may report such information to the department.

8. For each report the division shall attempt to obtain the name and address of the facility, the name of the facility employee, the name of the resident, information regarding the nature of

the misappropriation, the name of the complainant, and any other information which might be helpful in an investigation.

9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicates probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with his or her report to the department director or the director's designee for appropriate action.

11. Reports shall be confidential, as provided under section 192.2500 .

12. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he or she has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 192.2490 , to have misappropriated any property or funds of a resident while employed in any facility.

(L. 1979 S.B. 328, et al. § 30, A.L. 1982 H.B. 1086, A.L. 1989 S.B. 203 & 270, A.L. 1992 S.B. 573 & 634, A.L. 1993 H.B. 564, A.L. 2014 H.B. 1299 Revision)

Violations of resident's rights--complaints--legal action--damages.

198.093. 1. Any resident or former resident who is deprived of any right created by sections 198.088 and 198.090 , or the estate of a former resident so deprived, may file a written complaint within one hundred eighty days of the alleged deprivation or injury with the office of the attorney general describing the facts surrounding the alleged deprivation. A copy of the complaint shall be sent to the department by the attorney general.

2. The attorney general shall review each complaint and may initiate legal action as provided under sections 198.003 to 198.186 .

3. If the attorney general fails to initiate a legal action within sixty days of receipt of the complaint, the complainant may, within two hundred forty days of filing the complaint with the attorney general, bring a civil action in an appropriate court against any owner, operator or the agent of any owner or operator to recover actual damages. The court may, in its discretion, award punitive damages which shall be limited to the larger of five hundred dollars or five times the amount of special damages, unless the deprivation complained of is the result of an intentional act or omission causing physical or emotional injury to the resident, and may award to the prevailing party attorney's fees based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper; except that, an attorney who is paid in whole or part from public funds for his representation in any cause arising under this section shall not be awarded any attorney fees.

4. No owner or operator who pleads and proves as an affirmative defense that he exercised all care reasonably necessary to prevent the deprivation and injury for which liability is asserted shall be liable under this section.

5. Persons bringing suit to recover against a bond for personal funds pursuant to section 198.096 shall not be required to first file a complaint with the attorney general pursuant to subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to recover on such bond.

6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating, abridging or otherwise limiting the right of any person to bring appropriate legal actions in any court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall any provision of the above-named sections be construed as preventing or discouraging any person from filing a complaint with the department or notifying the department of any alleged deficiency or noncompliance on the part of any facility.

(L. 1979 S.B. 328, et al. § 31)

Bond required for facility holding resident's property in trust--exception, cash deposit held in insured escrow.

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

2. The required bond shall be conditioned to secure to every resident or former resident, or the estate of a former resident, the return of any moneys held in trust of which the resident has been wrongfully deprived by acts of the operator or any affiliates or employees of the operator. The liability of the surety to any and all persons shall not exceed the stated amount of the bond regardless of the period of time the bond has been in effect.

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

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

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

(L. 1979 S.B. 328, et al. § 32, A.L. 1988 S.B. 602, A.L. 2009 H.B. 395)

Misappropriation of funds of elderly or disabled nursing home residents, penalty.

198.097. 1. Any person who assumes the responsibility of managing the financial affairs of an elderly or disabled person who is a resident of any facility licensed under this chapter is guilty of a class E felony if such person misappropriates the funds and fails to pay for the facility care of the elderly or disabled person. For purposes of this subsection, a person assumes the responsibility of managing the financial affairs of an elderly person when he or she receives, has access to, handles, or controls the elderly or disabled person's monetary funds, including but not limited to Social Security income, pension, cash, or other resident income.

2. Evidence of misappropriating funds and failure to pay for the care of an elderly or disabled person may include but not be limited to proof that the facility has sent, by certified mail with confirmation receipt requested, notification of failure to pay facility care expenses incurred by a resident to the person who has assumed responsibility of managing the financial affairs of the resident.

3. Nothing in subsection 2 of this section shall be construed as limiting the investigations or prosecutions of violations of subsection 1 of this section or the crime of financial exploitation of an elderly or disabled person as defined by section 570.145 .

(L. 1987 S.B. 277 § 1, A.L. 2007 S.B. 577, A.L. 2014 S.B. 491)

Effective 1-01-17

Petition for appointment of receiver--when.

198.099. The attorney general, either on his own initiative or upon the request of the department or of any other state governmental agency having an interest in the matter, a resident or residents or the guardian of a resident of a facility or the owner or operator of a facility may petition for appointment of a receiver for a facility when any of the following conditions exist:

(1) The operator is operating without a license;

(2) The department has revoked the license of an operator or refused to grant an application for a license to the operator;

(3) The department has initiated revocation procedures and has determined that the lives, health, safety, or welfare of the residents cannot be adequately assured pending a full hearing on license revocation;

(4) The facility is closing or intends to close and adequate arrangements for relocation of residents have not been made at least thirty days prior to closure;

(5) An emergency exists in the facility;

(6) The operator is insolvent; or

(7) An owner of the land or structure is insolvent and such insolvency substantially affects the operation of the facility.

(L. 1979 S.B. 328, et al. § 33)

Effective 7-1-79

Department may appoint monitor.

198.103. In any situation described in section 198.099 , the department may place a person to act as a monitor in the facility. The monitor shall observe operation of the facility and shall advise it on how to comply with state laws and regulations, and shall submit a written report periodically to the department on the operation of the facility.

(L. 1979 S.B. 328, et al. § 34)

Effective 7-1-79

Petition for appointment of receiver, contents--hearing--appointment of receiver.

198.105. 1. Any petition for appointment of a receiver shall be verified and shall be accompanied by an affidavit or affidavits setting forth material facts showing there exists one or more of the conditions specified in section 198.099. The petition shall be filed in the circuit court of Cole County or in the county where the facility is located. If the petition is not filed by the attorney general, a copy of the petition shall be served upon the department and upon the attorney general. The court shall hold a hearing on the petition within five days of the filing of the petition and determine the matter within fifteen days of the initial hearing. The petition and notice of the hearing shall be

served on the operator or administrator of the facility or, if personal service is impossible, shall be posted in a conspicuous place in the facility not later than three days before the time specified for the hearing, unless a different period is fixed by order of the court.

2. The court shall appoint a person, selected in accordance with the provisions of this subsection and the rules promulgated pursuant to this section, to act as receiver if it finds that any ground exists which would authorize the appointment of a receiver under section 198.099 and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility. The department shall, within six months of August 28, 2003, promulgate rules to establish guidelines for the determination of qualified receivers, procedures for maintaining the list of qualified receivers that requested in writing to act as a receiver, and the selection or removal of such receivers. Any rule or portion of a rule, as that term is defined in section 536.010 , that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028 . This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

3. The director of the department shall maintain a list of persons who have submitted a written request in accordance with the provisions of this subsection and the rules promulgated by the department to act as receiver pursuant to section 198.099 . When a petition is filed seeking the appointment of a receiver, the director of the department shall select the first name on the list. The director of the department shall inform such person of his or her selection, the name of the facility, and the grounds for seeking receivership of such facility. Such person may elect not to be appointed, in which case the director of the department shall choose the next consecutive name on the list, continuing until a person has agreed to serve as the receiver. The director shall provide the name of the person selected and agreeing to serve as the receiver to the judge of the court wherein the petition for receivership is filed. For each additional petition filed seeking the appointment of a receiver, names shall be chosen from the list in consecutive order beginning with the next name that follows the last name chosen. If none of the persons on the list agree to serve as the receiver, the court shall appoint a person determined by the court to be qualified to act as receiver.

(L. 1979 S.B. 328, et al. § 35, A.L. 1984 S.B. 451, A.L. 2003 S.B. 556 & 311)

Ex parte appointment of receiver in emergency, when--notice--hearing.

198.108. If it appears from the petition filed under section 198.105, or from an affidavit or affidavits filed with the petition, or from testimony of witnesses under oath when the court determines that this is necessary, that there is probable cause to believe that an emergency exists in the facility, the court shall immediately issue the requested order for appointment of a receiver, ex parte and without further hearing. Notice of the petition and order shall be served on the operator or administrator of the facility or, if personal service is impossible, shall be posted in a conspicuous place in the facility within twenty-four hours after issuance of the order. If the petition is not filed by the attorney general, a copy of the petition shall be served on the department and upon the attorney general. A hearing on the petition shall be held within three days after notice is served or posted unless the operator consents to a later date. After the hearing, the court may terminate, continue or modify the temporary order.

(L. 1979 S.B. 328, et al. § 36)

Effective 7-1-79

Powers of receiver.

198.112. A receiver appointed under this section:

(1) May exercise those powers and shall perform those duties set out by the court;

(2) May, in his discretion, either:

(a) Assume the role of administrator or manager and take control of all day-to-day operations; or

(b) Name an administrator or manager to conduct the day-to-day operations of the facility subject to the supervision and direction of the receiver;

(3) May upgrade deficient homes by any methods, procedures, or actions he deems necessary; provided, however, that expenditures in excess of three thousand dollars, or in excess of any amount set by the court, be first approved by the court;

(4) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for receivership is filed as the operator would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court;

(5) May use the building, fixtures, furnishings and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of receivership, at the same rate of payment as was charged by the operators at the time the petition for receivership was filed, unless a different rate is set by the court;

(6) May let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties created under this section or by the court;

(7) May hire or discharge any employees, including the administrator;

(8) Shall receive and expend in a reasonable manner the revenues of the facility due on the date of the order of appointment as receiver, and to become due during the receivership;

(9) Shall do all acts necessary or appropriate to conserve the property and promote the health, safety or care of the residents of the facility;

(10) Except as hereinafter specified in section 198.115, shall honor all leases, mortgages, secured transactions or other wholly or partially executory contracts entered into by the facility's operator or administrator while acting in that capacity, but only to the extent of payments which become due or are for the use of the property during the period of the receivership;

(11) Shall be responsible, to the same extent as the operator would have been, for taxes which accrue during the period of the receivership;

(12) Shall be entitled to and shall take possession of all property or assets of residents which are in possession of an operator or administrator of the facility. The receiver shall preserve all property, assets and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets and records to the alternative placement of any transferred or discharged resident;

(13) Shall provide, if upgrading of the facility or correction of the deficiencies is not possible, for the orderly transfer of all residents in the facility to other suitable facilities, or make other provisions for their continued health, safety and welfare;

(14) Shall, if any resident is transferred or discharged, provide for:

(a) Transportation of the resident and the resident's belongings and medical records to the place to which the resident is being transferred or discharged;

(b) Aid in locating an alternative placement and in discharge planning;

(c) If the resident is being transferred, preparation for transfer to mitigate transfer trauma;

(15) Shall, if any resident is to be transferred, permit participation by the resident or the resident's guardian in the selection of the resident's alternative placement;

(16) Shall, unless emergency transfer is necessary, prepare a resident under subdivisions (14)(c) and (15) by explaining alternative placements, and by providing orientation to the placement chosen by the resident or the resident's guardian.

(L. 1979 S.B. 328, et al. § 37)

Effective 7-1-79

Executory contracts, receiver not required to honor--when--hearing.

198.115. 1. A receiver may not be required to honor any lease, mortgage, secured transaction or other wholly or partially executory contract entered into by the facility's operator or administrator while acting in that capacity, if the agreement is unconscionable. Factors which shall be considered in determining the unconscionability include, but are not limited to, the following:

(1) The person seeking payment under the agreement was an affiliate of the operator or owner at the time the agreement was made;

(2) The rental, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rental, price or rate of interest at the time the agreement was entered into.

2. If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest which the receiver is permitted to avoid under subsection 1 of this section, and if the real estate or goods are necessary for the continued operation of the facility, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within fifteen days. The receiver shall send notice of the application to any known owners of the property involved at least ten working days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease or mortgage involved by any person who received such notice, but the payment does not relieve the owner or operator of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease or mortgage involved.

(L. 1979 S.B. 328, et al. § 38)

Effective 7-1-79

Compensation of receiver.

198.118. The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership.

(L. 1979 S.B. 328, et al. § 39)

Effective 7-1-79

Bond of receiver.

198.121. A receiver may be required by the court to post a bond, which shall be considered a necessary expense of the receivership.

(L. 1979 S.B. 328, et al. § 40)

Effective 7-1-79

License may be issued to facility operated by receiver--duration.

198.124. Other provisions of sections 198.003 to 198.096 notwithstanding, the department may issue a license to a facility being operated by a receiver under sections 198.099 to 198.136 . The duration of a license issued under this subsection is limited to the duration of the receivership.

(L. 1979 S.B. 328, et al. § 41)

Effective 7-1-79

Termination of receivership, when.

198.128. The court may terminate a receivership:

(1) Upon a motion by any party to the petition, by the department, or by the receiver, and a finding by the court that the deficiencies and violations in the facility have been substantially eliminated or remedied; or

(2) If all residents in the facility have been provided alternative modes of health care, either in another facility or otherwise. The court may immediately terminate the receivership, or may terminate the receivership subject to such terms as the court deems necessary or appropriate to prevent the conditions complained of from recurring.

(L. 1979 S.B. 328, et al. § 42)

Effective 7-1-79

Accounting by receiver, when--contents--liability for deficiency--priority of deficiency judgment.

198.132. 1. Within thirty days after termination or such other time as the court may set, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected under section 198.108 and of the expenses of the receivership.

2. If the operating funds collected by the receiver under section 198.112 exceed the reasonable expenses of the receivership, the court shall order the payment of the surplus to the operator. If the operating funds are insufficient to cover reasonable expenses of the receivership, the operator shall be liable for the deficiency. The operator may apply to the court to determine the reasonableness of any expense of the receivership. The operator shall not be responsible for expenses in excess of what the court finds to be reasonable.

3. If a deficiency exists under subsection 2 of this section, the receiver may apply to the court for such a determination. If after notice to all interested parties and a hearing the court finds that in fact a deficiency does exist, then the court shall enter judgment in favor of the receiver and against the appropriate party or parties as set forth in subsection 2 of this section for the amount of such deficiency. Any judgment obtained under this subsection shall be treated as any other judgment and may be enforced according to law.

4. Any judgment for a deficiency obtained in accordance with this section by the receiver or any portion thereof may be assigned wholly or in part upon approval of the court.

5. The judgment shall have priority over any other judgment or lien or other interest which originates subsequent to the filing of a petition for receivership under the provisions of sections 198.099 to 198.136 except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver.

(L. 1979 S.B. 328, et al. § 43)

Effective 7-1-79

Operator or affiliate not liable for acts of receiver--liability of operator or affiliate otherwise not relieved.

198.136 . No operator or affiliate may be held liable for acts or omissions of the receiver or the receiver's employees during the term of the receivership. Nothing in sections 198.099 to 198.136 shall be deemed to relieve any operator or any affiliate of an operator of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the operator or affiliates of the operator prior to the appointment of a receiver under section 198.105 or 198.108, nor shall anything contained in sections 198.099 to 198.136 be construed to suspend during the receivership any obligation of the operator or any affiliate of an operator for payment of taxes or other operating and maintenance expenses of the facility, nor of the operator or affiliates of the operator for the payment of mortgages or liens.

(L. 1979 S.B. 328, et al. § 44)

Effective 7-1-79

Medicaid moneys not to be used for other purposes.

198.139. A health care provider or vendor shall not knowingly use any moneys paid to him under Medicaid for services provided to any resident for any purpose other than that permitted by the provisions of chapter 208 or state regulations or federal regulations or statutes governing Medicaid reimbursement.

(L. 1979 S.B. 328, et al. § 45)

Effective 7-1-79

Health care provider and vendor not to misrepresent or conceal facts or convert benefits for payments.

198.142. A health care provider or vendor shall not knowingly:

(1) Make or cause to be made any false statement or representation of a material fact in any application for any benefit or payment under Medicaid for services provided to any resident;

(2) Make or cause to be made any false statement or representation of any material fact for use in determining the person's eligibility for any benefit or payment under Medicaid for services provided to any resident;

(3) Conceal or fail to disclose any material fact that affects his eligibility for any benefit or payment under Medicaid for services provided to any resident or affects the eligibility of another for whom he applies or for whom he receives such benefit or payment, with the intent to secure the benefit or payment in a greater quantity than is due or to secure the benefit or payment when none is permitted;

(4) Convert a benefit or payment he receives under Medicaid for services provided to a resident for a use or benefit other than that for which it was specifically intended.

(L. 1979 S.B. 328, et al. § 46)

Effective 7-1-79

Kickbacks, bribes and rebates prohibited, when.

198.145. A person shall not purposely solicit or receive any payment, including, without limitation, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, from any vendor or health care provider:

(1) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicaid; or

(2) In return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under Medicaid.

(L. 1979 S.B. 328, et al. § 47)

Effective 7-1-79

Offering or making kickbacks, bribes or rebates prohibited, when.

198.148. A health care provider or vendor shall not purposely offer or make any payment, including without limitation, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce the person:

(1) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicaid; or

(2) To purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under Medicaid.

(L. 1979 S.B. 328, et al. § 48)

Effective 7-1-79

Usual trade discounts and employment benefits not kickbacks, bribes or rebates.

198.151. Sections 198.145 and 198.148 do not apply to:

(1) Any usual trade discount which is dependent solely upon time of payment or quantity buying to wholesalers which is obtained by a health care provider regardless of whether reflected in the cost claimed or charges made by the health care provider under Medicaid; and

(2) Any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the provision of covered services or items.

(L. 1979 S.B. 328, et al. § 49)

Effective 7-1-79

False statements by health care provider prohibited, when.

198.155. 1. A health care provider shall not knowingly make or cause to be made any false statement or representation of material fact in order to qualify either upon initial certification or upon recertification to receive funds under Medicaid.

2. A health care provider shall not knowingly induce or seek to induce any such false statement or representation of material fact for consideration, whether the consideration is direct or indirect.

(L. 1979 S.B. 328, et al. § 50)

Effective 7-1-79

Penalties for violation of sections 198.139 to 198.155.

198.158. 1. A person committing any act in violation of any provision of sections 198.139 to 198.155 is guilty of a class E felony.

2. A vendor or health care provider convicted of a criminal violation of sections 198.139 to 198.155 shall be prohibited from receiving future moneys under Medicaid or from providing services under Medicaid for or on behalf of any other health care provider. However, the director of the department or his or her designee shall review this prohibition upon the petition of a vendor or health care provider so convicted and, for good cause shown, may reinstate the vendor or health care provider as being eligible to receive funds under Medicaid. The decision of the director or his or her designee shall be made in writing after the director of the fraud investigation division is allowed the opportunity to state his or her position concerning such petition.

3. A vendor or health care provider committing any act or omission in violation of sections 198.139 to 198.155 shall be civilly liable to the state for any moneys obtained under Medicaid as a result of such act or omission.

(L. 1979 S.B. 328, et al. § 51, A.L. 2014 S.B. 491)

Effective 1-01-17

Fraud investigation division created--director--compensation--assistance by local prosecutors.

198.161. 1. There is hereby created within the department of social services a "Fraud Investigation Division". The fraud investigation division shall be headed by a division director appointed by the director of the department of social services. The director of the fraud investigation division shall be an attorney at law licensed to practice in this state and shall have substantial experience in criminal prosecution or defense. The director of the fraud investigation division shall receive such compensation as the director of the department of social services may designate subject to appropriation by the general assembly. The director of the fraud investigation division may employ such attorneys, accountants, investigators and such other personnel as are necessary to conduct the activities of the division. A team approach to the operations of the division shall be utilized wherever practicable.

2. The director of the fraud investigation division, with such assistance as he may require from the appropriate county prosecuting attorney, shall investigate suspected violations of sections 198.139 to 198.155 and any civil liabilities due the state as a result of any such violation. Evidence of actions which may constitute criminal violations under sections 198.139 to 198.155 shall be referred to the appropriate county prosecuting attorney. If the prosecuting attorney fails or refuses to initiate prosecution on a cause referred to him by the director of the fraud investigation division within sixty days after he is made aware by complaint of an alleged violation, the prosecuting attorney shall so notify the attorney general, who may take full charge of the prosecution and may initiate prosecution by information or indictment for the violation.

(L. 1979 S.B. 328, et al. § 52)

Effective 7-1-79

Medicaid payments stopped by division, when--hearing.

198.165. 1. When the director of the investigation division has probable cause to believe that a health care provider is committing any act or omission in violation of any provision of sections 198.139 to 198.186 , he may petition an appropriate court for an order to stop payments under Medicaid to the health care provider pending completion of the investigation and litigation under sections 198.139 to 198.186 .

2. The court shall allow the health care provider the opportunity to be heard on the request of the director of the fraud investigation division and shall decide, in writing, whether to stop payments to the health care provider.

(L. 1979 S.B. 328, et al. § 53)

Effective 7-1-79

Fraud investigation director may petition for appointment of receiver, when--court hearing.

198.168. If the director of the fraud investigation division has probable cause to believe that any acts or omissions in violation of sections 198.139 to 198.155 have been committed by a person who is in control of assets purchased, in whole or in part, directly or indirectly, with funds from Medicaid and is likely to convert, destroy or remove those assets, the director of the fraud investigation division can petition the circuit court of the county in which those assets may be found to appoint a receiver to manage those assets until the investigation and any litigation are completed. The circuit court immediately upon receipt of the petition of the director of the fraud investigation division shall enjoin the person in control of the assets from converting, destroying or removing those assets. A hearing for the appointment of a receiver shall be held within ten days of the filing of the petition. If the court finds that there is probable cause to believe the person has committed any acts or omissions in violation of any provisions of sections 198.139 to 198.155 and that the assets are likely to be converted, destroyed or removed, the circuit court shall appoint a receiver to manage the assets until the investigation and any litigation are completed. The court shall maintain continuing jurisdiction over the assets and may modify its orders as circumstances require. The order appointing a receiver shall be a final order for purposes of appeal.

(L. 1979 S.B. 328, et al. § 54)

Effective 7-1-79

Civil restitution of Medicaid funds, when.

198.171. The director of the fraud investigation division may seek civil restitution of any moneys dispensed under Medicaid for services provided to any resident or under section 208.030 which have been misappropriated, fraudulently obtained, or constitute overpayments. The authority of the director of the fraud investigation division under sections 198.139 to 198.186 to seek civil restitution does not diminish the authority of the department to seek restitution.

(L. 1979 S.B. 328, et al. § 55)

Effective 7-1-79

Fraud investigation director may hold hearings, take oaths--procedure on failure to testify--confidentiality of recorders--penalties.

198.174. 1. For the purpose of any investigation or proceeding under sections 198.158 to 198.171 , the director of fraud investigation or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take testimony, require answers to written interrogatories and require production of any books, papers, correspondence, memoranda, agreements or other documents or records which the director of fraud investigation deems relevant and material to the inquiry.

2. In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court of any county of the state or the city of St. Louis, upon application by the division

director may issue to the person an order requiring him to appear before the division director, or the officer designated by him, there to produce documentary evidence if so ordered or to give testimony or answer interrogatories touching the matter under investigation or in question in accordance with the forms and procedures otherwise authorized by the Rules of Civil Procedure. The court may make any order which justice requires to protect any person from undue annoyance, embarrassment, expense or oppression. Failure to obey the order of the court may be punished by the court as a contempt of court.

3. Notwithstanding the provisions of section 326.151, the accountant-client privilege recognized therein shall not, upon a knowing and intelligent waiver by any person subject to sections 198.003 to 198.186 , constitute a defense and shall not apply to a subpoena under this section and shall not apply in court proceedings instituted pursuant to sections 198.139 to 198.186 .

4. Information or documents obtained under this section by the director of the fraud investigation division shall not be disclosed except in the course of civil or criminal litigation or to another prosecutorial or investigative agency, or to the divisions of the department.

5. Anyone improperly disclosing information obtained under this section is guilty of a class A misdemeanor.

6. The provisions of this section do not repeal existing provisions of law and shall be construed as supplementary thereto.

(L. 1979 S.B. 328, et al. § 56)

Effective 7-1-79

Compelling of testimony--grant of immunity, when.

198.177. 1. In any investigation or proceeding under sections 198.139 to 198.186 in which any person has been or may be called to testify, produce evidence or provide other information by means of a subpoena or before a court or grand jury, if the person refuses to answer any question or produce evidence or material of any kind on the ground that he may be incriminated thereby, the director of the fraud investigation division may, in writing, request the circuit court of the county in which the proceeding is held to order the person to answer the question or produce the evidence. Upon receipt of the request, the court shall hold a hearing on said written request after written notice to the person specifying the nature of the request and the time and place of the hearing, and advising the person of his right to be present and his right to counsel at such hearing. At the hearing the director of the fraud investigation division and the person may participate. The burden of proof is on the director of the division to demonstrate to the court (1) the necessity for and (2) the reasonableness of the request to order the person to answer the question or produce the evidence or both. If the court is satisfied that such burden has been met, it may issue an order requiring the person to answer the questions or produce the evidence, or both, which he refuses to give or produce on the basis of his privilege against self-incrimination. If the court believes such burden has not been met, it shall dismiss the request. When the order is communicated to the person, the person may not refuse to comply with the order on the basis of his privilege against self-incrimination. After complying with the order and giving the testimony or producing the evidence, no testimony or other evidence or information obtained or any information directly or indirectly derived from the testimony or evidence may be used against the person in any proceeding or prosecution for any offense concerning which he gave answer or produced evidence under court order, except a prosecution for perjury, false swearing or contempt committed in answering or failing to answer, or in the producing or failing to produce evidence in accordance with the order.

2. If any person refuses to testify after being granted immunity from prosecution under sections 198.139 to 198.186 and after being ordered to testify or produce evidence, the court may find the person in contempt.

(L. 1979 S.B. 328, et al. § 57)

Effective 7-1-79

Audit and inspection of records, when--warrant.

198.180. During any investigation under sections 198.139 to 198.186 , the director of the fraud investigation division shall have the right to audit and to inspect the records of any health care provider or vendor. If the health care provider or vendor refuses to allow such audit or inspection or if there is reason to believe that the records are in danger of being destroyed, altered or secreted, the director of the fraud investigation division may make written application under oath to any court in the county where the records in question are being kept, or in Cole County, and if the judge shall be satisfied that there is reasonable cause for the audit or inspection or reasonable cause to believe that the records are in danger of being destroyed, altered or secreted, he shall issue a warrant to search for and seize such records.

(L. 1979 S.B. 328, et al. § 58)

Effective 7-1-79

State agencies and law enforcement officers to cooperate with fraud investigation division.

198.183. 1. All state agencies shall cooperate with the director of the fraud investigation division in his efforts to enforce the provisions of sections 198.139 to 198.186 . All officers of the state of Missouri charged with the enforcement of criminal law shall also render and furnish to the director of the fraud investigation division, when requested, all information and assistance in their possession or within their power relating to sections 198.139 to 198.186 .

2. The department and all of its other divisions shall promptly notify the director of the fraud investigation division of any substantial complaint or allegation of possible fraudulent activity on the part of a health care provider or vendor under Medicaid and shall refer to the director of the fraud

investigation division all suspected cases of fraud in Medicaid services provided to any resident.

3. The director of the fraud investigation division shall be allowed access to all information in the possession of the department which relates to Medicaid services provided to any resident. The department shall make available to the director of the fraud investigation division electronic data processing services pertaining to such Medicaid information.

(L. 1979 S.B. 328, et al. § 59)

Effective 7-1-79

Local crime investigation powers not diminished.

198.186 . The powers of the director of the fraud investigation division under sections 198.139 to 198.186 shall not diminish the powers of local authorities to investigate criminal conduct within their jurisdiction.

(L. 1979 S.B. 328, et al. § 60)

Effective 7-1-79

Criminal background checks for residents permitted.

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

(L. 2009 H.B. 395)

Medicaid payment system for assisted living facilities to be implemented--options.

198.189. The department of social services, MO HealthNet division, and the department of health and senior services, division of senior and disability services shall work together to implement a new Medicaid payment system for assisted living facilities defined in section 198.006 . The departments shall look at possible options including but not limited to federal Medicaid waivers, state plan amendments, and provisions of the federal Deficit Reduction Act of 2005 that will allow a tiered rate system via a bundled monthly rate for all services not included in the room and board function of the facility, including but not limited to: adult day care/socialization activities, escort services, essential shopping, health maintenance activities, housekeeping activities, meal preparation, laundry services, medication assistance (set-up and administration), personal care services, assistance with activities of daily living and instrumental activities of daily living, transportation services, nursing supervision, health promotion and exercise programming, emergency call systems, incontinence supplies, and companion services. The amount of the personal funds allowance for the Medicaid recipient residing in an assisted living facility shall include enough money for over-the-counter medications and co-payments for Medicaid and Medicare Part D services. The departments shall work with assisted living facility provider groups in developing this new payment system. The department of social services shall submit all necessary applications for implementing this new system singularly or within a multiservice state Medicaid waiver application to the secretary of the federal Department of Health and Human Services by July 1, 2007.

(L. 2006 S.B. 616 § 1, A.L. 2014 H.B. 1299 Revision)

District created, how--territory included--name--nursing home defined.

198.200 . 1. A nursing home district may be created, incorporated and managed as provided in sections 198.200 to 198.350 and may exercise the powers herein granted or necessarily implied. A nursing home district may include municipalities or territory not in municipalities or both or territory in one or more counties; except, that the provisions of sections 198.200 to 198.350 are not effective in counties having a population of more than four hundred thousand inhabitants. The territory contained within the corporate limits of an existing nursing home district shall not be incorporated in another nursing home district.

2. When a nursing home district is organized it shall be a body corporate and political subdivision of the state and shall be known as "..... Nursing Home District", and in that name may sue and be sued, levy and collect taxes within the limitations of sections 198.200 to 198.350 and the constitution and issue bonds as herein provided.

3. For the purposes of sections 198.200 to 198.360 , "nursing home" shall mean a residential care facility, an assisted living facility, an intermediate care facility, or a skilled nursing facility as defined in section 198.006 .

(L. 1963 p. 368 § 2, A.L. 1979 S.B. 328, et al., A.L. 1984 S.B. 451)

*Reprinted due to editorial change required by § 198.005 .

Petition of voters for district, where filed, contents.

198.210. Whenever the creation of a nursing home district is desired, a number of voters residing in the proposed district equal to ten percent of the vote cast for governor in the proposed district in the next preceding gubernatorial election, may file with the county clerk in which the territory or the greater part thereof is situated, a petition requesting the creation thereof. In case the proposed district which shall be contiguous is situated in two or more counties, the petition shall be filed in the office of the county clerk of the county in which the greater part of the area is situated, and the commissioners of the county commission of the county shall set the petition for public hearing. The petition shall set forth:

(1) A description of the territory to be embraced in the proposed district;

(2) The names of the municipalities located within the area;

(3) The name of the proposed district;

(4) The population of the district, which shall not be less than two thousand inhabitants;

(5) The assessed valuation of the area, which shall not be less than two million five hundred thousand dollars; and

(6) A request that the question be submitted to the voters residing within the limits of the proposed nursing home district whether they will establish a nursing home district under sections 198.200 to 198.350 , to be known as "..... Nursing Home District" for the purpose of constructing and maintaining a public nursing home.

(L. 1963 p. 368 § 3, A.L. 1978 H.B. 971)

Notice of hearing on petition--costs of notice.

198.220. 1. Upon the filing of the petition with the county clerk, he shall present it to the commissioners of the county commission who shall thereupon set the petition for hearing within not less than thirty nor more than forty days after the filing.

2. Notice shall be given by the commissioner of the county commission of the time and place where the hearing will be held, by publication on three separate days in one or more newspapers having a general circulation within the territory proposed to be incorporated as a nursing home district, the first of which publications shall be not less than twenty days prior to the date set for the hearing and if there is no such newspaper, then notice shall be posted in ten of the most public places in the territory, not less than twenty days prior to the date set for the hearing. This notice shall include a description of the territory as set out in the petition, names of municipalities located therein and the name of the proposed district and the question of creating a nursing home district.

3. The costs of printing and publication or posting of notices of public hearing thereon shall be paid in advance by the petitioners, and, if a district is organized under sections 198.200 to 198.350 , they shall be reimbursed out of the funds received by the district from taxation or other sources.

(L. 1963 p. 368 § 4)

Procedure where several petitions filed--amendment.

198.230. If two or more petitions covering in part the same territory are filed prior to the public hearing upon the petition which is first filed, the petitions shall be consolidated for public hearing, and hearing thereon may be continued to permit the giving of notice of any subsequent petitions. At the public hearing upon the petitions, the petitioners in the petition first filed may move to amend the petition to include any part of the territory described in the subsequent petitions, either as originally filed or as amended. Any such motion shall be allowed by the commissioners of the county commission. The public hearing shall proceed upon the first petition as originally filed or as so amended, and further proceedings upon any other petitions subsequently filed shall be stayed and held in abeyance until the termination of all proceedings upon the first petition, or any petition may be dismissed or withdrawn upon motion of the petitioners therein by their representatives.

(L. 1963 p. 368 § 5)

If petition sufficient county commission to order election.

198.240. If the territory, petition and proceedings meet the requirements of sections 198.200 to 198.350 , the commissioners of the county commission shall in and by the order finding and determining the sufficiency of the petition and that the territory meets the requirements of sections 198.200 to 198.350 * order the question to be submitted to the voters of the proposed district.

(L. 1963 p. 368 § 6, A.L. 1978 H.B. 971)

*Words "and shall" appear in original rolls.

Notice of election, contents.

198.250. Each notice shall state briefly the purpose of the election, setting forth the proposition to be voted upon and a description of the territory. The notice shall further state that any district upon its establishment shall have the powers, objects and purposes provided by sections 198.200 to 198.350 , and shall have the power to levy a property tax not to exceed thirty-five cents on the one hundred dollars valuation.

(L. 1963 p. 368 § 7, A.L. 1978 H.B. 971, A.L. 1985 S.B. 100)

Form of ballot.

198.260. The question of whether or not a nursing home shall be organized shall be submitted in substantially the following form:

Shall there be organized in the counties of ....., state of Missouri, a nursing home district for the establishment and operation of a nursing home to be located within the boundaries of the proposed district and having the power to impose a property tax not to exceed the annual rate of thirty-five cents on the hundred dollars assessed valuation without voter approval, and such additional tax as may be approved hereafter by vote thereon, to be known as "..... Nursing Home District" as prayed for by petition filed with the county clerk of ..... County, Missouri, on the .... day of ....., 20.....?

(L. 1963 p. 368 § 8, A.L. 1978 H.B. 971, A.L. 1985 S.B. 100)

Increase in tax levy, procedure--ballot of submission, form.

198.263. Any district which has a lower tax levy than the maximum levy authorized by section 198.250 may increase its levy up to, but not in excess of, such maximum levy if a majority of the voters of the district who vote on the increase approve the increase. The ballot of submission for a tax increase under this section shall be in substantially the following form:

Shall the ..... Nursing Home District be authorized to increase the annual rate of property tax from ..... cents to ..... cents on the hundred dollars assessed valuation?

[ ] YES [ ] NO

(Place an "X" in the square opposite the answer for which you wish to vote.)

If a majority of the qualified voters casting votes thereon are in favor of the increase, the board of directors of the district shall levy the annual rate of tax approved; but if a majority of the voters casting votes thereon are opposed to the increase, any annual tax rate in effect at the time of the election shall remain in effect; provided, however, that if the voters of the district have previously approved a levy and the levy has not been imposed, the board of directors may impose such previously approved levy or portion thereof, subject to other provisions of the law with respect to limitation on tax revenues.

(L. 1985 S.B. 100)

Results of election to be filed.

198.270. The order determining and declaring results of the election shall be entered upon the records of the commission and a certified copy thereof shall be filed with the county clerk of each other county in which the proposed district lies who shall cause the same to be spread upon the records of the county commission. If the order shows that the question to organize the district received a majority of the votes cast, the order shall declare the district organized.

(L. 1963 p. 368 § 9, A.L. 1978 H.B. 971)

Election districts--election of directors--terms--qualifications--declaration of candidacy--appointed if no candidate--no election required when.

198.280. 1. After the nursing home district has been declared organized, the declaring county commission shall either:

(1) Divide the district into six election districts as equal in population as possible, and shall by lot number the districts from one to six, inclusive. The county commission shall cause an election to be held in the nursing home district within ninety days after the order establishing the nursing home district to elect nursing home district directors. The election shall be called, held and conducted and notice shall be given as provided in sections 198.240 to 198.270 , and each voter shall vote for the director from his or her district; or

(2) Cause an election to be held in the nursing home district within ninety days after the order establishing the nursing home district to elect six at-large nursing home district directors. The election shall be called, held and conducted and notice shall be given as provided in sections 198.240 to 198.270 . After August 28, 1994, directors shall be elected for a term of three years. The first director whose term expires after August 28, 1994, shall continue to hold office until the expiration of the term of the second director whose term expires after August 28, 1994, at which time both such directors shall be elected for a term of three years. The third director whose term expires after August 28, 1994, shall continue to hold office until the expiration of the term of the fourth director whose term expires after August 28, 1994, at which time both such directors shall be elected for a term of three years. The fifth director whose term expires after August 28, 1994, shall continue to hold office until the expiration of the term of the sixth director whose term expires after August 28, 1994, at which time both such directors shall be elected for a term of three years. All directors shall serve until their successors are elected and qualified. If a vacancy occurs, the board shall select a successor who shall serve until the next regular election of a director is to be held in that nursing home or election district. If no candidate files a declaration of candidacy for a nursing home or election district, a majority of the board of directors may, after the election in that nursing home or election district would have regularly been held, appoint any resident of the nursing home district who otherwise qualifies pursuant to subsection 3 of this section to fill that vacancy.

2. Following the initial election establishing the nursing home district board of directors pursuant to subsection 1 of this section, the circuit court may choose to elect the board of directors at large.

3. Candidates for director of the nursing home district shall be citizens of the United States, resident taxpayers of the nursing home district who have resided within the state for one year next preceding the election and who are at least twenty-four years of age. All candidates shall file their declarations of candidacy with the county commission calling the election at least twenty days prior to the special election.

4. Notwithstanding any other provisions of law to the contrary, if the number of candidates for the office of director is equal to the number of directors to be elected, no election shall be held, and the candidates shall assume the responsibility of their offices at the same time and in the same manner as if they have been elected; however, if any vacancies are created after local certification and prior to the deadline provided in subdivision (4) of section 115.453 which cause the number of filed candidates to be less than the number of vacancies to be filled, an election shall be held, and write-in candidates for such positions shall be eligible as otherwise provided by law.

(L. 1963 p. 368 § 10, A.L. 1978 H.B. 971, H.B. 1208, A.L. 1982 S.B. 526, A.L. 1986 S.B. 527, A.L. 1994 H.B. 1221, A.L. 2001 H.B. 881)

Powers of board of directors--first meeting--officers--bylaws--time for meetings.

198.290. 1. The board of directors of a district shall possess and exercise all of its legislative and executive powers. Within thirty days after the election of the initial directors, the board shall meet. The time and place of the first meeting of the board

shall be designated by the county commission. At its first meeting the board shall elect a chairman from its members and select a secretary, treasurer and such officers or employees as it deems expedient or necessary for the accomplishment of its corporate objects. The secretary and treasurer need not be members of the board. At the meeting the board, by ordinance, shall define the first and subsequent fiscal years of the district, and shall adopt a corporate seal and bylaws, which shall determine the times for the annual election of officers and of other regular and special meetings of the board and shall contain the rules for the transaction of other business of the district and for amending the bylaws.

2. Each director of any district shall devote such time to the duties of the office as the faithful discharge thereof may require and shall serve without compensation.

(L. 1963 p. 368 § 11)

Powers of nursing home district.

198.300. 1. A nursing home district shall have and exercise the following governmental powers, and all other powers incidental, necessary, convenient or desirable to carry out and effectuate the express powers:

(1) To establish and maintain a nursing home within its corporate limits, and to construct, acquire, develop, expand, extend and improve the nursing home;

(2) To acquire or convey land or structures in fee simple, rights in land and easements upon, over or across land and leasehold interests in land and tangible and intangible personal property used or useful for the location, establishment, maintenance, development, expansion, extension or improvement of any nursing home. The acquisition may be by dedication, purchase, gift, agreement, lease, use or adverse possession or by condemnation. The conveyance may be by deed or lease;

(3) To operate, maintain and manage the nursing home, and to make and enter into contracts for the use, operation or management of and to provide rules and regulations for the operation, management or use of the nursing home;

(4) To fix, charge and collect reasonable fees and compensation for the use or occupancy of the nursing home or any part thereof, and for nursing care, medicine, attendance, or other services furnished by the nursing home, according to the rules and regulations prescribed by the board from time to time;

(5) To borrow money and to issue bonds, notes, certificates, or other evidences of indebtedness for the purpose of accomplishing any of its corporate purposes, subject to compliance with any condition or limitation set forth in sections 198.200 to 198.350 or otherwise provided by the Constitution of the state of Missouri;

(6) To employ or enter into contracts for the employment of any person, firm, or corporation, and for professional services, necessary or desirable for the accomplishment of the corporate objects of the district or the proper administration, management, protection or control of its property;

(7) To maintain the nursing home for the benefit of the inhabitants of the area comprising the district regardless of race, creed or color, and to adopt such reasonable rules and regulations as may be necessary to render the use of the nursing home of the greatest benefit to the greatest number; to exclude from the use of the nursing home all persons who willfully disregard any of the rules and regulations so established; to extend the privileges and use of the nursing home to persons residing outside the area of the district upon such terms and conditions as the board of directors prescribes by its rules and regulations;

(8) To police its property and to exercise police powers in respect thereto or in respect to the enforcement of any rule or regulation provided by the ordinances of the district and to employ and commission police officers and other qualified persons to enforce the same.

2. The use of any nursing home of a district shall be subject to the reasonable regulation and control of the district and upon such reasonable terms and conditions as shall be established by its board of directors.

3. A regulatory ordinance of a district adopted under any provision of this section may provide for a suspension or revocation of any rights or privileges within the control of the district for a violation of any regulatory ordinance.

4. Nothing in this section or in other provisions of sections 198.200 to 198.350 shall be construed to authorize the district or board to establish or enforce any regulation or rule in respect to the operation or maintenance of the nursing home within its jurisdiction which is in conflict with any federal or state law or regulation applicable to the same subject matter.

(L. 1963 p. 368 § 12, A.L. 1991 H.B. 450)

Whistleblower protection for employees--availability of information on rights of persons retaliated against.

198.301. No employee of a nursing home district who directs or exercises any authority in a facility shall evict, harass, dismiss, or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances, or regulations applying to the facility which the resident, the resident's family, or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department information and referral telephone contact line, residents, their families, and employees of a facility shall be able to obtain information about their rights, protections, and options in cases of eviction, harassment, dismissal, or retaliation due to a report being made pursuant to this section.

(L. 2003 S.B. 556 & 311)

Unsuitable site, may be changed, when.

198.305. 1. If, after acquiring a site for a nursing home or a nursing home, the board of the district by resolution determines that the site or nursing home acquired is unsuitable or unnecessary for the purpose, or it is in the best interest of the district, that the property should be sold, the board may sell and convey the property in the manner provided in subsection 2 of this section, provided that all outstanding bonds of the district constituting a lien on the property to be sold have been paid in full; or a sum sufficient to pay all such bonds, together with interest accrued or to accrue thereon, together with any other items of expense provided in such bonds, is deposited with the fiscal agent named in the bonds for the purpose of full payment; or consent in writing is obtained from all of the holders of the bonds.

2. Upon filing with the county clerk of the county in which the original petition to organize the district was filed of a certified copy of the resolution adopted by the board of directors of the district setting forth the reasons for selling the property and the manner in which the conditions of the provisions in subsection 1 of this section have been satisfied, the clerk shall present the resolution to the county commission. If the commission is satisfied that the statements in the resolution are true and valid, it shall by order entered of record approve the resolution. The board of directors of the district may then proceed to sell and convey the property. The deed shall be executed by the secretary of the board for and on behalf of the district, and shall convey to the purchaser all the right, title, interest, and estate which the nursing home district has in the property.

3. Any proceeds from the sale of the property remaining after the expenses of the sale of the property and the purchase price and costs of purchase of any new site or structure have been paid shall be placed in the treasury of the district and used to carry out the purposes for which the district was organized.

(L. 1975 H.B. 382, A.L. 1991 H.B. 450)

Indebtedness for nursing home--election--ballot--limits--tax to pay.

198.310. 1. For the purpose of purchasing nursing home district sites, erecting nursing homes and related facilities and furnishing the same, building additions to and repairing old buildings, the board of directors may borrow money and issue bonds for the payment thereof in the manner provided herein. The question of the loan shall be submitted by an order of the board of directors of the district. Notice of the submission of the question, the amount and the purpose of the loan shall be given as provided in section 198.250 .

2. The question shall be submitted in substantially the following form:

> Shall the ..... Nursing Home District borrow money in the amount of ..... dollars for the purpose of ..... and issue bonds in payment thereof?

3. If the constitutionally required percentage of the votes cast are for the loan, the board shall, subject to the restrictions of subsection 4, be vested with the power to borrow money in the name of the district, to the amount and for the purposes specified on the ballot, and issue the bonds of the district for the payment thereof.

4. The loans authorized by this section shall not be contracted for a period longer than twenty years, and the entire amount of the loan shall at no time exceed, including the existing indebtedness of the district, in the aggregate, ten percent of the value of taxable tangible property therein, as shown by the last completed assessment for state and county purposes, the rate of interest to be agreed upon by the parties, but in no case to exceed the highest legal rate allowed by contract; when effected, it shall be the duty of the directors to provide for the collection of an annual tax sufficient to pay the interest on the indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time the principal becomes due.

(L. 1963 p. 368 § 13, A.L. 1978 H.B. 971, A.L. 2013 S.B. 89)

Revenue bonds authorized, when.

198.312. As an alternative to the authorization for an indebtedness provided by section 198.310 , for the purpose of providing funds for the acquisition, construction, erection, equipment and furnishing of nursing homes and related facilities, and for providing a site therefor, including offstreet parking space, and making from time to time enlargements or extensions thereof, the board of directors may issue and sell revenue bonds. The revenue bonds are payable, both as to principal and interest, solely and only out of the net income and revenues arising from the operation of the facility, after providing for the costs of operation and maintenance thereof, or from other funds made available to the facility from sources other than from proceeds of taxation.

(L. 1978 H.B. 1769)

Revenue bonds not an indebtedness of the issuing authority.

198.314. Any bonds issued under and pursuant to sections 198.312 to 198.318 shall not be deemed to be an indebtedness of the state of Missouri, or of any city, or of the board of directors, or of the individual members of the board of directors, and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

(L. 1978 H.B. 1769)

Revenue bonds, form of, interest rate--to be negotiable instruments.

198.316. 1. Revenue bonds issued pursuant to the provisions of section 198.312 shall be of such denomination, shall bear such rate of interest not to exceed the highest rate permitted by law, and shall mature at such times as determined by the board

of directors. The bonds may be either serial bonds or term bonds and may be issued with or without reservation of the right to call them for payment or redemption in advance of their maturity, upon the giving of notice and with or without the covenant requiring the payment of a premium in the event of the call and redemption prior to maturity as the board determines.

2. The bonds when issued and sold shall be negotiable instruments within the meaning of the law merchant and the negotiable instruments law and the interest thereon is exempt from income taxes under the laws of the state of Missouri.

(L. 1978 H.B. 1769)

Board of directors to prescribe form, make necessary covenants, restrictions--bondholders, remedies of--revenue bonds, not to be exclusive method of financing.

198.318 . 1. The board of directors, issuing bonds under the provisions of section 198.312 , shall prescribe the form, details and incidents of the bonds, and the board of directors shall make such covenants as in their judgment are advisable or necessary properly to secure the payment thereof; but the form, details, incidents and covenants shall not be inconsistent with any of the provisions of sections 198.312 to 198.318 .

2. The holder of any bonds issued hereunder or of any coupons representing interest accrued thereon may, by civil action either at law or in equity, compel the board of directors issuing such bonds to perform all duties imposed upon them by the provisions of sections 198.312 to 198.318 , and also to enforce the performance of any and all other covenants made by such board of directors in the issuance of the bonds.

3. The provisions of sections 198.312 to 198.318 shall not be exclusive of other legal methods of financing the facilities therein described, but shall furnish an alternative method of finance.

(L. 1978 H.B. 1769)

Annexation of territory to district--election.

198.320. 1. A petition for annexation of land to a nursing home district shall be signed by not less than ten percent or fifty voters, whichever is fewer, residing within the territory therein described proposed for annexation and shall be filed with the county clerk of the county in which the district or the greater portion thereof is situated, and shall be addressed to the commissioners of the county commission. A hearing shall be held thereon as nearly as possible as in the case of a formation petition. If, upon hearing, the commissioners of the county commission find that the petition is in compliance with sections 198.200 to 198.350 , they shall order the submission of the question to the voters to decide whether or not the proposed annexation shall take place. The question shall be submitted within the territory by the county commission as is provided in section 198.250 .

2. The question shall be submitted in substantially the following form:

> Shall (description of territory) be annexed to the .... Nursing Home District?

3. If a majority of the votes cast on the question in the district and in the territory described in the petition, respectively, are in favor of the annexation, the commissioners of the county commission shall by order declare the territory annexed and shall describe the altered boundaries of the district.

(L. 1963 p. 368 § 14, A.L. 1978 H.B. 971)

Records of district--officers and employees to give bond.

198.330. The board shall provide for the proper and safe keeping of its permanent records and for the recording of the corporate action of the district. It shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records and accounts. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants or evidences of indebtedness binding upon the district shall furnish surety bond for the faithful performance of their duties and the faithful accounting for all moneys that may come into their hands in an amount to be fixed and in a form to be approved by the board.

(L. 1963 p. 368 § 15)

Board as trustee may accept and hold property donated--duties.

198.340. Any person desiring to donate property for the benefit of a nursing home, constructed or to be constructed under sections 198.200 to 198.350 , may vest title to the property so donated in the board of directors created under sections 198.200 to 198.350 , and the board of directors shall hold and control the property so received and accepted according to the terms of the deed, gift, devise or bequest of the property, and shall be a trustee of the property, and shall take title to all property it may acquire in the name of the district and shall control the property for the purposes provided in sections 198.200 to 198.350 .

(L. 1963 p. 368 § 16)

Apartments for seniors, districts may establish (counties of third and fourth classification).

198.345. Nothing in sections 198.200 to 198.350 shall prohibit a nursing home district from establishing and maintaining apartments for seniors that provide at a minimum housing and food services in any county of the third or fourth classification within its corporate limits. Such nursing home districts shall not lease such apartments for less than fair market rent as reported by the United States Department of Housing and Urban Development.

(L. 2005 H.B. 58 merged with S.B. 210, A.L. 2013 S.B. 23 merged with S.B. 89)

Citation of law.

198.350 . Sections 198.200 to 198.350 shall be known and may be referred to as "The Nursing Home District Law".

(L. 1963 p. 368 § 1)

Dissolution of district.

198.360. In any nursing home district created under the provisions of sections 198.200 to 198.350 which is not operating a nursing home, and in which the voters of the district have on three separate occasions refused to approve a bond issue for the construction of a nursing home, or in which the voters of the district have not approved a bond issue for the construction of a nursing home within three years after the establishment of the district, the board of that district shall submit to the voters the proposition of the dissolution of the district. If a majority of the voters approve the dissolution, the district shall be dissolved and any tax money in the treasury shall be paid into the general revenue fund of the county or counties in which the district is located, in the same proportion as the proportion of the valuation of the district in each county is to the total valuation of the district.

(L. 1969 p. 304 § 1, A.L. 1971 S.B. 158, A.L. 1973 H.B. 364, A.L. 1978 H.B. 1208)

Nursing facility reimbursement allowance, definitions.

198.401. 1. Each nursing facility, except for state-owned and -operated facilities, shall, in addition to all other fees and taxes now required or paid, pay a nursing facility reimbursement allowance for the privilege of engaging in the business of providing nursing facility services, other than services in an institution for mental diseases, in this state.

2. For the purpose of this section, the phrase "engaging in the business of providing nursing facility services, other than services in an institution for mental diseases, in this state" means accepting payment for such services.

3. For the purpose of this section, the term "nursing facility" shall be defined using the definition in section 1396r, Title 42 United States Code, as amended, and as such qualifies as a class of health care providers recognized in federal Public Law 102-234 Medicaid Voluntary Contribution and Provider Specific Tax Amendment of 1991.

(L. 1994 H.B. 1362 § 1)

Expires 9-30-15

Formula set forth in rules.

198.403. Each nursing facility's reimbursement allowance shall be based on a formula set forth in rules and regulations promulgated by the department of social services as provided in section 198.436 .

(L. 1994 H.B. 1362 § 2)

Expires 9-30-15

Records required, transmittal to department--elements of report, determinations.

198.406. 1. Each nursing facility shall keep such records as may be necessary to determine the amount of its reimbursement allowance. On or before the first day of October of each year, every nursing facility shall submit to the department of social services a statement that accurately reflects such information as is necessary to determine that nursing facility's reimbursement allowance.

2. If a nursing facility does not have a third prior year desk-reviewed cost report, elements of the reimbursement allowance shall be based on determinations by the department of social services in accordance with rules and regulations established under section 198.436 .

(L. 1994 H.B. 1362 § 3)

Expires 9-30-15

Determination of amount due--notification, payments--offset allowed.

198.409. 1. The director of the department of social services shall make a determination as to the amount of nursing facility reimbursement allowance due from each nursing facility.

2. The director of the department of social services shall notify each nursing facility of the annual amount of its reimbursement allowance on or before the first day of October each year. Such amount may be paid in monthly* increments over the balance of the reimbursement allowance period.

3. The department of social services may offset the nursing facility reimbursement allowance owed by the nursing facility against any payment due that nursing facility only if the nursing facility requests such an offset. The amounts to be offset shall result, so far as practicable, in withholding from the nursing facility an amount substantially equivalent to the reimbursement allowance owed by the nursing facility. The office of administration and state treasurer may make any fund transfers necessary to execute the offset.

(L. 1994 H.B. 1362 § 4)

Expires 9-30-15

*Word "month" appears in original rolls.

Finality of determination, protest--hearing, reconsideration, appeal.

198.412. 1. Each nursing facility reimbursement allowance determination shall be final after receipt of written notice from the department of social services, unless the nursing facility files a protest with the director of the department of social services setting forth the grounds on which the protest is based, within thirty days from the date of receipt of written notice from the department of social services to the nursing facility.

2. If a timely protest is filed, the director of the department of social services shall reconsider the determination and, if the

nursing facility has so requested, the director or the director's designee shall grant the nursing facility a hearing to be held within forty-five days after the protest is filed, unless extended by agreement between the nursing facility and the director. The director shall issue a final decision within forty-five days of the completion of the hearing. After reconsideration of the reimbursement allowance determination and a final decision by the director of the department of social services, a nursing home's appeal of the director's final decision shall be to the administrative hearing commission in accordance with sections 208.156 and 621.055 .

(L. 1994 H.B. 1362 § 5)

Expires 9-30-15

Forms and content set forth in rule.

198.416. The director of the department of social services shall prescribe by rule the form and content of any document required to be filed pursuant to the provisions of sections 198.401 to 198.436 .

(L. 1994 H.B. 1362 § 6)

Expires 9-30-15

Remittance of amount--nursing facility reimbursement allowance fund, purpose, restrictions--nursing facility quality of care fund, purpose, restrictions.

198.418. 1. The nursing facility reimbursement allowance owed or, if an offset has been requested, the balance, if any, after such offset, shall be remitted by the nursing facility to the department of social services. The remittance shall be made payable to the director of the department of revenue. The amount remitted shall be deposited in the state treasury to the credit of the "Nursing Facility Reimbursement Allowance Fund", which is hereby created for the sole purposes of providing payment to nursing facilities and disbursing up to five percent of the federal funds deposited to the nursing facility reimbursement allowance fund each year, not to exceed one million five hundred thousand dollars, to the credit of the nursing facility quality of care fund, subject to appropriation. The "Nursing Facility Quality of Care Fund" is hereby created in the state treasury. All investment earnings of the nursing facility quality of care fund shall be credited to the nursing facility quality of care fund. The unexpended balance in the nursing facility quality of care fund at the end of the biennium is exempt from the provisions of section 33.080 . The unexpended balance shall not revert to the general revenue fund, but shall accumulate in the nursing facility quality of care fund from year to year. All investment earnings of the nursing facility reimbursement allowance fund shall be credited to the nursing facility reimbursement allowance fund.

2. An offset as authorized by this section or a payment to the nursing facility reimbursement allowance fund shall be accepted as payment of the nursing facility's obligation imposed by section 198.401 .

3. The state treasurer shall maintain records that show the amount of money in the nursing facility reimbursement allowance fund at any time and the amount of any investment earnings on that amount. The department of social services shall disclose such information to any interested party upon written request.

4. The unexpended balance in the nursing facility reimbursement allowance fund at the end of the biennium is exempt from the provisions of section 33.080 . The unexpended balance shall not revert to the general revenue fund, but shall accumulate in the nursing facility reimbursement allowance fund from year to year.

(L. 1994 H.B. 1362 § 7)

Expires 9-30-15

Allowance period, notification by department, delinquent allowance--lien, enforcement, sanctions--effect upon license.

198.421. 1. A nursing facility reimbursement allowance period as provided in sections 198.401 to 198.436 shall be from the first day of October to the thirtieth day of September. The department shall notify each nursing facility with a balance due on the thirtieth day of September of each year the amount of such balance due. If any nursing home fails to pay its nursing facility reimbursement allowance within thirty days of such notice, the reimbursement allowance shall be delinquent. The reimbursement allowance may remain unpaid during an appeal or as allowed in section 198.412 .

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provision of section 198.401 for a previous reimbursement allowance period is unpaid and delinquent, the department of social services may proceed to enforce the state's lien against the property of the nursing facility and to compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the nursing facility is located. In addition, the director of the department of social services or the director's designee may cancel or refuse to issue, extend or reinstate a Medicaid provider agreement to any nursing facility which fails to pay such delinquent reimbursement allowance required by section 198.401 unless under appeal as allowed in section 198.412 .

3. Except as otherwise provided in this section, failure to pay a delinquent reimbursement allowance imposed under section 198.401 shall be grounds for denial, suspension or revocation of a license granted under this chapter. The director of the department of health and senior services may deny, suspend or revoke the license of any nursing facility which fails to pay a delinquent reimbursement allowance unless under appeal as allowed in section 198.412 .

(L. 1994 H.B. 1362 § 8, A.L. 2014 H.B. 1299 Revision)

Expires 9-30-15

No effect upon tax-exempt status.

198.424. Nothing in sections 198.401 to 198.436 shall be deemed to affect or in any way limit the tax-exempt or nonprofit status of any nursing facility granted by state law.

(L. 1994 H.B. 1362 § 9)

Expires 9-30-15

Medicaid provider agreements, payments, rate, computation.

198.427. The department of social services shall make payments to those nursing facilities that have a valid Medicaid provider agreement with the department. Any per diem rate, or its equivalent, used to compute such payments shall be equal to or greater than the nursing facility's per diem rate in effect on January 1, 1994, for those facilities with a permanent rate established in accordance with regulations promulgated by the department of social services. Those nursing facilities without a permanent rate or with an interim rate as of January 1, 1994, will be subject to having their permanent rate established in accordance with regulations promulgated by the department of social services in effect on January 1, 1994. Once the permanent rate is established, any per diem rate, or its equivalent, used to compute such payments shall be equal to or greater than the permanent rate established according to regulations in effect on January 1, 1994. The nursing facility reimbursement allowance shall not be used to supplant, and shall be in addition to, general revenue payments to nursing facilities.

(L. 1994 H.B. 1362 § 10)

Expires 9-30-15

Medicaid eligibility presumed pending approval or denial of application, when.

198.428. If the family support division is unable to make a determination regarding Medicaid eligibility for a resident within sixty days of the submission of a completed application for medical assistance for nursing facility services, the patient shall be Medicaid eligible until the application is approved or denied. However, in no event shall benefits be construed to commence prior to the date of application.

(L. 2003 S.B. 556 & 311, A.L. 2014 H.B. 1299 Revision)

Expires 9-30-15

Contingent application of requirements--disbursement of fund, when.

198.431. The requirements of sections 198.401 to 198.433 shall apply only as long as the revenues generated under section 198.401 are eligible for federal financial participation as provided in sections 198.401 to 198.433 and payments are made pursuant to the provisions of section 198.401 . For the purpose of this section, "federal financial participation" is the federal government's share of Missouri's expenditures under the Medicaid program. Notwithstanding anything in this section to the contrary, in the event federal financial participation is either denied, discontinued, reduced in excess of five percent per year or no longer available for the revenues generated under section 198.401 , the director of the department of social services shall cause disbursement of all funds held in the nursing facility reimbursement allowance fund to be made to all nursing facilities in accordance with regulations promulgated by the department of social services, along with a full accounting of such disbursements, within forty-five days of receipt of notice thereof by the department of social services.

(L. 1994 H.B. 1362 § 11)

Expires 9-30-15

Imposition of allowance, when.

198.433. The nursing home reimbursement allowance provided in section 198.401 shall not be imposed prior to the effective date of rules and regulations promulgated by the department of social services, but in no event prior to October 1, 1994.

(L. 1994 H.B. 1362 § 12)

Expires 9-30-15

Rules, regulations, promulgation, procedure.

198.436 . No regulations implementing sections 198.401 to 198.436 may be filed with the secretary of state without first being provided to interested parties registered on a list of such parties to be maintained by the director of the department of social services. Regulations must be provided to all interested parties seventy-two hours prior to being filed with the secretary of state. No rule or portion of a rule promulgated under the authority of sections 198.401 to 198.436 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024 .

(L. 1994 H.B. 1362 § 13, A.L. 1995 S.B. 3)

Expires 9-30-15

Expiration date.

198.439. Sections 198.401 to 198.436 shall expire on September 30, 2021.

(L. 1994 H.B. 1362 § 14, A.L. 1996 S.B. 952, A.L. 1999 S.B. 326, A.L. 2002 H.B. 1781 merged with S.B. 1094, A.L. 2005 S.B. 189, A.L. 2006 S.B. 822, A.L. 2007 S.B. 4, A.L. 2011 S.B. 62, A.L. 2015 S.B. 210, A.L. 2016 H.B. 1534, A.L. 2018 S.B. 775, A.L. 2019 S.B. 29, A.L. 2020 H.B. 2456)

Expires 9-30-21

Citation of law.

198.500 . Sections 198.500 to 198.515 shall be known and may be cited as the "Alzheimer's Special Care Disclosure Act".

(L. 1996 H.B. 781 § 1)

Definitions.

198.505. For the purposes of sections 198.500 to 198.515 , "Alzheimer's special care unit" or "Alzheimer's special care program" means any facility as defined in section 198.006 , or

any home health agency, adult day care center, hospice or adult foster home that locks, secures, segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or a related disorder, to prevent or limit access by a resident outside the designated or separated area; and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer's or dementia care services.

(L. 1996 H.B. 781 § 2)

Disclosure required, by whom--licensing department, duties--department of health and senior services, duties.

198.510. 1. Any facility which offers to provide or provides care for persons with Alzheimer's disease by means of an Alzheimer's special care unit or Alzheimer's special care program shall be required to disclose the form of care or treatment provided that distinguishes that unit or program as being especially applicable, or suitable for persons with Alzheimer's or dementia. The disclosure shall be made to the department which licenses the facility, agency or center giving the special care. At the time of admission of a patient requiring treatment rendered by the Alzheimer's special care program, a copy of the disclosure made to the department shall be delivered by the facility to the patient and the patient's next of kin, designee, or guardian. The licensing department shall examine all such disclosures in the department's records and verify the information on the disclosure for accuracy as part of the facility's regular license renewal procedure.

2. The department of health and senior services shall develop a single disclosure form to be completed by the facility, agency or center giving the special care. The information required to be disclosed by subsection 1 of this section on this form shall include, if applicable, an explanation of how the care is different from the rest of the facility in the following areas:

(1) The Alzheimer's special care unit's or program's written statement of its overall philosophy and mission which reflects the need of residents afflicted with dementia;

(2) The process and criteria for placement in, transfer or discharge from, the unit or program;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs;

(8) The costs of care and any additional fees; and

(9) Safety and security measures.

(L. 1996 H.B. 781 § 3, A.L. 2014 H.B. 1299 Revision)

Alzheimer's facilities, informational documents required--department, duties--licensing department, verification.

198.515. Any facility which offers to provide or provides care for persons with Alzheimer's disease by means of an Alzheimer's special care unit or Alzheimer's special care program shall be required to provide an informational document developed by or approved by the department of health and senior services. The document shall include but is not limited to updated information on selecting an Alzheimer's special care unit or Alzheimer's special care program. The document shall be given to any person seeking information about or placement in an Alzheimer's special care unit or Alzheimer's special care program. The distribution of this document shall be verified by the licensing department as part of the facility's regular license renewal procedure.

(L. 1996 H.B. 781 § 4, A.L. 2014 H.B. 1299 Revision)

Inspection of certain long-term care facilities, when--restrictions on surveyors, required disclosures--immediate family member defined--conflict of interest, when.

198.525. 1. In order to comply with sections 198.012 and 198.022, the department of health and senior services shall inspect residential care facilities, assisted living facilities, intermediate care facilities, and skilled nursing facilities, including those facilities attached to acute care hospitals at least once a year.

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

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

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

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

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

4. For purposes of this section, the phrase "immediate family member" shall mean husband, wife, natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother, stepsister,

father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild.

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

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

(L. 1999 S.B. 8 & 173 § 4, A.L. 2003 S.B. 556 & 311, A.L. 2009 H.B. 395, A.L. 2022 H.B. 2331 merged with S.B. 710)

Annual inspections — reevaluation of inspection process — disclosure of inspection schedule limited, penalty for violation.

198.526. 1. The department of health and senior services shall inspect all facilities licensed by the department at least once each year. Such inspections shall be conducted:

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

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

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

3. The department shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

(L. 1999 S.B. 326 § 4, A.L. 2003 S.B. 556 & 311, A.L. 2022 H.B. 2331 merged with S.B. 710)

CROSS REFERENCE:

Rulemaking authority, **198.534**

Inspectors and surveyors of long-term care facilities--uniformity of application of regulation standards.

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

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the number and type of actions overturned by the informal dispute resolution process under section 198.545 and formal appeal shall be used as part of the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

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

(L. 1999 H.B. 316, et al. § 2, A.L. 2009 H.B. 395, A.L. 2012 H.B. 1608)

Long-term care facility information to be provided on department internet website.

198.528. 1. The department of health and senior services shall provide through its internet website:

(1) The most recent survey of every long-term care facility licensed in this state and any such findings of deficiencies and the effect the deficiency would have on such facility. If such survey is in dispute, the survey shall not be posted on the website until the facility's informal dispute resolution process resolves the dispute and the department shall, upon request of the facility, post the facility's response;

(2) The facility's proposed plan of correction;

(3) A link to the federal website that provides a summary of facility surveys conducted over the last three years; and

(4) Information on how to obtain a copy of a complete facility survey conducted over the last three years.

2. Nothing in this section shall be construed as requiring the department to post any information on its internet website that is prohibited from disclosure pursuant to the federal Health Insurance Portability and Accountability Act, as amended.

(L. 2003 S.B. 556 & 311)

Managed care services provided in long-term care facilities, when, conditions--reimbursement rate--services included.

198.530. 1. If an enrollee in a managed care organization is also a resident in a long-term care facility licensed pursuant to chapter 198, or a continuing care retirement community, as defined in section 197.305 , such enrollee's managed care organization shall provide the enrollee with the option of receiving the covered service in the long-term care facility which serves as the enrollee's primary residence. For purposes of this section, "managed care organization" means any

organization that offers any health plan certified by the department of health and senior services designed to provide incentives to medical care providers to manage the cost and use of care associated with claims, including, but not limited to, a health maintenance organization and preferred provider organization. The resident enrollee's managed care organization shall reimburse the resident facility for those services which would otherwise be covered by the managed care organization if the following conditions apply:

(1) The facility is willing and able to provide the services to the resident; and

(2) The facility and those health care professionals delivering services to residents pursuant to this section meet the licensing and training standards as prescribed by law; and

(3) The facility is certified through Medicare; and

(4) The facility and those health care professionals delivering services to residents pursuant to this section agree to abide by the terms and conditions of the health carrier's contracts with similar providers, abide by patient protection standards and requirements imposed by state or federal law for plan enrollees and meet the quality standards established by the health carrier for similar providers.

2. The managed care organization shall reimburse the resident facility at a rate of reimbursement not less than the Medicare allowable rate pursuant to Medicare rules and regulations.

3. The services in subsection 1 of this section shall include, but are not limited to, skilled nursing care, rehabilitative and other therapy services, and postacute care, as needed. Nothing in this section shall limit the managed care organization from utilizing contracted providers to deliver the services in the enrollee's resident facility.

4. A resident facility shall not prohibit a health carrier's participating providers from providing covered benefits to an enrollee in the resident facility. A resident facility or health care professional shall not impose any charges on an enrollee for any service that is ancillary to, a component of, or in support of the services provided under this section when the services are provided by a health carrier's participating provider, or otherwise create a disincentive for the use of the health carrier's participating providers. Any violation of the requirements of this subsection by the resident facility shall be considered abuse or neglect of the resident enrollee.

(L. 1999 H.B. 316, et al. § 3)

Investigation of complaints--results provided, when.

198.532. 1. Complaints filed with the department of health and senior services against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to section 198.070 .

2. The department shall provide the results of all investigations in accordance with section 192.2500 *. The department shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the department of health and senior services and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the department of health and senior services.

(L. 1999 S.B. 326 § 1, A.L. 2003 S.B. 556 & 311)

*Reprinted due to statutory reference to section 660.320 changed to section 192.2500 to comply with section 3.060 .

Conflict of interest, state investigators.

198.533. The division shall ensure that any monitor selected to perform state investigations of long-term care facilities has no conflict of interest, and has no direct or indirect connection to the facility or its parent corporation.

(L. 1999 S.B. 326 § 2)

Rulemaking authority.

198.534. In consultation with consumers, providers and others, the division shall promulgate rules and regulations to implement the provisions of this section and sections 198.080 , 198.086, 198.526 , 198.532 and 198.533 . Any rule or portion of a rule, as that term is defined in section 536.010 , that is created under the authority delegated in this section and sections 198.080 , 198.086, 198.526 , 198.532 and 198.533 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028 . This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

(L. 1999 S.B. 326 § 6)

Definitions--contracting with third parties--department to establish IDR process, procedures--rulemaking authority.

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

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

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

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

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

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

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

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

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

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

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

(1) Within ten working days of the end of the survey, the department shall by certified mail transmit to the facility a statement of deficiencies committed by the facility. Notification of the availability of an IDR and IDR process shall be included in the transmittal;

(2) Within ten calendar days of receipt of the statement of deficiencies, the facility shall return a plan of correction to the department. Within such ten-day period, the facility may request in writing an IDR conference to refute the deficiencies cited in the statement of deficiencies;

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

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

(b) A telephonic conference; or

(c) A face-to-face conference held at the headquarters of the QIO or at the facility at the request of the facility. If the QIO determines the need for additional information, clarification, or discussion after conclusion of the IDR conference, the department and the facility shall be present.

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

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

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

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

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

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

(L. 2009 H.B. 395)

Citation of law — definitions.

198.610. 1. The provisions of sections 198.610 to 198.632 shall be known and may be cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".

2. For purposes of sections 198.610 to 198.632, the following terms shall mean:

(1) Authorized electronic monitoring**"**, the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632;

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

(3) "Electronic monitoring device", a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;

(4) "Facility" or "long-term care facility", any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined under section 198.006;

(5) "Guardian", the same meaning as defined under section 475.010;

(6) "Legal representative", a person authorized under a durable power of attorney that complies with sections 404.700 to 404.737 to act on behalf of a resident of a facility;

(7) "Resident", a person residing in a facility.

(L. 2020 H.B. 1387 & 1482)

Placement of electronic monitoring device — immunity from liability, when — release of recordings, when — rulemaking authority.

198.612. 1. Residents of long-term care facilities in this state shall have the right to place in the resident's room an authorized electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative.

2. No facility shall be civilly or criminally liable for activity or action arising out of the use by any resident or any resident's guardian or legal representative of any electronic monitoring device, including the facility's inadvertent or intentional disclosure of a recording made by a resident, or by a person who consents on behalf of the resident, for any purpose not authorized under sections 198.610 to 198.632.

3. No facility shall be civilly or criminally liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.632.

4. Except for cases of abuse and neglect, no person shall release any recording made under sections 198.610 to 198.632 without the written permission of the resident or the resident's guardian or legal representative and the long-term care facility.

5. The department shall promulgate rules to implement the provisions of sections 198.610 to 198.632. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2020, shall be invalid and void.

(L. 2020 H.B. 1387 & 1482)

Unauthorized placement of electronic monitoring device — immunity from liability, when.

198.614. 1. For purposes of sections 198.610 to 198.632, the placement and use of an electronic monitoring device in the room of a resident is considered to be unauthorized if:

(1) The placement and use of the device is not open and obvious; or

(2) The facility and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

2. The department and the facility shall be immune from civil liability in connection with the unauthorized placement or use of an electronic monitoring device in the room of a resident.

(L. 2020 H.B. 1387 & 1482)

Acknowledgment form, contents.

198.616. Each facility shall use an electronic monitoring device acknowledgment form developed by the department and adopted by regulation. The form shall be offered to any resident or resident's guardian or legal representative upon request. The form shall be completed and signed by or on behalf of a resident prior to the installation of, or any use of, an electronic monitoring device in the facility. The form shall state:

(1) That a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) That a person who, without authorization, places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the unauthorized

placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) That a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring, and that if the facility refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring, the person should contact the department;

(4) The basic procedures that shall be followed to request authorized electronic monitoring;

(5) The manner in which sections 198.610 to 198.632 affect the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) Any other information regarding authorized or unauthorized electronic monitoring that the department, by regulation, specifies should be included on the form.

(L. 2020 H.B. 1387 & 1482)

Resident sole authority to request monitoring — exception for lack of capacity, requirements.

198.618. 1. If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under sections 198.610 to 198.632, notwithstanding the terms of any durable power of attorney, general power of attorney, or similar instrument.

2. If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under sections 198.610 to 198.632.

3. If a resident has been determined by a physician to lack capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under sections 198.610 to 198.632.

(L. 2020 H.B. 1387 & 1482)

Request procedure — form, contents — consent requirements — recordkeeping requirements — access to footage, when.

198.620. 1. A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring shall make the request to the facility on an electronic monitoring request form prescribed by the department and provided to the resident by the facility.

2. The form shall require the resident or the resident's guardian or legal representative to:

(1) Release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) Choose whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident, if the electronic monitoring device is a video surveillance camera; and

(3) Obtain the consent of other residents residing in the room, using a form prescribed for such purpose by the department.

3. Consent under subdivision (3) of subsection 2 of this section shall be given only:

(1) By the other resident or residents in the room;

(2) By the guardian of a person described under subdivision (1) of this subsection, if the person has been judicially declared to lack the required capacity; or

(3) By the legal representative of a person described under subdivision (1) of this subsection, if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

4. The form prescribed by the department under subdivision (3) of subsection 2 of this section shall require any other resident in the room to consent to release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device.

5. Another resident in the room may:

(1) If the proposed electronic monitoring device is a video surveillance camera, condition his or her consent on the camera being pointed away from the consenting resident; and

(2) Condition his or her consent on the use of an audio electronic monitoring device being limited or prohibited.

6. If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring shall cease until the new resident has consented in accordance with this section.

7. The department shall include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

8. The department shall adopt rules prescribing the place or places that a form signed under this section shall be maintained and the period for which it shall be maintained.

9. Authorized electronic monitoring:

(1) Shall not commence nor an electronic monitoring device installed until all request and consent forms required by this section have been completed and returned to the facility;

(2) Shall be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room; and

(3) Shall be installed and conducted only in a fixed position.

10. The facility shall be granted access to all footage made by an electronic monitoring device at the facility's expense.

(L. 2020 H.B. 1387 & 1482)

Facility to permit monitoring, requirements.

198.622. 1. A facility shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

2. The facility shall require a resident who conducts authorized electronic monitoring, or the resident's guardian or legal representative, to post and maintain a conspicuous notice at the entrance to the resident's room. The notice shall state that the room is being monitored by an electronic monitoring device.

3. Authorized electronic monitoring conducted under sections 198.610 to 198.632 shall not be compulsory and shall be conducted only at the request of the resident or the resident's guardian or legal representative.

4. A facility shall not refuse to admit an individual to residency in the facility and shall not remove a resident from the facility because of a request to conduct authorized electronic monitoring. A facility shall not remove a resident from the facility because unauthorized electronic monitoring is being conducted by or on behalf of a resident.

5. A facility shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) Providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) Providing access to power sources for the video surveillance camera or other electronic monitoring device.

6. The resident or the resident's guardian or legal representative shall pay for all costs associated with conducting electronic monitoring, except for the costs of electricity. The resident or the resident's guardian or legal representative shall be responsible for:

(1) All costs associated with installation of equipment incurred by the resident or the facility; and

(2) Maintaining the equipment.

7. A facility shall require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department shall adopt rules regarding the safe placement of an electronic monitoring device.

8. If authorized electronic monitoring is conducted, the facility shall require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

9. A facility shall not be required to provide internet service or network access to any electronic monitoring device. Any internet service for an electronic monitoring device shall be the sole responsibility of the resident or the resident's guardian or legal representative.

10. A facility may move a resident to a comparable room to accommodate a request to conduct authorized electronic monitoring.

(L. 2020 H.B. 1387 & 1482)

Abuse or neglect of resident, use of footage, reporting requirements.

198.624. 1. If a resident who has capacity to determine that he or she has been abused or neglected and who is conducting electronic monitoring under sections 198.610 to 198.632 gives footage made by the electronic monitoring device to a person and directs the person to view or listen to the footage to determine whether abuse or neglect has occurred, the person to whom the resident gives the footage is considered to have viewed or listened to the footage on or before the seventh day after the date the person receives the footage for the purposes of reporting abuse or neglect.

2. A person is required to report abuse based on the person's viewing of, or listening to, footage only if the incident of abuse is acquired on the footage. A person is required to report neglect based on the person's viewing of, or listening to, footage only if it is clear from viewing or listening to the footage that neglect has occurred.

3. If abuse or neglect of the resident is reported to the facility, and the facility requests a copy of any relevant footage made by an electronic monitoring device, the person who possesses the footage shall provide the facility with a copy at the facility's expense.

(L. 2020 H.B. 1387 & 1482)

Admissibility of footage in court or administrative proceeding, when.

198.626. 1. Subject to applicable rules of evidence and procedure and the requirements of this section, footage created through the use of unauthorized or authorized electronic monitoring described by sections 198.610 to 198.632 may be admitted into evidence in a civil or criminal court action or administrative proceeding, provided that a proper foundation is offered to support its admission.

2. A court or administrative agency shall not admit into evidence footage created through the use of unauthorized or authorized electronic monitoring or take or authorize action based on the footage unless:

(1) If the footage is a videotape or recording, the footage shows the time and date that the events acquired on the footage occurred;

(2) The contents of the footage have not been edited or artificially enhanced; and

(3) If the contents of the footage have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the footage were not altered.

3. A person who sends more than one specimen of footage to the department shall identify for the department each specimen on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send footage to the department to identify the place on the footage that an incident of abuse or evidence of neglect may be found.

(L. 2020 H.B. 1387 & 1482)

Notice of electronic monitoring to be posted.

198.628. Each facility shall post a notice at the entrance to the facility stating that the rooms of some residents may be monitored electronically by, or on behalf of, the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the notice.

(L. 2020 H.B. 1387 & 1482)

Sanctions, when — administrative penalty, when.

198.630. 1. The department may impose appropriate sanctions under this chapter on an administrator of a facility who knowingly:

(1) Refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) Refuses to admit an individual to residency or allows the removal of a resident from the institution solely because of a request to conduct authorized electronic monitoring by a resident or a resident's guardian or legal representative;

(3) Allows the removal of a resident from the facility solely because unauthorized electronic monitoring is being conducted by or on behalf of the resident; or

(4) Violates another provision of sections 198.610 to 198.632.

2. The department may assess an administrative penalty against a facility that:

(1) Refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) Refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) Allows the removal of a resident from the facility solely because unauthorized electronic monitoring is being conducted by, or on behalf of, the resident; or

(4) Violates another provision of sections 198.610 to 198.632.

(L. 2020 H.B. 1387 & 1482)

Unauthorized acts, electronic monitoring devices and data — penalties — affirmative defense, when.

198.632. 1. A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with sections 198.610 to 198.632 or who destroys or corrupts any data collected by the device is guilty of a class B misdemeanor.

2. Evidence that the person had the consent of the resident or the resident's guardian or legal representative to engage in the conduct described in subsection 1 of this section shall be an affirmative defense to any prosecution brought under the provisions of subsection 1 of this section.

3. A person other than a resident of the facility who, without authorization, places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the unauthorized placement of the device in the room of a resident is guilty of a class B misdemeanor if the person continues the conduct after a written warning to cease and desist from that conduct.

(L. 2020 H.B. 1387 & 1482)

Definitions.

198.640. As used in sections 198.640 to 198.648, the following terms shall mean:

(1) "Controlling person", a business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a supplemental health care services agency. The term controlling person also means an individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling person;

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

(3) "Health care facility", a licensed hospital defined under section 197.020 or a licensed entity defined under subdivision (6), (14), (22), or (23) of section 198.006;

(4) "Health care personnel", any individual licensed, accredited, or certified by the state of Missouri to perform specified health services consistent with state law;

(5) "Person", an individual, firm, corporation, partnership, or association;

(6) "Supplemental health care services agency" or "agency", a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for health care personnel, including a temporary nursing staffing agency as defined in section 383.130, or that operates a digital website or digital smartphone application that facilitates the provision of the engagement of health care personnel and accepts requests for health care personnel through its digital website or digital smartphone application. The term supplemental health care services agency or agency shall not include an individual who engages, only on his or her own behalf, to provide the individual's services on a temporary basis to health care facilities or a home health agency licensed under section 197.415 and shall not include a person, firm, corporation, partnership, or association engaged in the provision of contracted specialty services by a practitioner as defined under subdivision (4) of section 376.1575, to a hospital as defined under section 197.020, or to other individuals or entities providing health care that are not health care facilities.

(L. 2022 S.B. 710)

Supplemental health care services agency, registration required — procedure.

198.642. 1. A person who operates a supplemental health care services agency shall register annually with the department. Each separate business location of the agency shall have a separate registration with the department. Fees collected under this section shall be deposited in the state treasury and credited to the state general revenue fund.

2. The department shall establish forms and procedures for processing each supplemental health care services agency registration application. An application for agency registration shall include at least the following:

(1) The names and addresses of each person having an ownership interest in the agency;

(2) If the owner is a corporation, copies of the articles of incorporation or articles of association and current bylaws, together with the names and addresses of officers and directors;

(3) "Health care facility", a licensed hospital defined under section 197.020 or a licensed entity defined under subdivision (6), (14), (22), or (23) of section 198.006;

(4) Any other relevant information that the department determines is necessary to properly evaluate an application for registration;

(5) Policies and procedures that describe how the agency's records will be immediately available at all times to the department upon request; and

(6) A registration fee that may be established in rule by the department as determined to be necessary to meet the expenses of the department for the administration of the provisions of sections 198.640 to 198.648, but in no case shall such fee be more than one thousand dollars.

If an agency fails to provide the items required in this subsection to the department, the department shall immediately suspend or refuse to issue the supplemental health care services agency registration. An agency may appeal the department's decision to the administrative hearing commission under chapter 621.

3. A registration issued by the department according to this section shall be effective for a period of one year from the date of its issuance, unless the registration has been revoked or suspended under the provisions of this section or unless the agency is sold or ownership or management is transferred. If an agency is sold or ownership or management is transferred, the registration of the agency shall be void, and the new owner or operator may apply for a new registration.

4. The department shall be responsible for the oversight of supplemental health care services agencies through annual unannounced surveys, complaint investigations, and other actions necessary to ensure compliance with sections 198.640 to 198.648.

(L. 2022 S.B. 710)

Agency criteria — revocation and nonrenewal of registration, when — appeal procedure

198.644. 1. Each registered supplemental health care services agency shall be required, as a condition of registration, to meet the following minimum criteria, which may be supplemented by rules promulgated by the department:

(1) Provide to the health care facility to which any temporary health care personnel are supplied documentation that each health care personnel meets all licensing or certification requirements for the position in which the health care personnel will be working and documentation that each health care personnel meets all training and continuing education standards for the position in which the health care personnel will be working for the type of facility or entity with which the health care personnel is placed in compliance with any federal, state, or local requirements;

(2) Comply with all pertinent requirements relating to the health and other qualifications of personnel employed in health care facilities, including requirements related to background checks in sections 192.2490 and 192.2495;

(3) Not restrict in any manner the employment opportunities of its health care personnel;

(4) Carry, or require the health care personnel to carry, and provide proof of medical malpractice insurance to insure against loss, damages, or expenses incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care

services by the agency or by any health care personnel of the agency;

(5) Maintain, and provide proof of, insurance coverage for workers' compensation for all health care personnel provided or procured by the agency or, if the health care personnel provided or procured by the agency are independent contractors, require occupational accident insurance;

(6) Refrain in any contract with any health care personnel or health care facility from requiring the payment of liquidated damages, employment fees, or other compensation should the health care personnel be hired as a permanent employee of a health care facility;

(7) (a) Submit a report to the department on a quarterly basis for each health care facility participating in Medicare or Medicaid with which the agency contracts that includes all of the following:

a. A detailed list of the average amount charged to the health care facility for each individual health care personnel category; and

b. A detailed list of the average amount paid by the agency to health care personnel in each individual health care personnel category.

(b) Such reports shall be considered closed records under section 610.021, provided that the department shall annually prepare reports of aggregate data that does not identify any data specific to any supplemental health care services agency;

(8) Retain all records for ten calendar years in a manner to allow them to be immediately available to the department;

(9) Provide services to a health care facility during the year preceding the agency's registration renewal date;

(10) Indemnify and hold harmless a health care facility for any damages, sanctions, or civil monetary penalties that are proximately caused by an action or failure to act of any health care personnel the agency provides to the health care facility; provided that the amount for which the supplemental health care services agency may be liable to a health care facility for civil monetary penalties and sanctions shall not exceed one hundred thousand dollars for civil monetary penalties and sanctions that may be assessed against skilled nursing facilities by the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services. If the damages, sanctions, or civil monetary penalties are proximately caused by the negligence, action, or failure to act by the health care facility, then liability shall be determined by a percentage of fault and shall be the sole responsibility of the party against whom such determination is made. Such determinations shall be made by the agreement of the parties or a neutral third party who considers all of the relevant factors in making a determination.

2. Failure to comply with the provisions of this section shall subject the supplemental health care services agency to revocation or nonrenewal of its registration.

3. The registration of a supplemental health care services agency that knowingly supplies to a health care facility a person with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study shall be revoked by the department upon fifteen days' advance written notice.

4. (1) Any supplemental health care services agency whose registration has been suspended or revoked may appeal the department's decision to the administrative hearing commission under the provisions of chapter 621.

(2) If a controlling person has been notified by the department that the supplemental health care services agency will not receive an initial registration or that a renewal of the registration has been denied, the controlling person or a legal representative on behalf of the agency may request and receive a hearing on the denial before the administrative hearing commission under the provisions of chapter 621.

5. (1) The controlling person of a supplemental health care services agency whose registration has not been renewed or has been revoked because of noncompliance with the provisions of sections 198.640 to 198.648 shall not be eligible to apply for or receive a registration for five years following the effective date of the nonrenewal or revocation.

(2) The department shall not issue or renew a registration to a supplemental health care services agency if a controlling person includes any individual or entity that was a controlling person of an agency whose registration was not renewed or was revoked as described in subdivision (1) of this subsection for five years following the effective date of nonrenewal or revocation.

(L. 2022 S.B. 710)

Complaints, reporting system.

198.646. The department shall establish a system for reporting complaints against a supplemental health care services agency or its health care personnel. Complaints may be made by any member of the public. The department shall investigate any complaint received and shall report the department's findings to the complaining party and the agency or health care personnel involved.

(L. 2022 S.B. 710)

Rulemaking authority.

198.648. The department shall promulgate rules to implement the provisions of sections 198.640 to 198.648. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,

section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be invalid and void.

(L. 2022 S.B. 710)

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Refer to the official Missouri Revised Statutes, which can be found at the Missouri General Assembly website: http://www.revisor.mo.gov