

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 966
95TH GENERAL ASSEMBLY

2089L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 198.527, RSMo, and to enact in lieu thereof three new sections relating to dispute resolution in long-term care facilities.

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

Section A. Section 198.527, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 198.089, 198.527, and 198.545, to read as follows:

198.089. The department of health and senior services shall strongly encourage all long-term care facilities licensed in this state to institute policies that will encourage familial involvement in the well-being and support of residents of long-term care facilities. Such policies for familial involvement shall include, but not be limited to, family conferences and meetings for the purpose of allowing families of residents to share their experiences and to discuss how to provide support to the residents of the facility.

198.527. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of [social] **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 **under section 198.545** and formal appeal shall be used [in] **as part of** the evaluation. Based on such evaluation, the department shall develop

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 standards and a retraining process for the region, state, or individual inspector or surveyor, as
13 needed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) A telephonic conference; or

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

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49 If the QIO determines the need for additional information, clarification, or discussion after
50 conclusion of the IDR conference, both parties, the department, and the facility shall be
51 present.

52 5. Within ten days of the IDR conference described in subsection 4 of this section,
53 the QIO shall make a determination, based upon the facts and findings presented, and
54 shall transmit the decision and rationale for the outcome in writing to the facility. If the
55 department disagrees with such determination, the department shall transmit the decision
56 and rationale for the reversal to the facility within such ten-day period.

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

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

64 8. The department shall not post on its web site or enter into the Centers for
65 Medicare & Medicaid Services online Survey, Certification and Reporting System, or

66 report to any other agency any information about the deficiencies which are in dispute
67 unless the dispute determination is made and the facility has responded with a revised plan
68 of correction, if needed.

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

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