

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 470

AN ACT

To repeal section 191.227, RSMo 1994, and sections 630.167 and 630.710, RSMo Supp. 1997, relating to certain health records, and to enact in lieu thereof three new sections relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Section 191.227, RSMo 1994, and sections 630.167 and 630.710, RSMo Supp. 1997, are repealed and three new sections enacted in lieu thereof, to be known as sections 191.227, 630.167 and 630.710, to read as follows:

191.227. 1. All physicians, chiropractors, hospitals, dentists, and other duly licensed practitioners in this state, herein called "providers", shall, upon written request of a patient, or guardian or legally authorized representative of a patient, furnish a copy of his record of that patient's health history and treatment rendered to the person submitting a written request, except that such right shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. [Beginning August 28,

1994,] Such record shall be furnished [within a reasonable time of the receipt of the request therefor and] in accordance with the time limit in subsection 4 of this section upon payment of a handling fee of [fifteen] twenty-five dollars plus a fee of thirty-five cents per page for copies of documents made on a standard photocopy machine.

2. Notwithstanding provisions of this section to the contrary, providers may charge for the reasonable cost of all duplications of medical record material or information which cannot routinely be copied or duplicated on a standard commercial photocopy machine.

3. The transfer of the patient's record done in good faith shall not render the provider liable to the patient or any other person for any consequences which resulted or may result from disclosure of the patient's record as required by this section.

4. Such records shall be furnished within thirty days of the receipt of the request for such records. When such records are copied and produced by the provider, they shall, upon request, attest to as to accuracy and completeness, and shall have a cover affidavit attesting to their production as business records of the provider in compliance with section 490.692, RSMo, and such records shall be admissible as business records pursuant to sections 490.660 to 490.690, RSMo. Any additional fee charged for the attestation shall not exceed eight dollars.

5. Beginning January 1, 2000, the limitation on fees

provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the fees shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors or the department of health, if such facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

2. If the investigation indicates possible abuse or neglect of a patient, resident or client, the investigator shall refer the complaint together with [his] the investigator's report to the department director for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal from a facility not operated or funded by the department is necessary to protect the residents from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and

protection of the residents in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident for a period not to exceed thirty days.

3. (1) Reports referred to in section 630.165 and the investigative reports referred to in this section shall be confidential, shall not be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that, complete copies all such reports shall be open and available to the parents or other guardian of the patient, resident, or client who is the subject of such report, if the names and any other descriptive information of the complainant or other person mentioned in the reports shall not be disclosed unless such complainant or person specifically consents to such disclosure. All reports referred to in this section shall be admissible in any judicial proceedings or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department of mental health, or the director's designee. All such reports may be disclosed by the department of mental health to law enforcement officers and public health officers, but only to the extent necessary to carry out the responsibilities of their offices, and to the department of social services, and to boards appointed pursuant to sections

205.968 to 205.990, RSMo, that are providing services to the patient, resident or client as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents or clients provided that all such law enforcement officers, public health officers, department of social services' officers and boards shall be obligated to keep such information confidential[. The name of the complainant or any person mentioned in the reports shall not be disclosed unless such complainant or person specifically requests such disclosure or unless a judicial proceeding results therefrom];

(2) Except as otherwise provided in this section, the proceedings, findings, deliberations, reports and minutes of [investigators or of] committees of health care professionals as defined in section 537.035, RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the responsibility to evaluate, maintain, or monitor the quality and utilization of mental health services[, or to investigate reports of abuse or neglect or incident reports or complaints of substandard, inadequate or inappropriate care] are privileged and shall not be subject to the discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible into evidence into any judicial or administrative action for failure to provide adequate or appropriate care. Such committees may exist, either within department facilities or its agents, contractors, or vendors, as applicable. Except as

otherwise provided in this section, no person who was in attendance at any investigation or committee proceeding shall be permitted or required to disclose any information acquired in connection with or in the course of such proceeding or to disclose any opinion, recommendation or evaluation of the committee or board or any member thereof; provided, however, that information otherwise discoverable or admissible from original sources is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before any committee or in the course of any investigation, nor is any member, employee or agent of such committee or other person appearing before it to be prevented from testifying as to matters within their personal knowledge and in accordance with the other provisions of this section, but such witness cannot be questioned about the testimony or other proceedings before any investigation or before any committee;

(3) Nothing in this section shall limit authority otherwise provided by law of a health care licensing board of the state of Missouri to obtain information by subpoena or other authorized process from investigation committees or to require disclosure of otherwise confidential information relating to matters and investigations within the jurisdiction of such health care licensing boards; provided, however, that such information, once obtained by such board and associated persons, shall be governed in accordance with the provisions of this subsection;

(4) Nothing in this section shall limit authority otherwise provided by law in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042 and the entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve to negate assurances that have been given by the governor of Missouri to the U.S. Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services concerning access to records by the agency designated as the protection and advocacy system for the state of Missouri. However, such information, once obtained by such entity or agency, shall be governed in accordance with the provisions of this subsection.

4. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil liability for making such a report or for testifying unless such person acted in bad faith or with malicious purpose.

5. Within five working days after a report required to be made [under] pursuant to this section is received, the person making the report shall be notified in writing of its receipt and

of the initiation of the investigation.

6. No person who directs or exercises any authority in a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he or she has reasonable cause to believe has been committed or has occurred.

7. Any person who is discharged as a result of an administrative substantiation of allegations contained in a report of abuse or neglect may, after exhausting administrative remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county in which such person resides within ninety days of such final administrative decision. The court may accept an appeal up to twenty-four months after the party filing the appeal received notice of the department's determination, upon a showing that:

(1) Good cause exists for the untimely commencement of the request for the review;

(2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity for employment; and

(3) There is no other adequate remedy at law.

630.710. 1. The standards contained in the rules shall particularly provide for the following:

(1) Admission and commitment criteria, which shall be based upon diagnoses;

(2) Care, treatment, habilitation or rehabilitation;

(3) General medical and health care;

(4) Adequate physical plant facilities, including fire safety, housekeeping and maintenance standards;

(5) Food service facilities;

(6) Safety precautions;

(7) Drugs and medications;

(8) Uniform system of recordkeeping;

(9) Resident or client rights and grievance procedures;

(10) Adequate staff.

2. [By August 28, 1997, the rules shall require a criminal record review from the highway patrol for all staff in the residential facility and day program who have unsupervised contact with persons affected by a mental disorder, mental illness, mental retardation or a developmental disability.

3.] The rules containing the standards for living units within facilities or homes shall provide for such classifications of the living units as are small enough to insure programs based upon the personal needs of the resident as determined by individualized habilitation or treatment plans. The units may include distinct parts of other facilities such as wards, wings or floors.