

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1620
93RD GENERAL ASSEMBLY

Reported from the Special Committee on Healthcare Facilities March 9, 2006 with recommendation that House Committee Substitute for House Bill No. 1620 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4346L.03C

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Section A. Sections 198.006 and 198.073, RSMo, are repealed and three new sections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

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

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates
2 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 following activities of
5 daily living:**

6 (a) **Eating;**

7 (b) **Dressing;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 8 (c) **Bathing;**
- 9 (d) **Toileting;**
- 10 (e) **Transferring; and**
- 11 (f) **Walking;**
- 12 (3) "Administrator", the person who is in general administrative charge of a facility;
- 13 [(3)] (4) "Affiliate":
- 14 (a) With respect to a partnership, each partner thereof;
- 15 (b) With respect to a limited partnership, the general partner and each limited partner
- 16 with an interest of five percent or more in the limited partnership;
- 17 (c) With respect to a corporation, each person who owns, holds or has the power to vote
- 18 five percent or more of any class of securities issued by the corporation, and each officer and
- 19 director;
- 20 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;
- 21 (5) **"Appropriately trained individual", an individual who is licensed, registered,**
- 22 **or certified with the state of Missouri in a health care related field or an individual with**
- 23 **a degree in a health care related field or an individual with a degree in a health care or**
- 24 **human services field and who has received facility orientation training under 19 CSR 30-**
- 25 **86042(18), and dementia training under section 660.050, RSMo, and twelve hours of**
- 26 **additional training, approved by the department, consisting of definition and assessment**
- 27 **of activities of daily living, assessment of cognitive ability, service planning, and interview**
- 28 **skills;**
- 29 (6) **"Assisted living facility", any premises, other than a residential care facility,**
- 30 **intermediate care facility, or skilled nursing facility that is utilized by its owner, operator,**
- 31 **or manager to provide or coordinate twenty-four hour care and services and protective**
- 32 **oversight to three or more residents who may need and are provided with shelter, board,**
- 33 **and assistance with any activities of daily living and any instrumental activities of daily**
- 34 **living, storage, distribution, or administration of medications, and supervision of health**
- 35 **care under the direction of a licensed physician, provided that such services are consistent**
- 36 **with a social model of care, and provided further that it shall not include a facility where**
- 37 **all of the residents are related within the fourth degree of consanguinity or affinity to the**
- 38 **owner, operator, or manager of the facility;**
- 39 (7) **"Community based assessment", documented basic information and analysis**
- 40 **describing an individual's abilities and needs in activities of daily living, instrumental**
- 41 **activities of daily living, vision/hearing, nutrition, social participation and support, and**
- 42 **cognitive functioning using an assessment tool approved by the department of health and**

43 **senior services, that is designed for community based services and that is not the nursing**
44 **home minimum data set;**

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

48 [(4)] **(9) "Department", the Missouri department of health and senior services;**

49 [(5)] **(10) "Emergency", a situation, physical condition or one or more practices,**
50 **methods or operations which presents imminent danger of death or serious physical or mental**
51 **harm to residents of a facility;**

52 [(6)] **(11) "Facility", any residential care facility [I, residential care facility II,**
53 **immediate], assisted living facility, intermediate care facility, or skilled nursing facility;**

54 [(7)] **(12) "Health care provider", any person providing health care services or goods to**
55 **residents and who receives funds in payment for such goods or services under Medicaid;**

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

58 **(a) Preparing meals;**

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

60 **(c) Medication management;**

61 **(d) Managing money;**

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

63 **(f) Housework; and**

64 **(g) Transportation ability;**

65 [(8)] **(14) "Intermediate care facility", any premises, other than a residential care facility**
66 **[I, residential care facility II], assisted living facility, or skilled nursing facility, which is utilized**
67 **by its owner, operator, or manager to provide twenty-four hour accommodation, board, personal**
68 **care, and basic health and nursing care services under the daily supervision of a licensed nurse**
69 **and under the direction of a licensed physician to three or more residents dependent for care and**
70 **supervision and who are not related within the fourth degree of consanguinity or affinity to the**
71 **owner, operator or manager of the facility;**

72 [(9)] **(15) "Manager", any person other than the administrator of a facility who contracts**
73 **or otherwise agrees with an owner or operator to supervise the general operation of a facility,**
74 **providing such services as hiring and training personnel, purchasing supplies, keeping financial**
75 **records, and making reports;**

76 [(10)] **(16) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in**
77 **compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42**
78 **U.S.C. 301 et seq.), as amended;**

79 [(11)] (17) "Neglect", the failure to provide, by those responsible for the care, custody,
80 and control of a resident in a facility, the services which are reasonable and necessary to maintain
81 the physical and mental health of the resident, when such failure presents either an imminent
82 danger to the health, safety or welfare of the resident or a substantial probability that death or
83 serious physical harm would result;

84 [(12)] (18) "Operator", any person licensed or required to be licensed under the
85 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

86 [(13)] (19) "Owner", any person who owns an interest of five percent or more in:

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

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

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

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

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

95 [(14)] (20) "Protective oversight", an awareness twenty-four hours a day of the location
96 of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
97 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
98 except where the resident is on voluntary leave;

99 [(15)] (21) "Resident", a person who by reason of aging, illness, disease, or physical or
100 mental infirmity receives or requires care and services furnished by a facility and who resides
101 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period
102 exceeding twenty-four consecutive hours;

103 [(16)] (22) "Residential care facility [I]", any premises, other than [a residential care
104 facility II] **an assisted living facility**, intermediate care facility, or skilled nursing facility, which
105 is utilized by its owner, operator or manager to provide twenty-four hour care to three or more
106 residents, who are not related within the fourth degree of consanguinity or affinity to the owner,
107 operator, or manager of the facility and who need or are provided with shelter, board, and with
108 protective oversight, which may include storage and distribution or administration of
109 medications and care during short-term illness or recuperation; **except that, for purposes of**
110 **receiving supplemental welfare assistance payments under section 208.030, RSMo, only,**
111 **any residential care facility classified as a residential care facility II immediately prior to**
112 **the effective date of section 198.070 and that continues to meet the requirements for a**
113 **residential care facility II in place immediately prior to the effective date of section 198.070**
114 **shall continue to receive after the effective date of section 198.070 the payment amount**

115 **allocated immediately prior to the effective date of section 198.070 for a residential care**
116 **facility II under section 208.030, RSMo;**

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

125 (18)] **(23) "Shared responsibility agreement", an optional agreement signed by**
126 **both an assisted living facility and a resident documenting the discussions between the**
127 **facility and a resident, the choices available and presented by the facility to the resident,**
128 **the agreement between the facility and the resident, and the responsibilities of both the**
129 **facility and the resident when the resident's preferences require variance from accepted**
130 **standards or policies and when such preferences have significant risk of an adverse**
131 **outcome. For residents not capable of making decisions, a legal representative of a resident**
132 **must discuss, agree to, and sign the shared responsibility agreement. The shared**
133 **responsibility agreement shall contain a signed statement by the resident, or legal**
134 **representative of the resident attesting that the options, facility responsibilities, resident**
135 **preferences, and agreement have been discussed with the resident's personal physician.**
136 **The shared responsibility agreement also shall have time frames for reviewing the**
137 **agreement at least every ninety days and shall designate responsibility for the review on**
138 **behalf of the facility;**

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

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

155 [(19)] (26) "Vendor", any person selling goods or services to a health care provider;

156 [(20)] (27) "Voluntary leave", an off-premise leave initiated by:

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

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

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

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

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

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

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

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

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

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

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

39 (a) Upon admission;

40 (b) At least semiannually; and

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

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

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

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

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

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

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

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

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

68 (b) Is at constant risk of elopement;

69 (c) Requires physical restraint;

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

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

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

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

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

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

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

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

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

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

90 7. The division of aging shall promulgate rules to ensure compliance with this section
91 and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as
92 that term is defined in section 536.010, RSMo, that is created under the authority delegated in
93 this section shall become effective only if it complies with and is subject to all of the provisions
94 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,

95 RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to
96 chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are
97 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
98 or adopted after August 28, 1999, shall be invalid and void.]

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

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

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

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

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

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

115 **(a) Upon admission;**

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

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

119 **(6) Based on the assessment in subdivision (5) of this subsection, implements an**
120 **individualized service plan developed by an appropriately trained individual in**
121 **partnership with the resident, or legal representative of the resident. The individualized**
122 **service plan will be reviewed with the resident, or legal representative of the resident at**
123 **least annually, or when there is a significant change in the resident's condition which may**
124 **require a change in services. The signatures of an authorized representative of the facility**
125 **and the resident, or the resident's legal representative shall be contained on the**
126 **individualized service plan to acknowledge that the service plan has been reviewed and**
127 **understood by the resident or legal representative;**

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

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

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

133 (b) Requires physical restraint;

134 (c) Requires chemical restraint. As used in this paragraph, the following terms
135 mean:

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

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

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

143 (d) Requires skilled nursing services as defined in subdivision (24) of section
144 198.006 for which the facility is not licensed or able to provide;

145 (e) Requires more than one person to simultaneously physically assist the resident
146 with any activity of daily living, with the exception of bathing and transferring;

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

148 (9) Develops and implements a plan to protect the rights, privacy, and safety of all
149 residents and to prevent the financial exploitation of all residents; and

150 (10) Complies with the training requirements of subsection 8 of section 660.050,
151 RSMo.

152 4. Exceptions to paragraphs (d) through (f) of subdivision (8) of subsection 2 of this
153 section shall be made for residents on hospice, provided the resident, designated
154 representative, or both, and the assisted living provider, physician, and licensed hospice
155 provider all agree that such program of care is appropriate for the resident.

156 5. If an assisted living facility accepts or retains any individual with a physical,
157 cognitive, or other impairment that prevents the individual from safely evacuating the
158 facility with minimal assistance, the facility shall:

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

161 (2) Include an individualized evacuation plan in the service plan of the resident;
162 and

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

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

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

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

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

179 **8. The department of health and senior services shall promulgate rules to ensure**
180 **compliance with this section. Any rule or portion of a rule, as that term is defined in**
181 **section 536.010, RSMo, that is created under the authority delegated in this section shall**
182 **become effective only if it complies with and is subject to all of the provisions of chapter**
183 **536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,**
184 **RSMo, are nonseverable and if any of the powers vested with the general assembly**
185 **pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and**
186 **annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
187 **authority and any rule proposed or adopted after August 28, 2006, shall be invalid and**
188 **void.**

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