

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 395
95TH GENERAL ASSEMBLY

Reported from the Committee on Health, Mental Health, Seniors and Families, April 16, 2009, with recommendation that the Senate Committee Substitute do pass.

1162S.03C

TERRY L. SPIELER, Secretary.

AN ACT

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

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

Section A. Sections 198.074, 198.075, 198.096, 198.525, and 208.819, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 198.074, 198.075, 198.096, 198.187, 198.525, 208.016, and 208.819, to read as follows:

198.074. 1. Effective August 28, 2007, all new facilities licensed **under this chapter** on or after August 28, 2007, or any [facilities completing a] **section of a facility licensed under this chapter in which a** major renovation [to the facility] **has been completed** on or after August 28, 2007, as defined and approved by the department, [and which are licensed under this chapter] 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

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

17 other impairment that prevents the individual from safely evacuating the facility
18 with minimal assistance shall install and maintain an approved sprinkler system
19 in accordance with NFPA 13R.

20 4. All residential care and assisted living facilities with more than twenty
21 residents not included in subsection 3 of this section, which are initially licensed
22 under this chapter prior to August 28, 2007, and that do not have installed an
23 approved sprinkler system in accordance with NFPA 13R **or 13** prior to August
24 28, 2007, shall install and maintain an approved sprinkler system in accordance
25 with NFPA 13R **or 13** by December 31, 2012, unless the facility meets the safety
26 requirements of Chapter 33 of existing residential board and care occupancies of
27 NFPA 101 life safety code.

28 5. All skilled nursing and intermediate care facilities not required prior
29 to August 28, 2007, to install and maintain an approved sprinkler system shall
30 install and maintain an approved sprinkler system in accordance with NFPA 13
31 by December 31, 2012, unless the facility receives an exemption from the
32 department and presents evidence in writing from a certified sprinkler system
33 representative or licensed engineer that the facility is unable to install an
34 approved National Fire Protection Association 13 system due to the unavailability
35 of water supply requirements associated with this system [or the facility meets
36 the safety requirements of Chapter 33 of existing residential board and care
37 occupancies of NFPA 101 life safety code].

38 6. Facilities that take a substantial step, as specified in [subsection 7]
39 **subsections 4 and 5** of this section, to install an approved NFPA 13R **or 13**
40 system prior to December 31, 2012, may apply to the [department] **state**
41 **treasurer's office** for a loan in accordance with section 198.075 to install such
42 system. However, such loan shall not be available if by December 31, 2009, the
43 average total reimbursement for the care of persons eligible for Medicaid public
44 assistance in an assisted living facility and residential care facility is equal to or
45 exceeds fifty-two dollars per day. The average total reimbursement includes
46 room, board, and care delivered by the facility, but shall not include payments to
47 the facility for care or services not provided by the facility. If a facility under this
48 subsection does not have an approved sprinkler system installed by December 31,
49 2012, such facility shall be required to install and maintain an approved
50 sprinkler system in accordance with NFPA 13 by December 31, 2013. Such loans
51 received under this subsection and in accordance with section 198.075, shall be
52 paid in full as follows:

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

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

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

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

66 7. (1) All facilities licensed under this chapter shall be equipped with a
67 complete fire alarm system in compliance with NFPA 101, Life Safety Code for
68 Detection, Alarm, and Communication Systems [as referenced in NFPA 72], or
69 shall maintain a system that was approved by the department when such facility
70 was constructed so long as such system is a complete fire alarm system. A
71 complete fire alarm system shall include, but not be limited to, interconnected
72 smoke detectors [throughout the facility], automatic transmission to the fire
73 department, dispatching agency, or central monitoring company, manual pull
74 stations at each required exit and attendant's station, heat detectors, and audible
75 and visual alarm indicators. **If a facility submits a plan of compliance for
76 installation of a sprinkler system required by this chapter, such facility
77 shall install a complete fire alarm system that complies with NFPA 72
78 upon installation of the sprinkler system. Until such time that the
79 sprinkler system is installed in the facility which has submitted a plan
80 of compliance, each resident room or any room designated for sleeping
81 in the facility shall be equipped with at least one battery-powered
82 smoke alarm installed, tested, and maintained in accordance with
83 NFPA 72. In addition, any such facility shall be equipped with heat
84 detectors interconnected to the fire alarm system which are installed,
85 tested, and maintained in accordance with NFPA 72 in all areas subject
86 to nuisance alarms, including but not limited to, kitchens, laundries,
87 bathrooms, mechanical air handling rooms, and attic spaces.**

88 (2) In addition, each floor accessed by residents shall be divided into at

89 least two smoke sections by one-hour rated smoke partitions. No smoke section
90 shall exceed one hundred fifty feet in length. If neither the length nor the width
91 of the floor exceeds seventy-five feet, no smoke-stop partition shall be
92 required. Facilities with a complete fire alarm system and smoke sections
93 meeting the requirements of this subsection prior to August 28, 2007, shall
94 continue to meet such requirements. Facilities initially licensed on or after
95 August 28, 2007, shall comply with such requirements beginning August 28, 2007,
96 or on the effective date of licensure.

97 (3) Except as otherwise provided in this subsection, the requirements for
98 complete fire alarm systems and smoke sections shall be enforceable on December
99 31, 2008.

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

103 9. [Fire safety inspections of facilities licensed under this chapter for
104 compliance with this section shall be conducted annually by the state fire marshal
105 if such inspections are not available to be conducted by local fire protection
106 districts or fire departments. The provisions of this section shall be enforced by
107 the state fire marshal or by the local fire protection district or fire department,
108 depending on which entity conducted the inspection.

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

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

11 2. Qualifying facilities shall make an application to the [department of
12 health and senior services] **state treasurer's office** upon forms provided by the
13 [department] **state treasurer's office**. Upon receipt of an application for a
14 loan, the [department] **state treasurer's office** shall review the application

15 [and advise the governor] before state funds are allocated for a loan. For
16 purposes of this section, a "qualifying facility" shall mean a facility licensed under
17 this chapter that is in substantial compliance. "Substantial compliance" shall
18 mean a facility that has no uncorrected deficiencies and is in compliance with
19 department of health and senior services rules and regulations governing such
20 facility.

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

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

198.096. 1. The operator of any facility who holds in trust personal funds
2 of residents as provided in section 198.090 shall obtain and file with the
3 department a bond in a form approved by the department in an amount equal to
4 one and one-half times the average monthly balance or average total of the
5 monthly balances, rounded to the nearest one thousand dollars, in the residents'
6 personal funds account or accounts kept pursuant to subdivision (3) of subsection
7 1 of section 198.090 for the preceding [calendar year] **twelve months**. In the
8 case of a new facility or of an operator not previously holding in trust the
9 personal funds of residents, the department shall determine the amount of bond
10 to be required, taking into consideration the size and type of facility, the number
11 of residents, and the experience of comparable facilities.

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

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

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

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

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

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

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

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

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

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

20 The disclosures under paragraph (b) of this subdivision shall be
21 disclosed to the department whenever the event giving rise to
22 disclosure first occurs.

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

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

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

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

208.819. 1. Subject to appropriations, persons institutionalized in
2 **nursing homes who are [Medicaid] MO HealthNet eligible and who wish to move**
3 **back into the community shall be eligible for a one-time [Missouri] transition [to**
4 **independence] grant. The [Missouri] transition [to independence] grant shall be**
5 **limited to up to [fifteen] twenty-four hundred dollars to offset the initial down**
6 **payments [and], setup costs, and other expenditures associated with housing**
7 **a senior or person with disabilities needing home and community-based**
8 **services as such person moves out of a nursing home. Such grants shall be**
9 **established and administered by the division of [vocational rehabilitation] senior**
10 **and disability services in consultation with the department of social**
11 **services. The division of [vocational rehabilitation] senior and disability**
12 **services and the department of social services shall cooperate in actively seeking**

13 federal and private grant moneys to **further** fund this program; except that, such
14 federal and private grant moneys shall not limit the general assembly's ability
15 to appropriate moneys for the [Missouri] transition [to independence] grants.

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

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