

FIRST REGULAR SESSION

SENATE BILL NO. 414

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 5, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1667S.011

AN ACT

To repeal sections 198.006 and 198.073, RSMo, and to enact in lieu thereof two new sections relating to long-term care 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Section A. Sections 198.006 and 198.073, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 198.006 and 198.073, to
3 read as follows:

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 following
5 activities of daily living:

6 (a) Eating;

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
13 of a facility;

14 (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;

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

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 and qualified individual", an individual who is
25 licensed or registered with the state of Missouri in a health care-related field or
26 an individual with a degree in a health care-related field or an individual with
27 a degree in a health care, social services, or human services field or an individual
28 licensed under chapter 344 and who has received facility orientation training
29 under 19 CSR 30-86042(18), and dementia training under section 192.2000 and
30 twenty-four hours of additional training, approved by the department, consisting
31 of definition and assessment of activities of daily living, assessment of cognitive
32 ability, service planning, and interview skills;

33 (6) "Assisted living facility", any premises, other than a residential care
34 facility, intermediate care facility, or skilled nursing facility, that is utilized by
35 its owner, operator, or manager to provide twenty-four-hour care and services and
36 protective oversight to three or more residents who are provided with shelter,
37 board, and who may need and are provided with the following:

38 (a) Assistance with any activities of daily living and any instrumental
39 activities of daily living;

40 (b) Storage, distribution, or administration of medications; and

41 (c) Supervision of health care under the direction of a licensed physician,
42 provided that such services are consistent with a social model of care; Such term
43 shall not include a facility where all of the residents are related within the fourth
44 degree of consanguinity or affinity to the owner, operator, or manager of the
45 facility;

46 (7) "Community-based assessment", documented basic information and
47 analysis provided by appropriately trained and qualified individuals describing
48 an individual's abilities and needs in activities of daily living, instrumental
49 activities of daily living, vision/hearing, nutrition, social participation and
50 support, and cognitive functioning using an assessment tool approved by the
51 department of health and senior services that is designed for community-based
52 services and that is not the nursing home minimum data set;

53 (8) "Dementia", a general term for the loss of thinking, remembering, and
54 reasoning so severe that it interferes with an individual's daily functioning, and

55 may cause symptoms that include changes in personality, mood, and behavior;

56 (9) "Department", the Missouri department of health and senior services;

57 (10) "Emergency", a situation, physical condition or one or more practices,

58 methods or operations which presents imminent danger of death or serious

59 physical or mental harm to residents of a facility;

60 (11) "Facility", any residential care facility, assisted living facility,

61 intermediate care facility, or skilled nursing facility;

62 (12) "Health care provider", any person providing health care services or

63 goods to residents and who receives funds in payment for such goods or services

64 under Medicaid;

65 (13) "Instrumental activities of daily living", or "IADL", one or more of the

66 following activities:

67 (a) Preparing meals;

68 (b) Shopping for personal items;

69 (c) Medication management;

70 (d) Managing money;

71 (e) Using the telephone;

72 (f) Housework; and

73 (g) Transportation ability;

74 (14) "Intermediate care facility", any premises, other than a residential

75 care facility, assisted living facility, or skilled nursing facility, which is utilized

76 by its owner, operator, or manager to provide twenty-four-hour accommodation,

77 board, personal care, and basic health and nursing care services under the daily

78 supervision of a licensed nurse and under the direction of a licensed physician to

79 three or more residents dependent for care and supervision and who are not

80 related within the fourth degree of consanguinity or affinity to the owner,

81 operator or manager of the facility;

82 (15) **"Intermittent health-related care", licensed nursing services**

83 **or professional therapies which are provided no more than five days**

84 **per week or licensed nursing services or professional therapies which**

85 **are provided six or seven days per week for temporary periods of time**

86 **with a predictable end within thirty days;**

87 (16) "Manager", any person other than the administrator of a facility who

88 contracts or otherwise agrees with an owner or operator to supervise the general

89 operation of a facility, providing such services as hiring and training personnel,

90 purchasing supplies, keeping financial records, and making reports;

91 [(16)] **(17)** "Medicaid", medical assistance under section 208.151, et seq.,
92 in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social
93 Security Act (42 U.S.C. 301, et seq.), as amended;

94 [(17)] **(18)** "**More than minimal assistance**", **any one or more of the**
95 **following actions:**

96 **(a) Requires assistance to traverse down stairways;**

97 **(b) Requires assistance to open a door;**

98 **(c) Requires assistance to propel a wheelchair;**

99 **(d) Requires more than one person to assist with a transfer; or**

100 **(e) Requires more than intermittent health-related care;**

101 **(19)** "Neglect", the failure to provide, by those responsible for the care,
102 custody, and control of a resident in a facility, the services which are reasonable
103 and necessary to maintain the physical and mental health of the resident, when
104 such failure presents either an imminent danger to the health, safety or welfare
105 of the resident or a substantial probability that death or serious physical harm
106 would result;

107 [(18)] **(20)** "Operator", any person licensed or required to be licensed
108 under the provisions of sections 198.003 to 198.096 in order to establish, conduct
109 or maintain a facility;

110 [(19)] **(21)** "Owner", any person who owns an interest of five percent or
111 more in:

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

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

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

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

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

121 [(20)] **(22)** "Protective oversight", an awareness twenty-four hours a day
122 of the location of a resident, the ability to intervene on behalf of the resident, the
123 supervision of nutrition, medication, or actual provisions of care, and the
124 responsibility for the welfare of the resident, except where the resident is on
125 voluntary leave;

126 [(21)] **(23)** "Resident", a person who by reason of aging, illness, disease,

127 or physical or mental infirmity receives or requires care and services furnished
128 by a facility and who resides or boards in or is otherwise kept, cared for, treated
129 or accommodated in such facility for a period exceeding twenty-four consecutive
130 hours;

131 [(22)] **(24)** "Residential care facility", any premises, other than an
132 assisted living facility, intermediate care facility, or skilled nursing facility, which
133 is utilized by its owner, operator or manager to provide twenty-four-hour care to
134 three or more residents, who are not related within the fourth degree of
135 consanguinity or affinity to the owner, operator, or manager of the facility and
136 who need or are provided with shelter, board, and with protective oversight,
137 which may include storage and distribution or administration of medications and
138 care during short-term illness or recuperation, except that, for purposes of
139 receiving supplemental welfare assistance payments under section 208.030, only
140 any residential care facility licensed as a residential care facility II immediately
141 prior to August 28, 2006, and that continues to meet such licensure requirements
142 for a residential care facility II licensed immediately prior to August 28, 2006,
143 shall continue to receive after August 28, 2006, the payment amount allocated
144 immediately prior to August 28, 2006, for a residential care facility II under
145 section 208.030;

146 [(23)] **(25)** "Skilled nursing facility", any premises, other than a
147 residential care facility, an assisted living facility, or an intermediate care
148 facility, which is utilized by its owner, operator or manager to provide for
149 twenty-four-hour accommodation, board and skilled nursing care and treatment
150 services to at least three residents who are not related within the fourth degree
151 of consanguinity or affinity to the owner, operator or manager of the
152 facility. Skilled nursing care and treatment services are those services commonly
153 performed by or under the supervision of a registered professional nurse for
154 individuals requiring twenty-four-hours-a-day care by licensed nursing personnel
155 including acts of observation, care and counsel of the aged, ill, injured or infirm,
156 the administration of medications and treatments as prescribed by a licensed
157 physician or dentist, and other nursing functions requiring substantial specialized
158 judgment and skill;

159 [(24)] **(26)** "Social model of care", long-term care services based on the
160 abilities, desires, and functional needs of the individual delivered in a setting
161 that is more home-like than institutional and promotes the dignity, individuality,
162 privacy, independence, and autonomy of the individual. Any facility licensed as

163 a residential care facility II prior to August 28, 2006, shall qualify as being more
164 home-like than institutional with respect to construction and physical plant
165 standards;

166 [(25)] **(27)** "Vendor", any person selling goods or services to a health care
167 provider;

168 [(26)] **(28)** "Voluntary leave", an off-premise leave initiated by:

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

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

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

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

11 3. Any facility licensed as a residential care facility II on August 27, 2006,
12 shall be granted a license as an assisted living facility, as defined in section
13 198.006, on August 28, 2006, regardless of the laws, rules, and regulations for
14 licensure as an assisted living facility as long as such facility continues to meet
15 all laws, rules, and regulations that were in place on August 27, 2006, for a
16 residential care facility II. At such time that the average total reimbursement,
17 not including residents' cost-of-living increases in their benefits from the Social
18 Security Administration after August 28, 2006, for the care of persons eligible for
19 Medicaid in an assisted living facility is equal to or exceeds forty-one dollars per
20 day, all facilities with a license as an assisted living facility shall meet all laws,
21 rules, and regulations for licensure as an assisted living facility. Nothing in this
22 section shall be construed to allow any facility that has not met the requirements
23 of subsections 4 and 6 of this section to care for any individual with a physical,
24 cognitive, or other impairment that prevents the individual from safely
25 evacuating the facility.

26 4. Any facility licensed as an assisted living facility, as defined in section

27 198.006, except for facilities licensed under subsection 3 of this section, may
28 admit or retain an individual for residency in an assisted living facility only if the
29 individual does not require hospitalization or skilled nursing placement, and only
30 if the facility:

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

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

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

40 (4) Completes a pre-move-in screening with participation of the
41 prospective resident;

42 (5) Completes for each resident a community-based assessment, as defined
43 in subdivision (7) of section 198.006:

44 (a) Upon admission;

45 (b) At least semiannually; and

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

48 (6) Based on the assessment in subsection 7 of this section and
49 subdivision (5) of this subsection, develops an individualized service plan in
50 partnership with the resident, or legal representative of the resident, that
51 outlines the needs and preferences of the resident. The individualized service
52 plan will be reviewed with the resident, or legal representative of the resident,
53 at least annually, or when there is a significant change in the resident's condition
54 which may require a change in services. The signatures of an authorized
55 representative of the facility and the resident, or the resident's legal
56 representative, shall be contained on the individualized service plan to
57 acknowledge that the service plan has been reviewed and understood by the
58 resident or legal representative;

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

62 (8) Ensures that the [residence] **facility** does not accept or retain a

63 resident who:

64 (a) Has exhibited behaviors that present a reasonable likelihood of serious
65 harm to himself or herself or others;

66 (b) Requires physical restraint;

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

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

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

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

76 (d) Requires skilled nursing services as defined in subdivision (23) of
77 section 198.006 for which the facility is not licensed or able to provide;

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

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

83 (9) Develops and implements a plan to protect the rights, privacy, and
84 safety of all residents and to protect against the financial exploitation of all
85 residents;

86 (10) Complies with the training requirements of subsection 7 of section
87 192.2000.

88 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of
89 this section shall be made for residents on hospice, provided the resident,
90 designated representative, or both, and the assisted living provider, physician,
91 and licensed hospice provider all agree that such program of care is appropriate
92 for the resident.

93 6. If an assisted living facility accepts or retains any individual with a
94 physical, cognitive, or other impairment [that prevents the individual from] **who**
95 **requires more than minimal assistance for** safely evacuating the facility
96 [with minimal assistance], the facility shall:

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

99 (2) Include an individualized evacuation plan in the service plan of the
100 resident; [and]

101 (3) Take necessary measures to provide residents with the opportunity to
102 explore the facility and, if appropriate, its grounds; [and]

103 (4) **Require any resident who is non-ambulatory or who has**
104 **dementia and is unable to safely evacuate the facility to reside on the**
105 **ground floor level of the facility; and**

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

108 7. **Nothing in this section should be construed to allow an**
109 **assisted living facility to admit or retain any resident who requires**
110 **more than one person assisting with eating; or requires more than one**
111 **person assisting with toileting; or requires twenty-four-hour licensed**
112 **nursing care to sufficiently meet the nursing needs of a resident; or**
113 **uses the services of a registered professional nurse at least eight**
114 **consecutive hours a day for seven days a week; or is a danger to self or**
115 **others.**

116 8. An individual admitted or readmitted to the facility shall have an
117 admission physical examination by a licensed physician **signed prior to**
118 **admission to the facility.** Documentation [should be obtained prior to
119 admission but shall be on file not later than ten days after admission and] shall
120 contain information regarding the individual's current medical status and any
121 special orders or procedures that should be followed. If the individual is admitted
122 directly from a hospital or another long-term care facility and is accompanied on
123 admission by a report that reflects his or her current medical status, an
124 admission physical shall not be required.

125 [8.] 9. Facilities licensed as an assisted living facility shall disclose to a
126 prospective resident, or legal representative of the resident, information
127 regarding the services the facility is able to provide or coordinate, the costs of
128 such services to the resident, and the resident conditions that will require
129 discharge or transfer, including the provisions of subdivision (8) of subsection 4
130 of this section.

131 [9.] 10. **If an assisted living facility locks, secures, segregates, or**
132 **provides a special program for persons with Alzheimer's disease,**
133 **dementia, or related disorders and advertises to the public that it is**
134 **offering a special care unit, the facility shall:**

135 (1) Provide a written disclosure statement on the mission and
136 philosophy reflecting the needs of residents with Alzheimer's disease,
137 dementia, or related disorders to the department of health and senior
138 services upon the issuance of a valid license and shall provide a copy
139 to each resident and their family or to the residents' legal
140 representative upon admission;

141 (2) Provide the process and criteria for placement in or transfer
142 or discharge from a program for residents with Alzheimer's disease,
143 dementia, or related disorders to the department of health and senior
144 services upon the issuance of a valid license and shall provide a copy
145 to each resident and their family or to the residents' legal
146 representative upon admission;

147 (3) Specify the process used for assessment and establishment of
148 a plan of care and its implementation, including the method by which
149 the plan of care evolves and is responsive to changes in condition;

150 (4) Institute a quarterly review process for all resident care
151 plans;

152 (5) Provide information on staff training and continuing
153 education practices to the department of health and senior services
154 upon the issuance of a valid license and shall provide a copy to each
155 resident and their family or to the residents' legal representative upon
156 admission;

157 (6) Ensure that there is an adequate and sufficient number of
158 staff awake, fully dressed and capable of providing for resident needs
159 consistent with the resident service plans on duty at all times;

160 (7) Ensure a representative willing, capable, and available to
161 make health care and financial decisions is designated for each
162 resident and accepts that responsibility in writing;

163 (8) List the frequency and types of activities for residents with
164 Alzheimer's disease, dementia, or related disorders;

165 (9) Detail the physical environment and design features
166 appropriate to support the function of residents with Alzheimer's
167 disease, dementia, or related disorders; and

168 (10) Provide safety and security measures to the department of
169 health and senior services upon the issuance of a valid license and
170 shall provide a copy to each resident and their family or to the
171 residents' legal representative upon admission.

172 **11.** After January 1, 2008, no entity shall hold itself out as an assisted
173 living facility or advertise itself as an assisted living facility without obtaining
174 a license from the department to operate as an assisted living facility. Any
175 residential care facility II licensed under this chapter that does not use the term
176 assisted living in the name of its licensed facility on or before May 1, 2006, shall
177 be prohibited from using such term after August 28, 2006, unless such facility
178 meets the requirements for an assisted living facility in subsection 4 of this
179 section. Any facility licensed as an intermediate care facility prior to August 28,
180 2006, that provides the services of an assisted living facility, as described in
181 paragraphs (a), (b), and (c) of subdivision (6) of section 198.006, utilizing the
182 social model of care, may advertise itself as an assisted living facility without
183 obtaining a license from the department to operate as an assisted living facility.

184 **[10.] 12.** The department of health and senior services shall promulgate
185 rules to ensure compliance with this section. Any rule or portion of a rule, as
186 that term is defined in section 536.010, that is created under the authority
187 delegated in this section shall become effective only if it complies with and is
188 subject to all of the provisions of chapter 536 and, if applicable, section
189 536.028. This section and chapter 536 are nonseverable and if any of the powers
190 vested with the general assembly pursuant to chapter 536 to review, to delay the
191 effective date, or to disapprove and annul a rule are subsequently held
192 unconstitutional, then the grant of rulemaking authority and any rule proposed
193 or adopted after August 28, 2006, shall be invalid and void.

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