

SECOND REGULAR SESSION

HOUSE BILL NO. 1847

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (117) (Sponsor) AND RICHARDSON (Co-sponsor).

5959L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 198.006 and 198.073, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 198.006 and 198.073, to read as follows:

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
- (2) "Activities of daily living" or "ADL", one or more of the following activities of daily living:
 - (a) Eating;
 - (b) Dressing;
 - (c) Bathing;
 - (d) Toileting;
 - (e) Transferring; and
 - (f) Walking;
- (3) "Administrator", the person who is in general administrative charge of a facility;
- (4) "Affiliate":
 - (a) With respect to a partnership, each partner thereof;
 - (b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

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.

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 and qualified individual", an individual who is licensed or
22 registered with the state of Missouri in a health care-related field or an individual with a degree
23 in a health care-related field or an individual with a degree in a health care, social services, or
24 human services field or an individual licensed under chapter 344 and who has received facility
25 orientation training under 19 CSR 30-86042(18), and dementia training under section 660.050
26 and twenty-four hours of additional training, approved by the department, consisting of definition
27 and assessment of activities of daily living, assessment of cognitive ability, service planning, and
28 interview 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, or
31 manager to provide twenty-four-hour care and services and protective oversight to three or more
32 residents who are provided with shelter, board, and who may need and are provided with the
33 following:

34 (a) Assistance with any activities of daily living and any instrumental activities of daily
35 living;

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

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

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

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

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

51 (10) "Emergency", a situation, physical condition or one or more practices, methods or
52 operations which presents imminent danger of death or serious physical or mental harm to
53 residents of a facility;

54 (11) "Facility", any residential care facility, assisted living facility, intermediate care
55 facility, or skilled nursing facility;

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

58 (13) "Instrumental activities of daily living", or "IADL", one or more of the following
59 activities:

60 (a) Preparing meals;

61 (b) Shopping for personal items;

62 (c) Medication management;

63 (d) Managing money;

64 (e) Using the telephone;

65 (f) Housework; and

66 (g) Transportation ability;

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

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

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

81 (17) **"Medical assessment", documented medical information provided by**
82 **appropriately trained and qualified individuals using an assessment tool approved by the**
83 **department of health and senior serves that is similar to the nursing home minimum data**
84 **set;**

85 (18) "Neglect", the failure to provide, by those responsible for the care, custody, and
86 control of a resident in a facility, the services which are reasonable and necessary to maintain the

87 physical and mental health of the resident, when such failure presents either an imminent danger
88 to the health, safety or welfare of the resident or a substantial probability that death or serious
89 physical harm would result;

90 [(18)] (19) "Operator", any person licensed or required to be licensed under the
91 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

92 [(19)] (20) "Owner", any person who owns an interest of five percent or more in:

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

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

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

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

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

101 [(20)] (21) "Protective oversight", an awareness twenty-four hours a day of the location
102 of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
103 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
104 except where the resident is on voluntary leave;

105 [(21)] (22) "Resident", a person who by reason of aging, illness, disease, or physical or
106 mental infirmity receives or requires care and services furnished by a facility and who resides
107 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period
108 exceeding twenty-four consecutive hours;

109 [(22)] (23) "Residential care facility", any premises, other than an assisted living facility,
110 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or
111 manager to provide twenty-four-hour care to three or more residents, who are not related within
112 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility
113 and who need or are provided with shelter, board, and with protective oversight, which may
114 include storage and distribution or administration of medications and care during short-term
115 illness or recuperation, except that, for purposes of receiving supplemental welfare assistance
116 payments under section 208.030, only any residential care facility licensed as a residential care
117 facility II immediately prior to August 28, 2006, and that continues to meet such licensure
118 requirements for a residential care facility II licensed immediately prior to August 28, 2006, shall
119 continue to receive after August 28, 2006, the payment amount allocated immediately prior to
120 August 28, 2006, for a residential care facility II under section 208.030;

121 [(23)] (24) "Skilled nursing facility", any premises, other than a residential care facility,
122 an assisted living facility, or an intermediate care facility, which is utilized by its owner, operator

123 or manager to provide for twenty-four-hour accommodation, board and skilled nursing care and
124 treatment services to at least three residents who are not related within the fourth degree of
125 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care
126 and treatment services are those services commonly performed by or under the supervision of
127 a registered professional nurse for individuals requiring twenty-four-hours-a-day care by licensed
128 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or
129 infirm, the administration of medications and treatments as prescribed by a licensed physician
130 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

131 [(24)] (25) "Social model of care", long-term care services based on the abilities, desires,
132 and functional needs of the individual delivered in a setting that is more home-like than
133 institutional and promotes the dignity, individuality, privacy, independence, and autonomy of the
134 individual. Any facility licensed as a residential care facility II prior to August 28, 2006, shall
135 qualify as being more home-like than institutional with respect to construction and physical plant
136 standards;

137 [(25)] (26) "Vendor", any person selling goods or services to a health care provider;

138 [(26)] (27) "Voluntary leave", an off-premise leave initiated by:

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

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

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

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

9 3. Any facility licensed as a residential care facility II on August 27, 2006, shall be
10 granted a license as an assisted living facility, as defined in section 198.006, on August 28, 2006,
11 regardless of the laws, rules, and regulations for licensure as an assisted living facility as long
12 as such facility continues to meet all laws, rules, and regulations that were in place on August
13 27, 2006, for a residential care facility II. At such time that the average total reimbursement, not
14 including residents' cost-of-living increases in their benefits from the Social Security
15 Administration after August 28, 2006, for the care of persons eligible for Medicaid in an assisted
16 living facility is equal to or exceeds forty-one dollars per day, all facilities with a license as an

17 assisted living facility shall meet all laws, rules, and regulations for licensure as an assisted living
18 facility. Nothing in this section shall be construed to allow any facility that has not met the
19 requirements of subsections 4 and 6 of this section to care for any individual with a physical,
20 cognitive, or other impairment that prevents the individual from safely evacuating the facility.

21 4. Any facility licensed as an assisted living facility, as defined in section 198.006,
22 except for facilities licensed under subsection 3 of this section, may admit or retain an individual
23 for residency in an assisted living facility only if the individual does not require hospitalization
24 or skilled nursing placement **and is physically capable of negotiating a normal path to safety**
25 **with minimal assistance**, and only if the facility:

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

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

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

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

35 (5) Completes for each resident a community-based assessment, as defined in
36 [subdivision (7) of] section 198.006, **and a medical assessment, as defined in section 198.006:**

37 (a) Upon admission;

38 (b) At least semiannually; and

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

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

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

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

- 53 (a) Has exhibited behaviors that present a reasonable likelihood of serious harm to
54 himself or herself or others;
- 55 (b) Requires physical restraint;
- 56 (c) Requires chemical restraint. As used in this paragraph, the following terms mean:
- 57 a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or
58 convenience and not required to treat medical symptoms;
- 59 b. "Convenience", any action taken by the facility to control resident behavior or
60 maintain residents with a lesser amount of effort by the facility and not in the resident's best
61 interest;
- 62 c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing
63 residents;
- 64 (d) Requires skilled nursing services as defined in subdivision (23) of section 198.006
65 for which the facility is not licensed or able to provide;
- 66 (e) Requires more than one person to simultaneously physically assist the resident with
67 any activity of daily living, with the exception of bathing and transferring;
- 68 (f) Is bed-bound or similarly immobilized due to a debilitating or chronic condition; and
- 69 (9) Develops and implements a plan to protect the rights, privacy, and safety of all
70 residents and to protect against the financial exploitation of all residents;
- 71 (10) Complies with the training requirements of subsection 8 of section 660.050.
- 72 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of this section
73 shall be made for residents on hospice, provided the resident, designated representative, or both,
74 and the assisted living provider, physician, and licensed hospice provider all agree that such
75 program of care is appropriate for the resident.
- 76 6. If an assisted living facility accepts or retains any individual with a physical, cognitive,
77 or other impairment that prevents the individual from safely evacuating the facility with minimal
78 assistance, the facility shall:
- 79 (1) Have sufficient staff present and awake twenty-four hours a day to assist in the
80 evacuation;
- 81 (2) Include an individualized evacuation plan in the service plan of the resident; and
- 82 (3) Take necessary measures to provide residents with the opportunity to explore the
83 facility and, if appropriate, its grounds; and
- 84 (4) Use a personal electronic monitoring device for any resident whose physician
85 recommends the use of such device.
- 86 7. An individual admitted or readmitted to the facility shall have an admission physical
87 examination by a licensed physician. Documentation should be obtained prior to admission but
88 shall be on file not later than ten days after admission and shall contain information regarding

89 the individual's current medical status and any special orders or procedures that should be
90 followed. If the individual is admitted directly from a hospital or another long-term care facility
91 and is accompanied on admission by a report that reflects his or her current medical status, an
92 admission physical shall not be required.

93 8. Facilities licensed as an assisted living facility shall disclose to a prospective resident,
94 or legal representative of the resident, information regarding the services the facility is able to
95 provide or coordinate, the costs of such services to the resident, and the resident conditions that
96 will require discharge or transfer, including the provisions of subdivision (8) of subsection 4 of
97 this section.

98 9. After January 1, 2008, no entity shall hold itself out as an assisted living facility or
99 advertise itself as an assisted living facility without obtaining a license from the department to
100 operate as an assisted living facility. Any residential care facility II licensed under this chapter
101 that does not use the term assisted living in the name of its licensed facility on or before May 1,
102 2006, shall be prohibited from using such term after August 28, 2006, unless such facility meets
103 the requirements for an assisted living facility in subsection 4 of this section. Any facility
104 licensed as an intermediate care facility prior to August 28, 2006, that provides the services of
105 an assisted living facility, as described in paragraphs (a), (b), and (c) of subdivision (6) of section
106 198.006, utilizing the social model of care, may advertise itself as an assisted living facility
107 without obtaining a license from the department to operate as an assisted living facility.

108 10. The department of health and senior services shall promulgate rules to ensure
109 compliance with this section. Any rule or portion of a rule, as that term is defined in section
110 536.010, that is created under the authority delegated in this section shall become effective only
111 if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
112 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
113 general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove
114 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
115 and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

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