

SECOND REGULAR SESSION

SENATE BILL NO. 1052

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time January 29, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4144S.04I

AN ACT

To repeal sections 198.006, 198.015 and 198.073, RSMo, relating to assisted living facilities, and to enact in lieu thereof four new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 198.006, 198.015 and 198.073, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 198.006, 198.015, 198.016 and 198.073, to read as follows: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) "Administrator", the person who is in general administrative charge of a facility;
- (3) "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;
 - (c) With respect to a corporation, each person who owns, holds or has the power to vote, five percent or more of any class of securities issued by the corporation, and each officer and director;
 - (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;
- (4) **"Alzheimer's disease", a progressive, neurodegenerative disease characterized by loss of function and death of nerve cells in several areas of the brain,**

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

leading to loss of mental functions such as memory and learning;

(5) "Assisted living facility", any group housing and services program, other than a skilled nursing facility, for three or more unrelated adults that promotes resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, independence and home-like surroundings and makes available, at a minimum, one meal per day, housekeeping services, and personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. Settings in which services are delivered may include self-contained apartment units or single or shared units with private or area baths. Missouri recognizes two types of assisted living residences: residential care facilities I and II; and multi-unit housing with services;

(6) "Dementia", the loss of intellectual functions, such as thinking, remembering and reasoning, of sufficient severity to interfere with a person's daily functioning. Dementia is not a disease itself but rather a group of symptoms that may accompany certain diseases or conditions. Symptoms may also include changes in personality, mood and behavior. Dementia is irreversible when caused by disease or injury but may be reversible when caused by drugs, alcohol, hormone or vitamin imbalances or depression;

(7) "Department", the Missouri department of social services;

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

[(6)] (9) "Facility", any residential care facility I, residential care facility II, immediate care facility, or skilled nursing facility;

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

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

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

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

(14) "Multi-unit housing with services", a category of apartments or other independent living residential arrangements which is utilized by its owner, operator or manager to offer services which enable residents with special needs to live in an independent, multi-unit setting. At a minimum, one meal a day, housekeeping and personal care services are available. Residents must not be in need of twenty-four-hour supervision;

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

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

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

- (a) The land on which any facility is located;
- (b) The structure or structures in which any facility is located;
- (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or
- (d) Any lease or sublease of the land or structure in or on which a facility is located.

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

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

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

[(16)] **(20)** "Residential care facility II", any premises, other than a residential care

facility I, an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, and care to three or more residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility, and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician, and protective oversight, including care during short-term illness or recuperation;

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

[(18)] **(22)** "Vendor", any person selling goods or services to a health care provider.

198.015. 1. No person shall establish, conduct or maintain a residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility in this state without a valid license issued by the department. Any person violating this subsection is guilty of a class A misdemeanor.

2. Each license shall be issued only for the premises and persons named in the application. A license, unless sooner revoked, shall be issued for a period of up to **[two years]** **eighteen months**, in order to coordinate licensure with certification in accordance with section 198.045.

3. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, the current operator shall notify the department of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

- (1) With respect to a partnership, a change in the majority interest of general partners;
- (2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;
- (3) With respect to a corporation, a change in the persons who own, hold or have the

power to vote the majority of any class of securities issued by the corporation.

4. Licenses shall be posted in a conspicuous place on the licensed premises.

5. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.

6. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.

7. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.

8. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

198.016. 1. Facilities of multi-unit housing with services are not required to be licensed. However, such facilities shall register with the Missouri department of health and senior services and provide a disclosure statement describing services offered, charges for services, financial and legal relationship with home care agencies, and other important information for consumers. Registered facilities shall submit a registration application and may be visited by the department to determine compliance. If no local fire and safety ordinances exist pertaining to multi-unit housing with services, then fire and safety requirements for license-exempt facilities registered pursuant to chapter 210, RSMo, shall apply. Residents must be notified that the department does not regularly visit or inspect registered facilities. If the department inspects a facility and determines it is noncompliant, the department shall give twenty days written notice to the facility concerning the nature of its suspected noncompliance. If compliance is not forthcoming within the twenty days, the departments shall thereafter notify the prosecuting attorney of the county wherein the facility is located concerning the suspected noncompliance or may require the noncompliant facility to obtain licensure as a residential care facility, pursuant to this chapter.

2. Multi-unit housing with services residents shall sign lease agreements and pay monthly rent. Multi-unit housing with services may be housing with or without subsidized rent.

3. Supportive services are optional to the resident, and the resident must have a choice of care providers. Personal care means assistance with feeding, dressing,

movement, bathing, or personal needs and may be provided by management or an in-home services company through a written agreement. Nursing care may be arranged by housing management and must be provided by a licensed home care provider, through a written care plan. Residents may engage or contract with any licensed health care professional or provider to obtain necessary health care services to the same extent available to persons residing in private homes. Payment for personal or nursing care may not be combined with charges for housing.

4. Residents may request assistance with medications. Such assistance may be in the form of reminders, assistance with self-medication, or administration of medications other than intravenously by licensed or certified staff. All medications must be stored in the resident's room. The department shall promulgate rules for the administration of medications to residents.

5. Facilities may, but are not required to, ask residents to move if their needs exceed the level of personal care services available, if the resident exhibits behaviors or actions that repeatedly interfere with the rights or well being of others, if the resident, due to cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express need or summon assistance, if the resident has a complex, unstable or unpredictable medical condition, or for nonpayment of charges.

6. Any facility which offers to provide or provides care for assisted living shall be required to provide an informational document. The document shall include but is not limited to updated information on selecting appropriate assisted living. The document shall be given to any person seeking information about or placement in an assisted living facility. The distribution of this document shall be verified by the department as part of the facility's regular registration procedure.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

198.073. An individual may be accepted for residency in an assisted living facility or may remain in residence if the facility has a written plan for the protection of all residents in the event of disasters, for keeping residents in place, for evacuating residents to areas of refuge, and for evacuating residents from the building when

necessary.

[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 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 division of aging known as the minimum data set used for assessing residents of

skilled nursing facilities:

- (a) Upon admission;
- (b) At least semiannually; and
- (c) When a significant change has occurred in the resident's condition which may

require additional services;

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

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

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

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

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

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

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

- (a) Has exhibited behaviors which indicate such resident is a danger to self or others;
- (b) Is at constant risk of elopement;
- (c) Requires physical restraint;
- (d) Requires chemical restraint. As used in this subdivision, the following terms

mean:

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

b. "Convenience", any action taken by the facility to control resident behavior or

maintain residents with a lesser amount of effort by the facility and not in the resident's best interests;

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

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

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

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

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

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

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

7. The division of aging shall promulgate rules to ensure compliance with this section and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.】

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