

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 716,
2 Page 2, Section 197.168, Line 9, by inserting after all of said section and line the following:

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4 "630.167. 1. Upon receipt of a report, the department or the department of health and senior
5 services, if such facility or program is licensed pursuant to chapter 197, shall initiate an investigation
6 within twenty-four hours. The department, or the department of health and senior services if such
7 facility or program is licensed under chapter 197, shall complete all investigations within sixty days,
8 unless good cause for the failure to complete the investigation is documented.

9 2. If the investigation indicates possible abuse or neglect of a patient, resident or client, the
10 investigator shall refer the complaint together with the investigator's report to the department
11 director for appropriate action. If, during the investigation or at its completion, the department has
12 reasonable cause to believe that immediate removal from a facility not operated or funded by the
13 department is necessary to protect the residents from abuse or neglect, the department or the local
14 prosecuting attorney may, or the attorney general upon request of the department shall, file a petition
15 for temporary care and protection of the residents in a circuit court of competent jurisdiction. The
16 circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order
17 granting the department authority for the temporary care and protection of the resident for a period
18 not to exceed thirty days.

19 3. (1) Except as otherwise provided in this section, reports referred to in section 630.165
20 and the investigative reports referred to in this section shall be confidential, shall not be deemed a
21 public record, and shall not be subject to the provisions of section 109.180 or chapter 610.
22 Investigative reports pertaining to abuse and neglect shall remain confidential until a final report is
23 complete, subject to the conditions contained in this section. Final reports of substantiated abuse or
24 neglect issued on or after August 28, 2007, are open and shall be available for release in accordance
25 with chapter 610. The names and all other identifying information in such final substantiated
26 reports, including diagnosis and treatment information about the patient, resident, or client who is
27 the subject of such report, shall be confidential and may only be released to the patient, resident, or
28 client who has not been adjudged incapacitated under chapter 475, the custodial parent or guardian
29 parent, or other guardian of the patient, resident or client. The names and other descriptive
30 information of the complainant, witnesses, or other persons for whom findings are not made against
31 in the final substantiated report shall be confidential and not deemed a public record. Final reports of
32 unsubstantiated allegations of abuse and neglect shall remain closed records and shall only be
33 released to the parents or other guardian of the patient, resident, or client who is the subject of such
34 report, patient, resident, or client and the department vendor, provider, agent, or facility where the
35 patient, resident, or client was receiving department services at the time of the unsubstantiated
36 allegations of abuse and neglect, but the names and any other descriptive information of the

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1 complainant or any other person mentioned in the reports shall not be disclosed unless such
2 complainant or person specifically consents to such disclosure. Requests for final reports of
3 substantiated or unsubstantiated abuse or neglect from a patient, resident or client who has not been
4 adjudged incapacitated under chapter 475 may be denied or withheld if the director of the
5 department or his or her designee determines that such release would jeopardize the person's
6 therapeutic care, treatment, habilitation, or rehabilitation, or the safety of others and provided that
7 the reasons for such denial or withholding are submitted in writing to the patient, resident or client
8 who has not been adjudged incapacitated under chapter 475. All reports referred to in this section
9 shall be admissible in any judicial proceedings or hearing in accordance with section 621.075 or any
10 administrative hearing before the director of the department of mental health, or the director's
11 designee. All such reports may be disclosed by the department of mental health to law enforcement
12 officers and public health officers, but only to the extent necessary to carry out the responsibilities of
13 their offices, and to the department of social services, and the department of health and senior
14 services, and to boards appointed pursuant to sections 205.968 to 205.990 that are providing services
15 to the patient, resident or client as necessary to report or have investigated abuse, neglect, or rights
16 violations of patients, residents or clients provided that all such law enforcement officers, public
17 health officers, department of social services' officers, department of health and senior services'
18 officers, and boards shall be obligated to keep such information confidential.

19 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,
20 reports and minutes of committees of health care professionals as defined in section 537.035 or
21 mental health professionals as defined in section 632.005 who have the responsibility to evaluate,
22 maintain, or monitor the quality and utilization of mental health services are privileged and shall not
23 be subject to the discovery, subpoena or other means of legal compulsion for their release to any
24 person or entity or be admissible into evidence into any judicial or administrative action for failure to
25 provide adequate or appropriate care. Such committees may exist, either within department facilities
26 or its agents, contractors, or vendors, as applicable. Except as otherwise provided in this section, no
27 person who was in attendance at any investigation or committee proceeding shall be permitted or
28 required to disclose any information acquired in connection with or in the course of such proceeding
29 or to disclose any opinion, recommendation or evaluation of the committee or board or any member
30 thereof; provided, however, that information otherwise discoverable or admissible from original
31 sources is not to be construed as immune from discovery or use in any proceeding merely because it
32 was presented during proceedings before any committee or in the course of any investigation, nor is
33 any member, employee or agent of such committee or other person appearing before it to be
34 prevented from testifying as to matters within their personal knowledge and in accordance with the
35 other provisions of this section, but such witness cannot be questioned about the testimony or other
36 proceedings before any investigation or before any committee.

37 (3) Nothing in this section shall limit authority otherwise provided by law of a health care
38 licensing board of the state of Missouri to obtain information by subpoena or other authorized
39 process from investigation committees or to require disclosure of otherwise confidential information
40 relating to matters and investigations within the jurisdiction of such health care licensing boards;
41 provided, however, that such information, once obtained by such board and associated persons, shall
42 be governed in accordance with the provisions of this subsection.

43 (4) Nothing in this section shall limit authority otherwise provided by law in subdivisions (5)
44 and (6) of subsection 2 of section 630.140 concerning access to records by the entity or agency
45 authorized to implement a system to protect and advocate the rights of persons with developmental
46 disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
47 authorized to implement a system to protect and advocate the rights of persons with mental illness
48 under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve to negate

1 assurances that have been given by the governor of Missouri to the U.S. Administration on
 2 Developmental Disabilities, Office of Human Development Services, Department of Health and
 3 Human Services concerning access to records by the agency designated as the protection and
 4 advocacy system for the state of Missouri. However, such information, once obtained by such entity
 5 or agency, shall be governed in accordance with the provisions of this subsection.

6 4. [Anyone] Any person who makes a report pursuant to this section or who testifies in any
 7 administrative or judicial proceeding arising from the report shall be immune from any civil liability
 8 for making such a report or for testifying unless such person acted in bad faith or with malicious
 9 purpose.

10 5. (1) Within five working days after a report required to be made pursuant to this section is
 11 received, the person making the report shall be notified in writing of its receipt and of the initiation
 12 of the investigation.

13 (2) For investigations alleging neglect of a patient, resident, or client, the guardian or family
 14 of such patient, resident, or client shall be:

15 (a) Interviewed during the investigation;

16 (b) Within five working days of the completion of the investigation and decision of the
 17 department or the department of health and senior services:

18 a. Notified of the result of the investigation and decision of the department or the department
 19 of health and senior services; and

20 b. If the report is found to be unsubstantiated and no person will be placed on the
 21 disqualification registry, notified of the guardian's or family's right to appeal the department or the
 22 department of health and senior services' decision.

23 6. No person who directs or exercises any authority in a residential facility, day program or
 24 specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client or
 25 employee because he or she or any member of his or her family has made a report of any violation or
 26 suspected violation of laws, ordinances or regulations applying to the facility which he or she has
 27 reasonable cause to believe has been committed or has occurred.

28 7. Any person who is discharged as a result of an administrative substantiation of allegations
 29 contained in a report of abuse or neglect may, after exhausting administrative remedies as provided
 30 in chapter 36, appeal such decision to the circuit court of the county in which such person resides
 31 within ninety days of such final administrative decision. The court may accept an appeal up to
 32 twenty-four months after the party filing the appeal received notice of the department's
 33 determination, upon a showing that:

34 (1) Good cause exists for the untimely commencement of the request for the review;

35 (2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity
 36 for employment; and

37 (3) There is no other adequate remedy at law.

38 Section 1. 1. The department of mental health shall develop guidelines for the screening and
 39 assessment of persons receiving services from the department or its contracted, licensed, certified, or
 40 funded providers that address the interaction between physical and mental health to ensure that all
 41 potential causes of changes in behavior or mental status caused by or associated with a medical
 42 condition are assessed. Such guidelines shall be issued by the department to its contracted, licensed,
 43 certified, and funded providers.

44 2. The department of mental health shall develop training that addresses appropriate
 45 assessment of behavior or mental status changes in persons receiving services from the department or
 46 its contracted, licensed, certified, or funded providers. Such training shall be made available by the
 47 department to its contracted, licensed, certified, or funded providers.

48 3. The provisions of this section shall not apply to long-term care facilities licensed under

1 chapter 198 or hospitals licensed under chapter 197."; and

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3 Further amend said bill by amending the title, enacting clause, and intersectional references
4 accordingly.

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