

SECOND REGULAR SESSION

SENATE BILL NO. 616

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3627S.011

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Section A. Sections 198.006 and 198.073, RSMo, are repealed and three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 "assisted living facility I", and the term "residential care facility II"
3 shall be referred to as "assisted living facility II". The revisor of
4 statutes shall replace all references to "residential care facility" that
5 appear in the revised statutes with "assisted living facility", except that
6 references to residential care facilities as defined in section 210.481,
7 RSMo, or residential facilities licensed by the department of mental
8 health shall not be replaced.**

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 has**
25 **received twelve hours of training, approved by the department,**
26 **consisting of definition and assessment of activities of daily living and**
27 **instrumental activities of daily living, assessment of cognitive ability,**
28 **service planning, residents' rights, and interview skills;**

29 **(6) "Assisted living facility I", any premises, other than an**
30 **assisted living facility II, intermediate care facility, or skilled nursing**
31 **facility that is utilized by its owner, operator, or manager to provide**
32 **twenty-four hour care, services, and protective oversight to three or**
33 **more residents who need or are provided with shelter and board,**
34 **provided that such care may include storage and distribution of**
35 **medications, including administration of medications during short-term**
36 **illness or recuperation, provided that such services are consistent with**
37 **a social model of care, and provided further that it shall not include a**
38 **facility where all of the residents are related within the fourth degree**
39 **of consanguinity or affinity to the owner, operator, or manager of the**
40 **residence;**

41 **(7) "Assisted living facility II", any premises, other than an**
42 **assisted living facility I, intermediate care facility, or skilled nursing**
43 **facility that is utilized by its owner, operator, or manager to provide**
44 **twenty-four hour care and services and protective oversight to three or**
45 **more residents who need or may be provided with shelter, board, and**
46 **assistance with any activities of daily living, or any instrumental**
47 **activities of daily living, provided that such care may include storage,**

48 **distribution, or administration of medications, or supervision of health**
49 **care under the direction of a licensed physician, provided that such**
50 **services are consistent with a social model of care, and provided**
51 **further that it shall not include a facility where all of the residents are**
52 **related within the fourth degree of consanguinity or affinity to the**
53 **owner, operator, or manager of the residence;**

54 **(8) "Community based assessment", documented basic**
55 **information and analysis describing an individual's abilities and needs**
56 **in activities of daily living, instrumental activities of daily living,**
57 **vision/hearing, nutrition, social participation and support, and**
58 **cognitive functioning;**

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

63 **[(4)] (10) "Department", the Missouri department of health and senior**
64 **services;**

65 **[(5)] (11) "Emergency", a situation, physical condition or one or more**
66 **practices, methods or operations which presents imminent danger of death or**
67 **serious physical or mental harm to residents of a facility;**

68 **[(6)] (12) "Facility", any [residential care facility I, residential care**
69 **facility II, immediate] assisted living facility I, assisted living facility II,**
70 **intermediate care facility, or skilled nursing facility;**

71 **[(7)] (13) "Health care provider", any person providing health care**
72 **services or goods to residents and who receives funds in payment for such goods**
73 **or services under Medicaid;**

74 **(14) "Instrumental activities of daily living", or "IADL", one or**
75 **more of the following activities:**

76 **(a) Preparing meals;**

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

78 **(c) Medication management;**

79 **(d) Managing money;**

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

81 **(f) Housework; and**

82 **(g) Transportation ability;**

83 **[(8)] (15) "Intermediate care facility", any premises, other than [a**
84 **residential care facility] an assisted living facility I, [residential care facility]**

85 **assisted living facility II**, or skilled nursing facility, which is utilized by its
86 owner, operator, or manager to provide twenty-four hour accommodation, board,
87 personal care, and basic health and nursing care services under the daily
88 supervision of a licensed nurse and under the direction of a licensed physician to
89 three or more residents dependent for care and supervision and who are not
90 related within the fourth degree of consanguinity or affinity to the owner,
91 operator or manager of the facility;

92 [(9)] (16) "Manager", any person other than the administrator of a
93 facility who contracts or otherwise agrees with an owner or operator to supervise
94 the general operation of a facility, providing such services as hiring and training
95 personnel, purchasing supplies, keeping financial records, and making reports;

96 [(10)] (17) "Medicaid", medical assistance under section 208.151, RSMo,
97 et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the
98 Social Security Act (42 U.S.C. 301 et seq.), as amended;

99 [(11)] (18) "Neglect", the failure to provide, by those responsible for the
100 care, custody, and control of a resident in a facility, the services which are
101 reasonable and necessary to maintain the physical and mental health of the
102 resident, when such failure presents either an imminent danger to the health,
103 safety or welfare of the resident or a substantial probability that death or serious
104 physical harm would result;

105 [(12)] (19) "Operator", any person licensed or required to be licensed
106 under the provisions of sections 198.003 to 198.096 in order to establish, conduct
107 or maintain a facility;

108 [(13)] (20) "Owner", any person who owns an interest of five percent or
109 more in:

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

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

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

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

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

119 [(14)] (21) "Protective oversight", an awareness twenty-four hours a day
120 of the location of a resident, the ability to intervene on behalf of the resident, the

121 supervision of nutrition, medication, or actual provisions of care, and the
122 responsibility for the welfare of the resident, except where the resident is on
123 voluntary leave;

124 [(15)] **(22)** "Resident", a person who by reason of aging, illness, disease,
125 or physical or mental infirmity receives or requires care and services furnished
126 by a facility and who resides or boards in or is otherwise kept, cared for, treated
127 or accommodated in such facility for a period exceeding twenty-four consecutive
128 hours;

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

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

147 **(18)] (23) "Shared responsibility agreement", an optional**
148 **agreement signed by both an assisted living facility and a resident**
149 **documenting the discussions between the facility and a resident, the**
150 **choices available and presented by the facility to the resident, the**
151 **agreement between the facility and the resident, and the**
152 **responsibilities of both the facility and the resident when the resident's**
153 **preferences require variance from accepted standards or policies and**
154 **when such preferences have significant risk of an adverse**
155 **outcome. For residents not capable of making decisions, a legal**
156 **representative or responsible family member must discuss, agree to,**

157 **and sign the shared responsibility agreement. The shared**
158 **responsibility agreement shall contain a signed statement by the**
159 **resident or legal representative or responsible family member if the**
160 **resident is not capable of making decisions, attesting that the options,**
161 **facility responsibilities, resident preferences, and agreement have been**
162 **discussed with the resident's personal physician. The shared**
163 **responsibility agreement also shall have time frames for reviewing the**
164 **agreement at least every ninety days and shall designate responsibility**
165 **for the review on behalf of the facility;**

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

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

185 **[(19)] (26) "Vendor", any person selling goods or services to a health care**
186 **provider;**

187 **[(20)] (27) "Voluntary leave", an off-premise leave initiated by:**

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

190 **(b) A legal guardian of a resident that has been declared mentally**
191 **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] **subsections 2 and 3**
8 of this section, those persons previously qualified for residence who may have a
9 temporary period of incapacity due to illness, surgery, or injury, which period
10 does not exceed forty-five days, may be allowed to remain in [a residential care
11 facility] **an assisted living facility II** or [residential care facility] **assisted**
12 **living facility I** if approved by a physician.

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

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

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

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

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

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

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

43 (a) Upon admission;

44 (b) At least semiannually; and

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

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

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

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

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

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

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

72 (13) A licensee of any licensed residential care facility or any residential
73 care facility shall ensure that its facility does not accept or retain a resident who

74 is mentally incapable of negotiating a normal pathway to safety using assistive
75 devices and aids that:

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

78 (b) Is at constant risk of elopement;

79 (c) Requires physical restraint;

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

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

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

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

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

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

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

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

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

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

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

110 the grant of rulemaking authority and any rule proposed or adopted after August
111 28, 1999, shall be invalid and void.]

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

116 **(1) Provides for or coordinates oversight and services to meet**
117 **the needs of the resident;**

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

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

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

127 **(5) Completes a resident assessment by an appropriately trained**
128 **individual using an assessment tool, determined by the department of**
129 **health and senior services, for community based services:**

130 **(a) Upon admission;**

131 **(b) At least annually; and**

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

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

146 **(7) Makes available and implements self-care, productive and**

147 **leisure activity programs which maximize and encourage the resident's**
148 **optimal functional ability;**

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

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

153 **(b) Requires physical restraint;**

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

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

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

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

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

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

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

172 **(9) Develops and implements a plan to protect the rights,**
173 **privacy, and safety of all residents and to prevent the financial**
174 **exploitation of all residents; and**

175 **(10) Complies with the training requirements of subsection 8 of**
176 **section 660.050, RSMo.**

177 **3. If an assisted living facility accepts any individual with a**
178 **physical, cognitive, or other impairment that prevents the individual**
179 **from safely evacuating the residence with minimal assistance, the**
180 **facility shall:**

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

183 **(2) Include an individualized evacuation plan in the service plan**

184 of the resident; and

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

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

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

194 4. Facilities licensed as an assisted living facility I or an assisted
195 living facility II shall disclose to a prospective resident or the legal
196 representative of the resident information regarding the services the
197 facility is able to provide and the resident conditions that will require
198 discharge or transfer, including the provisions of subdivision (8) of
199 subsection 2 of this section.

200 5. The department of health and senior services shall promulgate
201 rules to ensure compliance with this section. Any rule or portion of a
202 rule, as that term is defined in section 536.010, RSMo, that is created
203 under the authority delegated in this section shall become effective
204 only if it complies with and is subject to all of the provisions of chapter
205 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
206 chapter 536, RSMo, are nonseverable and if any of the powers vested
207 with the general assembly pursuant to chapter 536, RSMo, to review, to
208 delay the effective date, or to disapprove and annul a rule are
209 subsequently held unconstitutional, then the grant of rulemaking
210 authority and any rule proposed or adopted after August 28, 2006, shall
211 be invalid and void.

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