

SECOND REGULAR SESSION

# HOUSE BILL NO. 1388

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MURPHY.

3345H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 198.088, RSMo, and to enact in lieu thereof one new section relating to long-term care facilities.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 198.088, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 198.088, to read as follows:

198.088. 1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

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.

18 (c) Except in the case of an emergency, the resident, his next of kin, attending physician,  
19 and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or  
20 discharge of any resident, and casework services or other means are utilized to assure that  
21 adequate arrangements exist for meeting his needs through other resources;

22 (3) Policies define the uses of chemical and physical restraints, identify the professional  
23 personnel who may authorize the application of restraints in emergencies and describe the  
24 mechanism for monitoring and controlling their use;

25 (4) Policies define procedures for submittal of complaints and recommendations by  
26 residents and for assuring response and disposition;

27 (5) There are written policies governing access to, duplication of, and dissemination of  
28 information from the resident's records;

29 (6) Each resident admitted to the facility:

30 (a) Is fully informed of his rights and responsibilities as a resident. Prior to or at the time  
31 of admission, a list of resident rights shall be provided to each resident, or his designee, next of  
32 kin, or legal guardian. A list of resident rights shall be posted in a conspicuous location in the  
33 facility and copies shall be available to anyone upon request;

34 (b) Is fully informed in writing, prior to or at the time of admission and during stay, of  
35 services available in the facility, and of related charges including any charges for services not  
36 covered under the federal or state programs or not covered by the facility's basic per diem rate;

37 (c) Is fully informed by a physician of his health and medical condition unless medically  
38 contraindicated, as documented by a physician in his resident record, and is afforded the  
39 opportunity to participate in the planning of his total care and medical treatment and to refuse  
40 treatment, and participates in experimental research only upon his informed written consent;

41 (d) Is transferred or discharged only for medical reasons or for his welfare or that of  
42 other residents, or for nonpayment for his stay. No resident may be discharged without notice  
43 of his right to a hearing and an opportunity to be heard on the issue of whether his immediate  
44 discharge is necessary. Such notice shall be given in writing no less than thirty days in advance  
45 of the discharge except in the case of an emergency discharge. In emergency discharges a written  
46 notice of discharge and right to a hearing shall be given as soon as practicable and an expedited  
47 hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

48 (e) Is encouraged and assisted, throughout his period of stay, to exercise his rights as a  
49 resident and as a citizen, and to this end may voice grievances and recommend changes in  
50 policies and services to facility staff or to outside representatives of his choice, free from  
51 restraint, interference, coercion, discrimination, or reprisal;

52 (f) May manage his personal financial affairs, and, to the extent that the facility assists  
53 in such management, has his personal financial affairs managed in accordance with section  
54 198.090;

55 (g) Is free from mental and physical abuse, and free from chemical and physical  
56 restraints except as follows:

57 a. When used as a part of a total program of care to assist the resident to attain or  
58 maintain the highest practicable level of physical, mental or psychosocial well-being;

59 b. When authorized in writing by a physician for a specified period of time; and

60 c. When necessary in an emergency to protect the resident from injury to himself or to  
61 others, in which case restraints may be authorized by designated professional personnel who  
62 promptly report the action taken to the physician. When restraints are indicated, devices that are  
63 least restrictive, consistent with the resident's total treatment program, shall be used;

64 (h) Is ensured confidential treatment of all information contained in his records,  
65 including information contained in an automatic data bank, and his written consent shall be  
66 required for the release of information to persons not otherwise authorized under law to receive  
67 it;

68 (i) Is treated with consideration, respect, and full recognition of his dignity and  
69 individuality, including privacy in treatment and in care for his personal needs;

70 (j) Is not required to perform services for the facility;

71 (k) May communicate, associate and meet privately with persons of his choice, unless  
72 to do so would infringe upon the rights of other residents, and send and receive his personal mail  
73 unopened;

74 (l) May participate in activities of social, religious and community groups at his  
75 discretion, unless contraindicated for reasons documented by a physician in the resident's medical  
76 record;

77 (m) May retain and use his personal clothing and possessions as space permits;

78 (n) If married, is ensured privacy for visits by his or her spouse; if both are residents in  
79 the facility, they are permitted to share a room; and

80 (o) Is allowed the option of purchasing or renting goods or services not included in the  
81 per diem or monthly rate from a supplier of his own choice;

82 (7) The resident or his designee, next of kin or legal guardian receives an itemized bill  
83 for all goods and services actually rendered;

84 (8) A written account, available to residents and their families, is maintained on a current  
85 basis for each resident with written receipts for all personal possessions and funds received by  
86 or deposited with the facility and for all disbursements made to or on behalf of the resident.

87           2. Each facility and the department shall encourage and assist residents in the free  
88 exercise of the resident's rights to civil and religious liberties, including knowledge of available  
89 choices and the right to independent personal decision. Each resident shall be given a copy of  
90 a statement of his rights and responsibilities, including a copy of the facility's rules and  
91 regulations. Each facility shall prepare a written plan to ensure the respect of each resident's  
92 rights and privacy and shall provide appropriate staff training to implement the plan.

93           3. (1) Each facility shall establish written procedures approved by the department by  
94 which complaints and grievances of residents may be heard and considered. The procedures  
95 shall provide for referral to the department of any complaints or grievances not resolved by the  
96 facility's grievance procedure.

97           (2) Each facility shall designate one staff member, employed full time, referred to in this  
98 subsection as the "designee", to receive all grievances when they are first made.

99           (3) If anyone wishes to complain about treatment, conditions, or violations of rights, he  
100 shall write or cause to be written his grievance or shall state it orally to the designee [~~no later~~  
101 ~~than fourteen days after the occurrence giving rise to the grievance~~]. When the department  
102 receives a complaint that does not contain allegations of abuse or neglect or allegations which  
103 would, if substantiated, constitute violation of a class I or class II standard as defined in section  
104 198.085, and the complainant indicates that the complaint was not filed with the facility prior  
105 to the reporting of it to the department, the department may in such instances refer the complaint  
106 to the staff person who is designated by the facility to receive all grievances when they are first  
107 made. In such instances the department shall assure appropriate response from the facility,  
108 assure resolution at a subsequent on-site visit and provide a report to the complainant. The  
109 designee shall confer with persons involved in the occurrence and with any other witnesses and,  
110 no later than three days after the grievance, give a written explanation of findings and proposed  
111 remedies, if any, to the complainant and to the aggrieved party, if someone other than the  
112 complainant. Where appropriate because of the mental or physical condition of the complainant  
113 or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

114           (4) The department shall establish and implement procedures for the making and  
115 transmission of complaints to the department by any person alleging violation of the provisions  
116 of sections 198.003 to 198.186, 198.200, 208.030, and 208.159 and the standards established  
117 thereunder. The department shall promptly review each complaint. In the case of a refusal to  
118 investigate, the department shall promptly notify the complainant of its refusal and the reasons  
119 therefor; and in every other case, the department shall, following investigation, notify the  
120 complainant of its investigation and any proposed action.

121           4. Whenever the department finds upon investigation that there have been violations of  
122 the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159 or the standards

123 established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334,  
124 335, 336, 337, 338, or 344, the department shall forward a report of its findings to the  
125 appropriate licensing or examining board for further investigation.

126           5. Each facility shall maintain a complete record of complaints and grievances made  
127 against such facility and a record of the final disposition of the complaints and grievances. Such  
128 record shall be open to inspection by representatives of the department during normal business  
129 hours.

130           6. Nothing in this section shall be construed as requiring a resident to exhaust grievance  
131 procedures established by the facility or by the department prior to filing a complaint pursuant  
132 to section 198.090.

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