**Section 390.200 Inspections, Surveys, Evaluations and Consultation**

a) The terms survey, inspection, and evaluation are synonymous. These terms refer to the overall examination of compliance with the Act and this Part.

1) All facilities to which this Part applies shall be subject to and shall be deemed to have given consent to annual inspections, surveys, or evaluations by properly identified personnel of the Department, or by other properly identified persons, including local health department staff, as the Department may designate.

2) *An inspection, survey or evaluation, other than an inspection of financial records,* *shall be conducted without prior notice to the facility. A visit for the sole purpose of* *consultation* *may be announced.* *Submission of a facility's current Consumer Choice Information Report required by Section 2-214 of* the Act *shall be verified at the time of inspection.* (Section 3-212(a) of the Act)

3) The licensee, or person representing the licensee in the facility, shall provide access and entry to the premises or facility for obtaining information required to carry out the Act and this Part. In addition, *the Department* *shall have access to and may reproduce or photocopy at* *its* *cost any books, records, and other documents maintained by the facility,* the licensee or their representatives *to the extent necessary to carry out* the *Act* and this Part. (Section 3-213 of the Act)

4) A facility may charge the Department for photocopying at a rate determined by the facility not to exceed the rate in Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127).

5) A *facility shall complete a Consumer Choice Information Report and shall file it with the Office of State Long Term Care Ombudsman electronically as prescribed by the Office. The Report shall be filed annually and upon request by the Office of State Long Term Care Ombudsman.* This report shall *be completed by the facility in full.* (Section 2-214(a) of the Act)

b) *No person shall*:

1) *Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of* the *Act* or this Part;

2) *Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to investigations and enforcement of* the *Act* or this Part;

3) *Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under* the *Act* or this Part;

4) *Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under* the *Act* or this Part. (Section 3-318(a) of the Act)

c) *A violation of* subsection (b) *is a business offense, punishable by a fine not to exceed $10,000, except as otherwise provided in subsection (2) of Section 3-103* of the Act and Section 390.120(c) *as to submission of false or misleading information in a license application.* (Section 3-318(b) of the Act)

d) *In determining whether to make* *more than the required number of* *unannounced* *inspections, surveys and evaluations of a facility, the Department shall* *consider one or more of* *the following:*

1) *Previous inspection reports;*

2) *The facility's history of compliance with* the Act and this Part, *and correction of violations, penalties or other enforcement actions*;

3) *The* *number and severity of* *complaints* *received about the facility;*

4) *Any* *allegations of resident abuse or neglect;*

5) *Weather conditions;*

6) *Health emergencies;*

7) *Other reasonable belief that deficiencies* *exist;* (Section 3-212(b) of the Act) and

8) Requirements pursuant to the "1864 Agreement" (42 U.S.C. 1395aa) between the Department and the U.S. Department of Health and Human Services (HHS) (e.g., annual and follow-up certification inspections, life safety code inspections and any inspections requested by the Secretary of HHS).

e) *The Department shall not be required to determine whether a facility certified to participate in the Medicare program under Title XVIII of the Social Security Act, or the Medicaid Program under Title XIX of the Social Security Act, and which the Department determines by inspection to be in compliance with the certification requirements of Title XVIII or XIX, is in compliance with any requirement of* the *Act* and this Part *that is less stringent than or duplicates a federal certification requirement.* (Section 3-212(b-1) of the Act)

f) *The Department shall,* in accordance with Section 3-212(a) of the Act, *determine whether a certified facility is in compliance with requirements of the Act that exceed federal certification requirements.* (Section 3-212(b-1) of the Act)

g) *If a certified facility is found to be out of compliance with federal certification requirements, the results of the inspection conducted pursuant to Title XVIII or XIX of the Social Security Act* (Section 3-212 (b-1) of the Act) shall be reviewed to determine which, if any, of the results shall be considered licensure findings, as follows:

1) The result identifies potential violations of the MC/DD Act and this Part; and

2) The result, based on available information, would likely represent a Type "AA", a Type "A", or a Type "B" violation if tested against the factors described in Sections 390.272 and 390.274.

h) All results of an inspection conducted pursuant to Title XVIII or XIX of the Social Security Act that the Department considers licensure findings shall be provided to the facility at the time of exit or by mail in accordance with subsection (i).

i) *Upon the completion of each inspection, survey, and evaluation, the* *appropriate* *Department* *personnel* *who conducted the inspection, survey, or evaluation shall submit a copy of their report to the licensee* or the licensee's representative *upon exiting the facility* or upon considering results of an inspection conducted pursuant to Title XVIII or XIX of the Social Security Act as licensure findings. A copy of the information gathered during a complaint investigation will not be provided upon exiting the facility. *Comments or documentation provided by the licensee, which may refute findings in the report, which explain extenuating circumstances that the facility could not reasonably have prevented, or which indicate methods and timetables for correction of deficiencies described in the report shall be provided to the Department within 10 days of receipt of the copy of the report.* (Section 3-212(c) of the Act)

j) Consultation consists of providing advice or suggestions to the staff of a facility at their request relative to specific matters of the scope of regulation, methods of compliance with the Act or this Part, or general matters of patient care. A request for consultation by a facility or facility staff does not obligate Department personnel to provide consultation. A facility that requests and obtains consultation from the Department retains legal responsibility for compliance with the Act and this Part.

(Source: Amended at 46 Ill. Reg. 8192, effective May 6, 2022)