

SECOND REGULAR SESSION

[P E R F E C T E D]

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.

Senate Committee Substitute for Senate Bill No. 616, adopted March 14, 2006.

Taken up for Perfection March 14, 2006. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3627S.07P

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Section A. Sections 198.006 and 198.073, RSMo, are repealed and three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;

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

10 **(e) Transferring; and**

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 **except that, for purposes of receiving supplemental welfare**
133 **assistance payments under section 208.030, RSMo, only, any residential**
134 **care facility licensed as a residential care facility II immediately prior**
135 **to the effective date of section 198.073 and that continues to meet such**
136 **licensure requirements for a residential care facility II licensed**
137 **immediately prior to the effective date of section 198.073 shall continue**
138 **to receive after the effective date of section 198.073 the payment**
139 **amount allocated immediately prior to the effective date of section**
140 **198.073 for a residential care facility II under section 208.030, RSMo;**

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

151 [(18)] (23) **"Shared responsibility agreement", an optional**
152 **agreement signed by both an assisted living facility and a resident**
153 **documenting the discussions between the facility and a resident, the**
154 **choices available and presented by the facility to the resident, the**

155 agreement between the facility and the resident, and the
156 responsibilities of both the facility and the resident when the resident's
157 preferences require variance from accepted standards or policies and
158 when such preferences have significant risk of an adverse
159 outcome. For residents not capable of making decisions, a legal
160 representative of a resident must discuss, agree to, and sign the shared
161 responsibility agreement. The shared responsibility agreement shall
162 contain a signed statement by the resident, or legal representative of
163 the resident attesting that the options, facility responsibilities, resident
164 preferences, and agreement have been discussed with the resident's
165 personal physician. The shared responsibility agreement also shall
166 have time frames for reviewing the agreement at least every ninety
167 days and shall designate responsibility for the review on behalf of the
168 facility;

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

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

188 [(19)] (26) "Vendor", any person selling goods or services to a health care
189 provider;

190 [(20)] (27) "Voluntary leave", an off-premise leave initiated by:

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

193 (b) A legal guardian of a resident that has been declared mentally
194 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, except that any facility licensed by the
207 department as of January 1, 2006, shall not be subject to the provisions
208 of this subsection until January 1, 2008.

209 8. The department of health and senior services shall promulgate
210 rules to ensure compliance with this section. Any rule or portion of a
211 rule, as that term is defined in section 536.010, RSMo, that is created
212 under the authority delegated in this section shall become effective
213 only if it complies with and is subject to all of the provisions of chapter
214 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
215 chapter 536, RSMo, are nonseverable and if any of the powers vested

216 with the general assembly pursuant to chapter 536, RSMo, to review, to
217 delay the effective date, or to disapprove and annul a rule are
218 subsequently held unconstitutional, then the grant of rulemaking
219 authority and any rule proposed or adopted after August 28, 2006, shall
220 be invalid and void.

✓

Unofficial

Bill

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