

SECOND REGULAR SESSION

HOUSE BILL NO. 1620

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SUTHERLAND (Sponsor), THRELKELD, MEADOWS, YOUNG, SANDER, WOOD, KUESSNER, BIVINS, CHAPPELLE-NADAL, WASSON, MOORE, CUNNINGHAM (86), STEVENSON, DONNELLY, YAEGER, JOHNSON (47), MEINERS, COOPER (155), DUSENBERG AND WETER (Co-sponsors).

Read 1st time February 1, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4346L.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Section A. Section 198.006 and 198.073, RSMo, are repealed and three new sections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 "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;**

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.

- 7 **(b) Dressing;**
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 has received twelve**
22 **hours of training, approved by the department, consisting of definition and assessment of**
23 **activities of daily living and instrumental activities of daily living, assessment of cognitive**
24 **ability, service planning, residents' rights, and interview skills;**
25 **(6) "Assisted living facility", any premises, other than a residential care facility,**
26 **intermediate care facility, or skilled nursing facility that is utilized by its owner, operator,**
27 **or manager to provide or coordinate twenty-four hour care, services, and protective**
28 **oversight to three or more residents who need or are provided with shelter, board, and**
29 **assistance with any activities of daily living and any instrumental activities of daily living,**
30 **including storage, distribution, or administration of medications, or supervision of health**
31 **care under the direction of a licensed physician; provided that such services are consistent**
32 **with a social model of care, and provided further that it shall not include a facility where**
33 **all of the residents are related within the fourth degree of consanguinity or affinity to the**
34 **owner, operator, or manager of the residence;**
35 **(7) "Community based assessment", documented basic information and analysis**
36 **describing an individual's abilities and needs in activities of daily living, instrumental**
37 **activities of daily living, vision/hearing, nutrition, social participation and support, and**
38 **cognitive functioning;**
39 **(8) "Dementia", a general term for the loss of thinking, remembering, and**
40 **reasoning so severe that it interferes with an individual's daily functioning, and may cause**
41 **symptoms that include changes in personality, mood, and behavior;**
42 **[(4)] (9) "Department", the Missouri department of health and senior services;**

43 [(5)] (10) "Emergency", a situation, physical condition or one or more practices, methods
44 or operations which presents imminent danger of death or serious physical or mental harm to
45 residents of a facility;

46 [(6)] (11) "Facility", any residential care facility [I, residential care facility II,
47 immediate], **assisted living facility, intermediate** care facility, or skilled nursing facility;

48 [(7)] (12) "Health care provider", any person providing health care services or goods to
49 residents and who receives funds in payment for such goods or services under Medicaid;

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

52 (a) **Preparing meals;**

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

54 (c) **Medication management;**

55 (d) **Managing money;**

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

57 (f) **Housework; and**

58 (g) **Transportation ability;**

59 [(8)] (14) "Intermediate care facility", any premises, other than a residential care facility
60 [I, residential care facility II], **assisted living facility**, or skilled nursing facility, which is utilized
61 by its owner, operator, or manager to provide twenty-four hour accommodation, board, personal
62 care, and basic health and nursing care services under the daily supervision of a licensed nurse
63 and under the direction of a licensed physician to three or more residents dependent for care and
64 supervision and who are not related within the fourth degree of consanguinity or affinity to the
65 owner, operator or manager of the facility;

66 [(9)] (15) "Manager", any person other than the administrator of a facility who contracts
67 or otherwise agrees with an owner or operator to supervise the general operation of a facility,
68 providing such services as hiring and training personnel, purchasing supplies, keeping financial
69 records, and making reports;

70 [(10)] (16) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
71 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
72 U.S.C. 301 et seq.), as amended;

73 [(11)] (17) "Neglect", the failure to provide, by those responsible for the care, custody,
74 and control of a resident in a facility, the services which are reasonable and necessary to maintain
75 the physical and mental health of the resident, when such failure presents either an imminent
76 danger to the health, safety or welfare of the resident or a substantial probability that death or
77 serious physical harm would result;

78 [(12)] (18) "Operator", any person licensed or required to be licensed under the
79 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

80 [(13)] (19) "Owner", any person who owns an interest of five percent or more in:

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

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

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

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

86

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

90 [(14)] (20) "Protective oversight", an awareness twenty-four hours a day of the location
91 of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
92 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
93 except where the resident is on voluntary leave;

94 [(15)] (21) "Resident", a person who by reason of aging, illness, disease, or physical or
95 mental infirmity receives or requires care and services furnished by a facility and who resides
96 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period
97 exceeding twenty-four consecutive hours;

98 [(16)] (22) "Residential care facility [I]", any premises, other than [a residential care
99 facility II] **an assisted living facility**, intermediate care facility, or skilled nursing facility, which
100 is utilized by its owner, operator or manager to provide twenty-four hour care to three or more
101 residents, who are not related within the fourth degree of consanguinity or affinity to the owner,
102 operator, or manager of the facility and who need or are provided with shelter, board, and with
103 protective oversight, which may include storage and distribution or administration of
104 medications and care during short-term illness or recuperation;

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

113 (18)] **(23) "Shared responsibility agreement", an optional agreement signed by both**
114 **an assisted living facility and a resident documenting the discussions between the facility**
115 **and a resident, the choices available and presented by the facility to the resident, the**
116 **agreement between the facility and the resident, and the responsibilities of both the facility**
117 **and the resident when the resident's preferences require variance from accepted standards**
118 **or policies and when such preferences have significant risk of an adverse outcome. For**
119 **residents not capable of making decisions, a legal representative or responsible family**
120 **member shall discuss, agree to, and sign the shared responsibility agreement. The shared**
121 **responsibility agreement shall contain a signed statement by the resident, legal**
122 **representative of the resident, or other responsible party, attesting that the options, facility**
123 **responsibilities, resident preferences, and agreement have been discussed with the**
124 **resident's personal physician. The shared responsibility agreement also shall contain time**
125 **frames for reviewing the agreement at least every ninety days and shall designate**
126 **responsibility for the review in behalf of the facility;**

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

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

143 [(19)] (26) "Vendor", any person selling goods or services to a health care provider;

144 [(20)] (27) "Voluntary leave", an off-premise leave initiated by:

145 (a) A resident [that has not been declared mentally incompetent or incapacitated by a
146 court] **or other responsible party;** or

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

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

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

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

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

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

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

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

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

(6) Every resident mentally incapable of negotiating a pathway to safety in the facility shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an assessment instrument utilized by the

36 division of aging known as the minimum data set used for assessing residents of skilled nursing
37 facilities:

38 (a) Upon admission;

39 (b) At least semiannually; and

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

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

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

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

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

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

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

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

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

67 (b) Is at constant risk of elopement;

68 (c) Requires physical restraint;

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

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

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

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

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

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

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

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

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

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

89 7. The division of aging shall promulgate rules to ensure compliance with this section
90 and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as
91 that term is defined in section 536.010, RSMo, that is created under the authority delegated in
92 this section shall become effective only if it complies with and is subject to all of the provisions
93 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
94 RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to
95 chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are
96 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
97 or adopted after August 28, 1999, shall be invalid and void.] **An individual may be accepted
98 for residency or remain in an assisted living facility, only if the individual does not require
99 hospitalization or skilled nursing care, and only if the facility:**

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

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

105 **(3) Has a written plan for the protection of all residents in the event of a disaster,
106 including keeping residents in place, evacuating residents to areas of refuge, evacuating**

107 residents from the building if necessary, or other methods of protection based on the
108 disaster and the individual building design;

109 (4) Completes a screening prior to admission by an appropriately trained
110 individual with participation of the prospective resident;

111 (5) Completes a resident assessment by an appropriately trained individual using
112 an assessment tool, determined by the department of health and senior services, for
113 community based services:

114 (a) Upon admission;

115 (b) At least annually; and

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

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

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 subdivision, 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 residence 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 section 198.006, for which the
144 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;

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. If an assisted living facility accepts any individual with a physical, cognitive, or
153 other impairment that prevents the individual from safely evacuating the residence with
154 minimal assistance, the facility shall:

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

157 (2) Include an individualized evacuation plan in the service plan of the resident;
158 and

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

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

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

167 5. Facilities licensed as an assisted living facility shall disclose to a prospective
168 resident, the legal representative of the resident, or other responsible party information
169 regarding the services the facility is able to provide and the resident conditions that would
170 require discharge or transfer, including the provisions of subdivision (8) of subsection 2
171 of this section.

172 6. After January 1, 2007, no facility shall hold itself out as an assisted living facility
173 or advertise itself as an assisted living facility without obtaining a license from the
174 department to operate as an assisted living facility.

175 7. The department of health and senior services shall promulgate rules to ensure
176 compliance with this section and to sanction facilities that fail to comply with this section.
177 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
178 created under the authority delegated in this section shall become effective only if it

179 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
180 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
181 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
182 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
183 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
184 **adopted after August 28, 2006, shall be invalid and void.**

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