

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 616
93RD GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, March 2, 2006, with recommendation that the Senate Committee Substitute do pass.

3627S.07C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 198.006 and 198.073, RSMo, and to enact in lieu thereof three new sections relating to assisted living facilities.

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

Section A. Sections 198.006 and 198.073, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 198.005, 198.006,
3 and 198.073, to read as follows:

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

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

- 3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
4 (2) "Activities of daily living" or "ADL", one or more of the
5 following activities of daily living:
6 (a) Eating;
7 (b) Dressing;
8 (c) Bathing;
9 (d) Toileting;
10 (e) Transferring; and

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

11 **(f) Walking;**

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

14 **[(3)] (4) "Affiliate":**

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

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

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

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

24 **(5) "Appropriately trained individual", an individual who is**
25 **licensed, registered, or certified with the state of Missouri in a health**
26 **care related field or an individual with a degree in a health care**
27 **related field or an individual with a degree in a health care or human**
28 **services field and who has received facility orientation training under**
29 **19 CSR 30-86042(18), and dementia training under section 660.050,**
30 **RSMo, and twelve hours of additional training, approved by the**
31 **department, consisting of definition and assessment of activities of**
32 **daily living, assessment of cognitive ability, service planning, and**
33 **interview skills;**

34 **(6) "Assisted living facility", any premises, other than a**
35 **residential care facility, intermediate care facility, or skilled nursing**
36 **facility that is utilized by its owner, operator, or manager to provide or**
37 **coordinate twenty-four hour care and services and protective oversight**
38 **to three or more residents who may need and are provided with shelter,**
39 **board, and assistance with any activities of daily living and any**
40 **instrumental activities of daily living, storage, distribution, or**
41 **administration of medications, and supervision of health care under the**
42 **direction of a licensed physician, provided that such services are**
43 **consistent with a social model of care, and provided further that it**
44 **shall not include a facility where all of the residents are related within**
45 **the fourth degree of consanguinity or affinity to the owner, operator,**
46 **or manager of the facility;**

47 **(7) "Community based assessment", documented basic**

48 **information and analysis describing an individual's abilities and needs**
49 **in activities of daily living, instrumental activities of daily living,**
50 **vision/hearing, nutrition, social participation and support, and**
51 **cognitive functioning using an assessment tool approved by the**
52 **department of health and senior services, that is designed for**
53 **community based services and that is not the nursing home minimum**
54 **data set;**

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

59 **[(4)] (9) "Department", the Missouri department of health and senior**
60 **services;**

61 **[(5)] (10) "Emergency", a situation, physical condition or one or more**
62 **practices, methods or operations which presents imminent danger of death or**
63 **serious physical or mental harm to residents of a facility;**

64 **[(6)] (11) "Facility", any residential care facility [I, residential care**
65 **facility II, immediate], assisted living facility, intermediate care facility, or**
66 **skilled nursing facility;**

67 **[(7)] (12) "Health care provider", any person providing health care**
68 **services or goods to residents and who receives funds in payment for such goods**
69 **or services under Medicaid;**

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

72 **(a) Preparing meals;**

73 **(b) Shopping for personal items;**

74 **(c) Medication management;**

75 **(d) Managing money;**

76 **(e) Using the telephone;**

77 **(f) Housework; and**

78 **(g) Transportation ability;**

79 **[(8)] (14) "Intermediate care facility", any premises, other than a**
80 **residential care facility [I, residential care facility II], assisted living facility,**
81 **or skilled nursing facility, which is utilized by its owner, operator, or manager to**
82 **provide twenty-four hour accommodation, board, personal care, and basic health**
83 **and nursing care services under the daily supervision of a licensed nurse and**

84 under the direction of a licensed physician to three or more residents dependent
85 for care and supervision and who are not related within the fourth degree of
86 consanguinity or affinity to the owner, operator or manager of the facility;

87 **[(9)] (15)** "Manager", any person other than the administrator of a
88 facility who contracts or otherwise agrees with an owner or operator to supervise
89 the general operation of a facility, providing such services as hiring and training
90 personnel, purchasing supplies, keeping financial records, and making reports;

91 **[(10)] (16)** "Medicaid", medical assistance under section 208.151, RSMo,
92 et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the
93 Social Security Act (42 U.S.C. 301 et seq.), as amended;

94 **[(11)] (17)** "Neglect", the failure to provide, by those responsible for the
95 care, custody, and control of a resident in a facility, the services which are
96 reasonable and necessary to maintain the physical and mental health of the
97 resident, when such failure presents either an imminent danger to the health,
98 safety or welfare of the resident or a substantial probability that death or serious
99 physical harm would result;

100 **[(12)] (18)** "Operator", any person licensed or required to be licensed
101 under the provisions of sections 198.003 to 198.096 in order to establish, conduct
102 or maintain a facility;

103 **[(13)] (19)** "Owner", any person who owns an interest of five percent or
104 more in:

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

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

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

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

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

114 **[(14)] (20)** "Protective oversight", an awareness twenty-four hours a day
115 of the location of a resident, the ability to intervene on behalf of the resident, the
116 supervision of nutrition, medication, or actual provisions of care, and the
117 responsibility for the welfare of the resident, except where the resident is on
118 voluntary leave;

119 **[(15)] (21)** "Resident", a person who by reason of aging, illness, disease,

120 or physical or mental infirmity receives or requires care and services furnished
121 by a facility and who resides or boards in or is otherwise kept, cared for, treated
122 or accommodated in such facility for a period exceeding twenty-four consecutive
123 hours;

124 [(16)] **(22)** "Residential care facility [I]", any premises, other than [a
125 residential care facility II] **an assisted living facility**, intermediate care
126 facility, or skilled nursing facility, which is utilized by its owner, operator or
127 manager to provide twenty-four hour care to three or more residents, who are not
128 related within the fourth degree of consanguinity or affinity to the owner,
129 operator, or manager of the facility and who need or are provided with shelter,
130 board, and with protective oversight, which may include storage and distribution
131 or administration of medications and care during short-term illness or
132 recuperation;

133 [(17)] "Residential care facility II", any premises, other than a residential
134 care facility I, an intermediate care facility, or a skilled nursing facility, which
135 is utilized by its owner, operator or manager to provide twenty-four hour
136 accommodation, board, and care to three or more residents who are not related
137 within the fourth degree of consanguinity or affinity to the owner, operator, or
138 manager of the facility, and who need or are provided with supervision of diets,
139 assistance in personal care, storage and distribution or administration of
140 medications, supervision of health care under the direction of a licensed
141 physician, and protective oversight, including care during short-term illness or
142 recuperation;

143 [(18)] **(23)** "Shared responsibility agreement", **an optional**
144 **agreement signed by both an assisted living facility and a resident**
145 **documenting the discussions between the facility and a resident, the**
146 **choices available and presented by the facility to the resident, the**
147 **agreement between the facility and the resident, and the**
148 **responsibilities of both the facility and the resident when the resident's**
149 **preferences require variance from accepted standards or policies and**
150 **when such preferences have significant risk of an adverse**
151 **outcome. For residents not capable of making decisions, a legal**
152 **representative of a resident must discuss, agree to, and sign the shared**
153 **responsibility agreement. The shared responsibility agreement shall**
154 **contain a signed statement by the resident, or legal representative of**
155 **the resident attesting that the options, facility responsibilities, resident**

156 **preferences, and agreement have been discussed with the resident's**
157 **personal physician. The shared responsibility agreement also shall**
158 **have time frames for reviewing the agreement at least every ninety**
159 **days and shall designate responsibility for the review on behalf of the**
160 **facility;**

161 **(24) "Skilled nursing facility",** any premises, other than a residential care
162 facility [I, a residential care facility II], **an assisted living facility,** or an
163 intermediate care facility, which is utilized by its owner, operator or manager to
164 provide for twenty-four hour accommodation, board and skilled nursing care and
165 treatment services to at least three residents who are not related within the
166 fourth degree of consanguinity or affinity to the owner, operator or manager of
167 the facility. Skilled nursing care and treatment services are those services
168 commonly performed by or under the supervision of a registered professional
169 nurse for individuals requiring twenty-four hours a day care by licensed nursing
170 personnel including acts of observation, care and counsel of the aged, ill, injured
171 or infirm, the administration of medications and treatments as prescribed by a
172 licensed physician or dentist, and other nursing functions requiring substantial
173 specialized judgment and skill;

174 **(25) "Social model of care", long-term care services based on the**
175 **abilities, desires, and functional needs of the individual delivered in a**
176 **setting that is more home-like than institutional and promotes the**
177 **dignity, individuality, privacy, independence, and autonomy of the**
178 **individual. Such services may include, at the option of both the**
179 **resident and the facility, a shared responsibility agreement;**

180 **[(19)] (26) "Vendor",** any person selling goods or services to a health care
181 provider;

182 **[(20)] (27) "Voluntary leave",** an off-premise leave initiated by:

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

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

198.073. 1. [Except as provided in subsection 3 of this section,] A
2 residential care facility [II or residential care facility I] shall admit or retain only
3 those persons who are capable mentally and physically of negotiating a normal
4 path to safety using assistive devices or aids when necessary, and who may need
5 assisted personal care within the limitations of such facilities, and who do not

6 require hospitalization or skilled nursing care.

7 2. Notwithstanding the provisions of subsection [3] 1 of this section, those
8 persons previously qualified for residence who may have a temporary period of
9 incapacity due to illness, surgery, or injury, which period does not exceed
10 forty-five days, may be allowed to remain in a residential care facility [II or
11 residential care facility I] **or assisted living facility** if approved by a physician.

12 [3. A residential care facility II may admit or continue to care for those
13 persons who are physically capable of negotiating a normal path to safety using
14 assistive devices or aids when necessary but are mentally incapable of negotiating
15 such a path to safety that have been diagnosed with Alzheimer's disease or
16 Alzheimer's related dementia, if the following requirements are met:

17 (1) A family member or legal representative of the resident, in
18 consultation with the resident's primary physician and the facility, determines
19 that the facility can meet the needs of the resident. The facility shall document
20 the decision regarding continued placement in the facility through written
21 verification by the family member, physician and the facility representative;

22 (2) The facility is equipped with an automatic sprinkler system, in
23 compliance with National Fire Protection Association Code 13 or National Fire
24 Protection Association Code 13R, and an automated fire door system and smoke
25 alarms in compliance with 13-3.4 of the 1997 Life Safety Codes for Existing
26 Health Care Occupancy;

27 (3) In a multilevel facility, residents who are mentally incapable of
28 negotiating a pathway to safety are housed only on the ground floor;

29 (4) The facility shall take necessary measures to provide residents with
30 the opportunity to explore the facility and, if appropriate, its grounds;

31 (5) The facility shall be staffed twenty-four hours a day by the appropriate
32 number and type of personnel necessary for the proper care of residents and
33 upkeep of the facility. In meeting such staffing requirements, every resident who
34 is mentally incapable of negotiating a pathway to safety shall count as three
35 residents. All on-duty staff of the facility shall, at all times, be awake, dressed
36 and prepared to assist residents in case of emergency;

37 (6) Every resident mentally incapable of negotiating a pathway to safety
38 in the facility shall be assessed by a licensed professional, as defined in sections
39 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an
40 assessment instrument utilized by the division of aging known as the minimum
41 data set used for assessing residents of skilled nursing facilities:

42 (a) Upon admission;

43 (b) At least semiannually; and

44 (c) When a significant change has occurred in the resident's condition
45 which may require additional services;

46 (7) Based on the assessment in subdivision (6) of this subsection, a
47 licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter
48 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan
49 for every resident who is mentally incapable of negotiating a pathway to
50 safety. Such individualized service plan shall be implemented by the facility's
51 staff to meet the specific needs of the resident;

52 (8) Every facility shall use a personal electronic monitoring device for any
53 resident whose physician recommends the use of such device;

54 (9) All facility personnel who will provide direct care to residents who are
55 mentally incapable of negotiating a pathway to safety shall receive at least
56 twenty-four hours of training within the first thirty days of employment. At least
57 twelve hours of such training shall be classroom instruction, with six classroom
58 instruction hours and two on-the-job training hours related to the special needs,
59 care and safety of residents with dementia;

60 (10) All personnel of the facility, regardless of whether such personnel
61 provides direct care to residents who cannot negotiate a pathway to safety, shall
62 receive on a quarterly basis at least four hours of in-service training, with at least
63 two such hours relating to the care and safety of residents who are mentally
64 incapable of negotiating a pathway to safety;

65 (11) Every facility shall make available and implement self-care,
66 productive and leisure activity programs for persons with dementia which
67 maximize and encourage the resident's optimal functional ability;

68 (12) Every facility shall develop and implement a plan to protect the
69 rights, privacy and safety of all residents and to prevent the financial exploitation
70 of all residents; and

71 (13) A licensee of any licensed residential care facility or any residential
72 care facility shall ensure that its facility does not accept or retain a resident who
73 is mentally incapable of negotiating a normal pathway to safety using assistive
74 devices and aids that:

75 (a) Has exhibited behaviors which indicate such resident is a danger to
76 self or others;

77 (b) Is at constant risk of elopement;

78 (c) Requires physical restraint;

79 (d) Requires chemical restraint. As used in this subdivision, the following
80 terms mean:

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

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

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

88 (e) Requires skilled nursing services as defined in subdivision (17) of
89 section 198.003 for which the facility is not licensed or able to provide;

90 (f) Requires more than one person to simultaneously physically assist the
91 resident with any activity of daily living, with the exception of bathing;

92 (g) Is bed-bound or chair-bound due to a debilitating or chronic condition.

93 4. The facility shall not care for any person unless such facility is able to
94 provide appropriate services for and meet the needs of such person.

95 5. Nothing in this chapter shall prevent a facility from discharging a
96 resident who is a danger to himself or herself, or to others.

97 6. The training requirements established in subdivisions (9) and (10) of
98 subsection 3 of this section shall fully satisfy the training requirements for the
99 program described in subdivision (18) of subsection 1 of section 208.152, RSMo.

100 7. The division of aging shall promulgate rules to ensure compliance with
101 this section and to sanction facilities that fail to comply with this section. Any
102 rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
103 is created under the authority delegated in this section shall become effective
104 only if it complies with and is subject to all of the provisions of chapter 536,
105 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
106 RSMo, are nonseverable and if any of the powers vested with the general
107 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
108 or to disapprove and annul a rule are subsequently held unconstitutional, then
109 the grant of rulemaking authority and any rule proposed or adopted after August
110 28, 1999, shall be invalid and void.]

111 **3. An individual may be accepted for residency in an assisted**
112 **living facility, or remain in such facility, only if the individual does not**
113 **require hospitalization or skilled nursing care, and only if the facility:**

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

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

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

124 **(4) Completes a pre move-in screening by an appropriately**
125 **trained individual with participation of the prospective resident;**

126 **(5) Completes for each resident a community based assessment,**
127 **as defined in subdivision (7) of section 198.006, administered by an**
128 **appropriately trained individual:**

129 **(a) Upon admission;**

130 **(b) At least semiannually; and**

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

133 **(6) Based on the assessment in subdivision (5) of this subsection,**
134 **implements an individualized service plan developed by an**
135 **appropriately trained individual in partnership with the resident, or**
136 **legal representative of the resident. The individualized service plan**
137 **will be reviewed with the resident, or legal representative of the**
138 **resident at least annually, or when there is a significant change in the**
139 **resident's condition which may require a change in services. The**
140 **signatures of an authorized representative of the facility and the**
141 **resident, or the resident's legal representative shall be contained on the**
142 **individualized service plan to acknowledge that the service plan has**
143 **been reviewed and understood by the resident or legal representative;**

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

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

149 **(a) Has exhibited behaviors which indicate such resident is a**
150 **danger to self or others;**

- 151 **(b) Requires physical restraint;**
- 152 **(c) Requires chemical restraint. As used in this paragraph, the**
153 **following terms mean:**
- 154 **a. "Chemical restraint", a psychopharmacologic drug that is used**
155 **for discipline or convenience and not required to treat medical**
156 **symptoms;**
- 157 **b. "Convenience", any action taken by the facility to control**
158 **resident behavior or maintain residents with a lesser amount of effort**
159 **by the facility and not in the resident's best interest;**
- 160 **c. "Discipline", any action taken by the facility for the purpose**
161 **of punishing or penalizing residents;**
- 162 **(d) Requires skilled nursing services as defined in subdivision**
163 **(24) of section 198.006 for which the facility is not licensed or able to**
164 **provide;**
- 165 **(e) Requires more than one person to simultaneously physically**
166 **assist the resident with any activity of daily living, with the exception**
167 **of bathing and transferring;**
- 168 **(f) Is bed-bound or similarly immobilized due to a debilitating or**
169 **chronic condition;**
- 170 **(9) Develops and implements a plan to protect the rights,**
171 **privacy, and safety of all residents and to prevent the financial**
172 **exploitation of all residents; and**
- 173 **(10) Complies with the training requirements of subsection 8 of**
174 **section 660.050, RSMo.**
- 175 **4. Exceptions to paragraphs (d) through (f) of subdivision (8) of**
176 **subsection 2 of this section shall be made for residents on hospice,**
177 **provided the resident, designated representative, or both, and the**
178 **assisted living provider, physician, and licensed hospice provider all**
179 **agree that such program of care is appropriate for the resident.**
- 180 **5. If an assisted living facility accepts or retains any individual**
181 **with a physical, cognitive, or other impairment that prevents the**
182 **individual from safely evacuating the facility with minimal assistance,**
183 **the facility shall:**
- 184 **(1) Have sufficient staff present and awake twenty-four hours a**
185 **day to assist in the evacuation;**
- 186 **(2) Include an individualized evacuation plan in the service plan**
187 **of the resident; and**

188 **(3) Be equipped with an automatic sprinkler system in**
189 **compliance with National Fire Protection Association Code 13 or**
190 **National Fire Protection Association Code 13R, and an automated fire**
191 **door system and smoke alarms in compliance with 13-3.4 of the 1997**
192 **Life Safety Codes for Existing Health Care Occupancy;**

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

195 **(5) Use a personal electronic monitoring device for any resident**
196 **whose physician recommends the use of such device.**

197 **6. Facilities licensed as an assisted living facility shall disclose**
198 **to a prospective resident, or legal representative of the resident**
199 **information regarding the services the facility is able to provide or**
200 **coordinate, the costs of such services to the resident, and the resident**
201 **conditions that will require discharge or transfer, including the**
202 **provisions of subdivision (8) of subsection 2 of this section.**

203 **7. After January 1, 2007, no facility shall hold itself out as an**
204 **assisted living facility or advertise itself as an assisted living facility**
205 **without obtaining a license from the department to operate as an**
206 **assisted living facility.**

207 **8. The department of health and senior services shall promulgate**
208 **rules to ensure compliance with this section. Any rule or portion of a**
209 **rule, as that term is defined in section 536.010, RSMo, that is created**
210 **under the authority delegated in this section shall become effective**
211 **only if it complies with and is subject to all of the provisions of chapter**
212 **536, RSMo, and, if applicable, section 536.028, RSMo. This section and**
213 **chapter 536, RSMo, are nonseverable and if any of the powers vested**
214 **with the general assembly pursuant to chapter 536, RSMo, to review, to**
215 **delay the effective date, or to disapprove and annul a rule are**
216 **subsequently held unconstitutional, then the grant of rulemaking**
217 **authority and any rule proposed or adopted after August 28, 2006, shall**
218 **be invalid and void.**

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