

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1081
94TH GENERAL ASSEMBLY

Reported from the Committee on Health Care Policy April 30, 2008 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1081 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

4634L.06C

AN ACT

To repeal sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 537.037, 630.045, 630.050, 630.140, 630.165, 630.167, 630.170, 630.175, 632.005, 632.440, and 633.005, RSMo, and to enact in lieu thereof twenty-three new sections relating to quality assurance and safety in the division of mental retardation and developmental disabilities community programs, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927,
2 537.037, 630.045, 630.050, 630.140, 630.165, 630.167, 630.170, 630.175, 632.005, 632.440, and
3 633.005, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known
4 as sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 537.037, 630.045,
5 630.050, 630.140, 630.165, 630.167, 630.170, 630.175, 632.005, 632.440 633.005, 633.300,
6 633.303, 633.306, 633.309, and 633.401, to read as follows:

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited as the
2 "Family Care Safety Act".

3 2. As used in sections 210.900 to 210.936, the following terms shall mean:

4 (1) "Child-care provider", any licensed or license-exempt child-care home, any licensed
5 or license-exempt child-care center, child-placing agency, residential care facility for children,

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.

6 group home, foster family group home, foster family home, employment agency that refers a
7 child-care worker to parents or guardians as defined in section 289.005, RSMo. The term
8 "child-care provider" does not include summer camps or voluntary associations designed
9 primarily for recreational or educational purposes;

10 (2) "Child-care worker", any person who is employed by a child-care provider, or
11 receives state or federal funds, either by direct payment, reimbursement or voucher payment, as
12 remuneration for child-care services;

13 (3) "Department", the department of health and senior services;

14 (4) "Elder-care provider", any operator licensed pursuant to chapter 198, RSMo, or any
15 person, corporation, or association who provides in-home services under contract with the
16 division of aging, or any employer of nurses or nursing assistants of home health agencies
17 licensed pursuant to sections 197.400 to 197.477, RSMo, or any nursing assistants employed by
18 a hospice pursuant to sections 197.250 to 197.280, RSMo, or that portion of a hospital for which
19 subdivision (3) of subsection 1 of section 198.012, RSMo, applies;

20 (5) "Elder-care worker", any person who is employed by an elder-care provider, or who
21 receives state or federal funds, either by direct payment, reimbursement or voucher payment, as
22 remuneration for elder-care services;

23 (6) ["Patrol", the Missouri state highway patrol;

24 (7)] "Employer", any child-care provider, elder-care provider, or personal-care provider
25 as defined in this section;

26 (7) **"Mental health provider", any mental retardation facility or group home as**
27 **defined in section 633.005, RSMo;**

28 (8) **"Mental health worker", any person employed by a mental health provider to**
29 **provide personal care services and supports;**

30 (9) **"Patrol", the Missouri state highway patrol;**

31 [(8)] (10) "Personal-care attendant" or "personal-care worker", a person who performs
32 routine services or supports necessary for a person with a physical or mental disability to enter
33 and maintain employment or to live independently;

34 [(9)] (11) "Personal-care provider", any person, corporation, or association who
35 provides personal-care services or supports under contract with the department of mental health,
36 the division of aging, the department of health and senior services or the department of
37 elementary and secondary education;

38 [(10)] (12) "Related child care", child care provided only to a child or children by such
39 child's or children's grandparents, great-grandparents, aunts or uncles, or siblings living in a
40 residence separate from the child or children;

41 [(11)] (13) "Related elder care", care provided only to an elder by an adult child, a
42 spouse, a grandchild, a great-grandchild or a sibling of such elder.

210.903. 1. To protect children, the elderly, [and] **the disabled, including the**
2 **developmentally disabled** individuals in this state, and to promote family and community safety
3 by providing information concerning family caregivers, there is hereby established within the
4 department of health and senior services a "Family Care Safety Registry and Access Line" which
5 shall be available by January 1, 2001.

6 2. The family care safety registry shall contain information on child-care workers',
7 elder-care workers', **mental health workers'**, and personal-care workers' background and on
8 child-care, elder-care, **mental health**, and personal-care providers through:

9 (1) The patrol's criminal record check system pursuant to section 43.540, RSMo,
10 including state and national information, to the extent possible;

11 (2) Probable cause findings of abuse and neglect prior to August 28, 2004, or findings
12 of abuse and neglect by a preponderance of the evidence after August 28, 2004, pursuant to
13 sections 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of the elderly or
14 disabled, pursuant to section 570.145, RSMo;

15 (3) The division of aging's employee disqualification list pursuant to section 660.315,
16 RSMo;

17 (4) As of January 1, 2003, the department of mental health's employee disqualification
18 registry;

19 (5) Foster parent licensure denials, revocations and involuntary suspensions pursuant
20 to section 210.496;

21 (6) Child-care facility license denials, revocations and suspensions pursuant to sections
22 210.201 to 210.259;

23 (7) Residential living facility and nursing home license denials, revocations, suspensions
24 and probationary status pursuant to chapter 198, RSMo; and

25 (8) As of January 1, 2004, a check of the patrol's Missouri uniform law enforcement
26 system (MULES) for sexual offender registrations pursuant to section 589.400, RSMo.

210.906. 1. Every child-care worker or elder-care worker hired on or after January 1,
2 2001, or personal-care worker hired on or after January 1, 2002, **or mental health worker hired**
3 **on or after January 1, 2009**, shall complete a registration form provided by the department.
4 The department shall make such forms available no later than January 1, 2001, and may, by rule,
5 determine the specific content of such form, but every form shall:

6 (1) Request the valid Social Security number of the applicant;

7 (2) Include information on the person's right to appeal the information contained in the
8 registry pursuant to section 210.912;

9 (3) Contain the signed consent of the applicant for the background checks required
10 pursuant to this section; and

11 (4) Contain the signed consent for the release of information contained in the
12 background check for employment purposes only.

13 2. Every child-care worker or elder-care worker hired on or after January 1, 2001, and
14 every personal-care worker hired on or after January 1, 2002, **and every mental health worker**
15 **hired on or after January 1, 2009**, shall complete a registration form within fifteen days of the
16 beginning of such person's employment. Any person employed as a child-care, elder-care,
17 **mental health**, or personal-care worker who fails to submit a completed registration form to the
18 department of health and senior services as required by sections 210.900 to 210.936 without
19 good cause, as determined by the department, is guilty of a class B misdemeanor.

20 3. The costs of the criminal background check may be paid by the individual applicant,
21 or by the provider if the applicant is so employed, or for those applicants receiving public
22 assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325,
23 RSMo. Any moneys remitted to the patrol for the costs of the criminal background check shall
24 be deposited to the credit of the criminal record system fund as required by section 43.530,
25 RSMo.

26 4. Any person licensed pursuant to sections 210.481 to 210.565 shall be automatically
27 registered in the family care safety registry at no additional cost other than the costs required
28 pursuant to sections 210.481 to 210.565.

29 5. Any person not required to register pursuant to the provisions of sections 210.900 to
30 210.936 may also be included in the registry if such person voluntarily applies to the department
31 for registration and meets the requirements of this section and section 210.909, including
32 submitting to the background checks in subsection 1 of section 210.909.

33 6. The provisions of sections 210.900 to 210.936 shall not extend to related child care,
34 related elder care or related personal care.

210.909. 1. Upon submission of a completed registration form by a child-care worker,
2 elder-care worker, **mental health worker**, or personal-care attendant, the department shall:

3 (1) Determine if a probable cause finding of child abuse or neglect prior to August 28,
4 2004, or a finding of child abuse or neglect by a preponderance of the evidence after August 28,
5 2004, involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and,
6 as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly
7 or disabled pursuant to section 570.145, RSMo;

8 (2) Determine if the applicant has been refused licensure or has experienced involuntary
9 licensure suspension or revocation pursuant to section 210.496;

10 (3) Determine if the applicant has been placed on the employee disqualification list
11 pursuant to section 660.315, RSMo;

12 (4) As of January 1, 2003, determine if the applicant is listed on the department of
13 mental health's employee disqualification registry;

14 (5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether
15 the applicant has any criminal history record for a felony or misdemeanor or any offense for
16 which the person has registered pursuant to sections 589.400 to 589.425, RSMo; and

17 (6) If the background check involves a provider, determine if a facility has been refused
18 licensure or has experienced licensure suspension, revocation or probationary status pursuant
19 to sections 210.201 to 210.259 or chapter 198, RSMo; and

20 (7) As of January 1, 2004, determine through a request to the patrol if the applicant is
21 a registered sexual offender pursuant to section 589.400, RSMo, listed in the Missouri uniform
22 law enforcement system (MULES).

23 2. Upon completion of the background check described in subsection 1 of this section,
24 the department shall include information in the registry for each registrant as to whether any
25 convictions, employee disqualification listings, registry listings, probable cause findings, pleas
26 of guilty or nolo contendere, or license denial, revocation or suspension have been documented
27 through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

28 3. The department shall notify such registrant in writing of the results of the
29 determination recorded on the registry pursuant to this section.

210.915. The department of corrections, the department of public safety, the department
2 of social services and the department of mental health shall collaborate with the department to
3 compare records on child-care, elder-care, **mental health**, and personal-care workers, and the
4 records of persons with criminal convictions and the background checks pursuant to subdivisions
5 (1) to [(6)] (8) of subsection 2 of section 210.903, and to enter into any interagency agreements
6 necessary to facilitate the receipt of such information and the ongoing updating of such
7 information. The department shall promulgate rules and regulations concerning such updating,
8 including subsequent background reviews as listed in subsection 1 of section 210.909.

210.921. 1. The department shall not provide any registry information pursuant to this
2 section unless the department obtains the name and address of the person calling, and determines
3 that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936,
4 "employment purposes" includes direct employer-employee relationships, prospective
5 employer-employee relationships, and screening and interviewing of persons or facilities by
6 those persons contemplating the placement of an individual in a child-care, elder-care, **mental**
7 **health**, or personal-care setting. Disclosure of background information concerning a given
8 applicant recorded by the department in the registry shall be limited to:

9 (1) Confirming whether the individual is listed in the registry; and

10 (2) Indicating whether the individual has been listed or named in any of the background
11 checks listed in subsection 2 of section 210.903. If such individual has been so listed, the
12 department of health and senior services shall only disclose the name of the background check
13 in which the individual has been identified. With the exception of any agency licensed **or**

14 **contracted** by the state to provide child care, elder care, **mental health services**, or personal
15 care which shall receive specific information immediately if requested, any specific information
16 related to such background check shall only be disclosed after the department has received a
17 signed request from the person calling, with the person's name, address and reason for requesting
18 the information.

19 2. Any person requesting registry information shall be informed that the registry
20 information provided pursuant to this section consists only of information relative to the state
21 of Missouri and does not include information from other states or information that may be
22 available from other states.

23 3. Any person who uses the information obtained from the registry for any purpose other
24 than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B
25 misdemeanor.

26 4. When any registry information is disclosed pursuant to subdivision (2) of subsection
27 1 of this section, the department shall notify the registrant of the name and address of the person
28 making the inquiry.

29 5. The department of health and senior services staff providing information pursuant to
30 sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that
31 otherwise might result by reason of such actions; provided, however, any department of health
32 and senior services staff person who releases registry information in bad faith or with ill intent
33 shall not have immunity from any liability, civil or criminal. Any such person shall have the
34 same immunity with respect to participation in any judicial proceeding resulting from the release
35 of registry information. The department is prohibited from selling the registry or any portion
36 of the registry for any purpose including "employment purposes" as defined in subsection 1 of
37 this section.

210.927. The department of health and senior services shall make an annual report, no
2 later than July first of each year, to the speaker of the house of representatives and the president
3 pro tem of the senate on the operation of the family care safety registry and toll-free telephone
4 service, including data on the number of information requests received from the public,
5 identification of any barriers encountered in administering the provisions of sections 210.900
6 to 210.936, recommendations for removing or minimizing the barriers so identified, and any
7 recommendations for improving the delivery of information on child-care, elder-care, **mental**
8 **health**, and personal-care workers to the public.

537.037. 1. Any physician or surgeon, registered professional nurse or licensed practical
2 nurse licensed to practice in this state under the provisions of chapter 334 or 335, RSMo, or
3 licensed to practice under the equivalent laws of any other state and any person licensed as a
4 mobile emergency medical technician under the provisions of chapter 190, RSMo, may:

5 (1) In good faith render emergency care or assistance, without compensation, at the
6 scene of an emergency or accident, and shall not be liable for any civil damages for acts or
7 omissions other than damages occasioned by gross negligence or by willful or wanton acts or
8 omissions by such person in rendering such emergency care;

9 (2) In good faith render emergency care or assistance, without compensation, to any
10 minor involved in an accident, or in competitive sports, or other emergency at the scene of an
11 accident, without first obtaining the consent of the parent or guardian of the minor, and shall not
12 be liable for any civil damages other than damages occasioned by gross negligence or by willful
13 or wanton acts or omissions by such person in rendering the emergency care.

14 2. Any other person who has been trained to provide first aid in a standard recognized
15 training program may, without compensation, render emergency care or assistance to the level
16 for which he or she has been trained, at the scene of an emergency or accident, and shall not be
17 liable for civil damages for acts or omissions other than damages occasioned by gross negligence
18 or by willful or wanton acts or omissions by such person in rendering such emergency care.

19 3. Any mental health professional, as defined in section 632.005, RSMo, or [substance
20 abuse] **qualified** counselor, as defined in section 631.005, RSMo, or any practicing medical,
21 osteopathic, or chiropractic physician, or certified nurse practitioner, or physicians' assistant may
22 in good faith render suicide prevention interventions at the scene of a threatened suicide and
23 shall not be liable for any civil damages for acts or omissions other than damages occasioned
24 by gross negligence or by willful or wanton acts or omissions by such person in rendering such
25 suicide prevention interventions.

26 4. Any other person [who has been trained to provide suicide prevention interventions
27 in a standard recognized training program] may, without compensation, render suicide
28 prevention interventions [to the level for which such person has been trained] at the scene of a
29 threatened suicide and shall not be liable for civil damages for acts or omissions other than
30 damages occasioned by gross negligence or by willful or wanton acts or omissions by such
31 person in rendering such suicide prevention interventions.

630.045. The director of the department may [appoint such personnel] **authorize such**
2 **persons**, including mental health coordinators, as are necessary to carry out the civil involuntary
3 detention requirements of chapter 632, RSMo. [The mental health coordinators shall be subject
4 to the exclusive direction and supervision of the director, or his designee, who shall not be an
5 employee of any mental health facility.]

630.050. 1. The department shall promulgate rules under the provisions of this section
2 and chapter 536, RSMo, as necessary to prescribe policies or standards which affect charging,
3 funding and licensing procedures of residential facilities, day programs and specialized services
4 available to the public **and for reporting and investigating complaints of abuse and neglect.**
5 The rules applicable to each facility, program or service operated, funded or licensed by the

6 department shall be available for public inspection and review at such facility, program or
7 service. No rule or portion of a rule promulgated under the authority of this chapter shall
8 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
9 RSMo.

10 2. The department shall adopt operating regulations concerning only its internal
11 management which need not be published in the Missouri Register or the code of state
12 regulations under chapter 536, RSMo, but these regulations shall be available at department
13 facilities for public inspection and review.

14 3. Under the supervision of the department and its respective divisions, each facility
15 shall adopt policies concerning only its internal management or its procedures for its patients,
16 residents or clients without publishing such policies in the Missouri Register or the code of state
17 regulations under chapter 536, RSMo, but the facility policies shall be available at such facility
18 for public inspection and review.

19 4. The rules, operating regulations and facility policies shall be compatible with and
20 appropriate to the facility or program mission, population served, size, type of service and other
21 reasonable classifications.

630.140. 1. Information and records compiled, obtained, prepared or maintained by the
2 residential facility, [day] **mental health** program operated, funded or licensed by the department
3 or otherwise, specialized service, or by any mental health facility or mental health program in
4 which people may be civilly detained pursuant to chapter 632, RSMo, in the course of providing
5 services to either voluntary or involuntary patients, residents or clients shall be confidential.

6 2. The facilities or programs shall disclose information and records including medication
7 given, dosage levels, and individual ordering such medication to the following upon their
8 request:

- 9 (1) The parent of a minor patient, resident or client;
- 10 (2) The guardian or other person having legal custody of the patient, resident or client;
- 11 (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an
12 alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as
13 evidenced by court orders of the attorney's appointment;
- 14 (4) An attorney or personal physician as authorized by the patient, resident or client;
- 15 (5) Law enforcement officers and agencies, information about patients, residents or
16 clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out
17 the responsibilities of their office, and all such law enforcement officers shall be obligated to
18 keep such information confidential;
- 19 (6) The entity or agency authorized to implement a system to protect and advocate the
20 rights of persons with developmental disabilities under the provisions of 42 U.S.C. Sections
21 15042 to 15044. The entity or agency shall be able to obtain access to the records of a person

22 with developmental disabilities who is a client of the entity or agency if such person has
23 authorized the entity or agency to have such access; and the records of any person with
24 developmental disabilities who, by reason of mental or physical condition is unable to authorize
25 the entity or agency to have such access, if such person does not have a legal guardian,
26 conservator or other legal representative, and a complaint has been received by the entity or
27 agency with respect to such person or there is probable cause to believe that such person has
28 been subject to abuse or neglect. The entity or agency obtaining access to a person's records
29 shall meet all requirements for confidentiality as set out in this section;

30 (7) The entity or agency authorized to implement a system to protect and advocate the
31 rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to
32 obtain access to the records of a patient, resident or client who by reason of mental or physical
33 condition is unable to authorize the system to have such access, who does not have a legal
34 guardian, conservator or other legal representative and with respect to whom a complaint has
35 been received by the system or there is probable cause to believe that such individual has been
36 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall
37 meet all requirements for confidentiality as set out in this section. The provisions of this
38 subdivision shall apply to a person who has a significant mental illness or impairment as
39 determined by a mental health professional qualified under the laws and regulations of the state;

40 (8) To mental health coordinators, but only to the extent necessary to carry out their
41 duties under chapter 632, RSMo.

42 3. The facilities or services may disclose information and records under any of the
43 following:

44 (1) As authorized by the patient, resident or client;

45 (2) To persons or agencies responsible for providing health care services to such
46 patients, residents or clients **as permitted by the federal Health Insurance Portability and
47 Accountability Act of 1996 (HIPAA), as amended;**

48 (3) To the extent necessary for a recipient to make a claim or for a claim to be made on
49 behalf of a recipient for aid or insurance;

50 (4) To qualified personnel for the purpose of conducting scientific research, management
51 audits, financial audits, program evaluations or similar studies; provided, that such personnel
52 shall not identify, directly or indirectly, any individual patient, resident or client in any report
53 of such research, audit or evaluation, or otherwise disclose patient, resident or client identities
54 in any manner;

55 (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo,
56 552, RSMo, or 632, RSMo;

57 (6) To law enforcement officers or public health officers, but only to the extent
58 necessary to carry out the responsibilities of their office, and all such law enforcement and
59 public health officers shall be obligated to keep such information confidential;

60 (7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

61 (8) To the attorney representing petitioners, but only to the extent necessary to carry out
62 their duties under chapter 632, RSMo;

63 (9) To the department of social services or the department of health and senior services
64 as necessary to report or have investigated abuse, neglect, or rights violations of patients,
65 residents, or clients;

66 (10) To a county board established pursuant to sections 205.968 to 205.972, RSMo
67 1986, but only to the extent necessary to carry out their statutory responsibilities. The county
68 board shall not identify, directly or indirectly, any individual patient, resident or client;

69 (11) To parents, legal guardians, treatment professionals, law enforcement officers, and
70 other individuals who by having such information could mitigate the likelihood of a suicide.
71 The facility treatment team shall have determined that the consumer's safety is at some level of
72 risk.

73 4. The facility or program shall document the dates, nature, purposes and recipients of
74 any records disclosed under this section and sections 630.145 and 630.150.

75 5. The records and files maintained in any court proceeding under chapter 632, RSMo,
76 shall be confidential and available only to the patient, the patient's attorney, guardian, or, in the
77 case of a minor, to a parent or other person having legal custody of the patient, to the petitioner
78 and the petitioner's attorney, and to the Missouri state highway patrol for reporting to the
79 National Instant Criminal Background Check System (NICS). In addition, the court may order
80 the release or use of such records or files only upon good cause shown, and the court may
81 impose such restrictions as the court deems appropriate.

82 6. Nothing contained in this chapter shall limit the rights of discovery in judicial or
83 administrative procedures as otherwise provided for by statute or rule.

84 7. The fact of admission of a voluntary or involuntary patient to a mental health facility
85 under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this
86 section.

630.165. 1. When any physician, physician assistant, dentist, chiropractor, optometrist,
2 podiatrist, intern, resident, nurse, nurse practitioner, medical examiner, social worker, licensed
3 professional counselor, certified substance abuse counselor, psychologist, other health
4 practitioner, minister, Christian Science practitioner, peace officer, pharmacist, physical
5 therapist, facility administrator, nurse's aide [or] , orderly **or any other direct care staff** in a
6 residential facility, day program, **group home or mental retardation facility as defined in**
7 **section 633.005, RSMo**, or specialized service operated, **licensed, certified, or funded [or**

8 licensed] by the department or in a mental health facility or mental health program in which
9 people may be admitted on a voluntary basis or are civilly detained pursuant to chapter 632,
10 RSMo, or employee of the departments of social services, mental health, or health and senior
11 services; or home health agency or home health agency employee; hospital and clinic personnel
12 engaged in examination, care, or treatment of persons; in-home services owner, provider,
13 operator, or employee; law enforcement officer, long-term care facility administrator or
14 employee; mental health professional, probation or parole officer, or other nonfamilial person
15 with responsibility for the care of a patient, resident, or client of a facility, program, or service
16 has reasonable cause to suspect that a patient, resident or client of a facility, program or service
17 has been subjected to abuse or neglect or observes such person being subjected to conditions or
18 circumstances that would reasonably result in abuse or neglect, he or she shall immediately
19 report or cause a report to be made to the department in accordance with section 630.163.

20 2. Any person who knowingly fails to make a report as required in subsection 1 of this
21 section is guilty of a class A misdemeanor and shall be subject to a fine up to one thousand
22 dollars. Penalties collected for violations of this section shall be transferred to the state school
23 moneys fund as established in section 166.051, RSMo, and distributed to the public schools of
24 this state in the manner provided in section 163.031, RSMo. Such penalties shall not considered
25 charitable for tax purposes.

26 3. Every person who has been previously convicted of or pled guilty to failing to make
27 a report as required in subsection 1 of this section and who is subsequently convicted of failing
28 to make a report under subsection 2 of this section is guilty of a class D felony and shall be
29 subject to a fine up to five thousand dollars. Penalties collected for violation of this subsection
30 shall be transferred to the state school moneys fund as established in section 166.051, RSMo,
31 and distributed to the public schools of this state in the manner provided in section 163.031,
32 RSMo. Such penalties shall not considered charitable for tax purposes.

33 4. Any person who knowingly files a false report of vulnerable person abuse or neglect
34 is guilty of a class A misdemeanor and shall be subject to a fine up to one thousand dollars.
35 Penalties collected for violations of this subsection shall be transferred to the state school
36 moneys fund as established in section 166.051, RSMo, and distributed to the public schools of
37 this state in the manner provided in section 163.031, RSMo. Such penalties shall not considered
38 charitable for tax purposes.

39 5. Every person who has been previously convicted of or pled guilty to making a false
40 report to the department and who is subsequently convicted of making a false report under
41 subsection 4 of this section is guilty of a class D felony and shall be subject to a fine up to five
42 thousand dollars. Penalties collected for violations of this subsection shall be transferred to the
43 state school moneys fund as established in section 166.051, RSMo, and distributed to the public

44 schools of this state in the manner provided in section 163.031, RSMo. Such penalties shall not
45 considered charitable for tax purposes.

46 6. Evidence of prior convictions of false reporting shall be heard by the court, out of the
47 hearing of the jury, prior to the submission of the case to the jury, and the court shall determine
48 the existence of the prior convictions.

49 7. Any residential facility, day program, or specialized service operated, funded, or
50 licensed by the department that prevents or discourages a patient, resident, or client, employee,
51 or other person from reporting that a patient, resident, or client of a facility, program, or service
52 has been abused or neglected shall be subject to loss of their license issued pursuant to sections
53 630.705 to 630.760 and civil fines of up to five thousand dollars for each attempt to prevent or
54 discourage reporting.

630.167. 1. Upon receipt of a report, the department [or its agents, contractors or
2 vendors] or the department of health and senior services, if such facility or program is licensed
3 pursuant to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

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

14 3. (1) Except as otherwise provided in this section, reports referred to in section 630.165
15 and the investigative reports referred to in this section shall be confidential, shall not be deemed
16 a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter
17 610, RSMo. Investigative reports pertaining to abuse and neglect shall remain confidential until
18 a final report is complete, subject to the conditions contained in this section. Final reports of
19 substantiated abuse or neglect issued on or after August 28, 2007, are open and shall be available
20 for release in accordance with chapter 610, RSMo. The names and all other identifying
21 information in such final substantiated reports, including diagnosis and treatment information
22 about the patient, resident, or client who is the subject of such report, shall be confidential and
23 may only be released to the patient, resident, or client who has not been adjudged incapacitated
24 under chapter 475, RSMo, the custodial parent or guardian parent, or other guardian of the
25 patient, resident or client. The names and other descriptive information of the complainant,
26 witnesses, or other persons for whom findings are not made against in the final substantiated

27 report shall be confidential and not deemed a public record. Final reports of unsubstantiated
28 allegations of abuse and neglect shall remain closed records and shall only be released to the
29 parents or other guardian of the patient, resident, or client who is the subject of such report,
30 patient, resident, or client and the department vendor, provider, agent, or facility where the
31 patient, resident, or client was receiving department services at the time of the unsubstantiated
32 allegations of abuse and neglect, but the names and any other descriptive information of the
33 complainant or any other person mentioned in the reports shall not be disclosed unless such
34 complainant or person specifically consents to such disclosure. Requests for final reports of
35 substantiated or unsubstantiated abuse or neglect from a patient, resident or client who has not
36 been adjudged incapacitated under chapter 475, RSMo, may be denied or withheld if the director
37 of the department or his or her designee determines that such release would jeopardize the
38 person's therapeutic care, treatment, habilitation, or rehabilitation, or the safety of others and
39 provided that the reasons for such denial or withholding are submitted in writing to the patient,
40 resident or client who has not been adjudged incapacitated under chapter 475, RSMo. All
41 reports referred to in this section shall be admissible in any judicial proceedings or hearing in
42 accordance with section 36.390, RSMo, or any administrative hearing before the director of the
43 department of mental health, or the director's designee. All such reports may be disclosed by
44 the department of mental health to law enforcement officers and public health officers, but only
45 to the extent necessary to carry out the responsibilities of their offices, and to the department of
46 social services, and the department of health and senior services, and to boards appointed
47 pursuant to sections 205.968 to 205.990, RSMo, that are providing services to the patient,
48 resident or client as necessary to report or have investigated abuse, neglect, or rights violations
49 of patients, residents or clients provided that all such law enforcement officers, public health
50 officers, department of social services' officers, department of health and senior services'
51 officers, and boards shall be obligated to keep such information confidential;

52 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,
53 reports and minutes of committees of health care professionals as defined in section 537.035,
54 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the
55 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health
56 services are privileged and shall not be subject to the discovery, subpoena or other means of
57 legal compulsion for their release to any person or entity or be admissible into evidence into any
58 judicial or administrative action for failure to provide adequate or appropriate care. Such
59 committees may exist, either within department facilities or its agents, contractors, or vendors,
60 as applicable. Except as otherwise provided in this section, no person who was in attendance
61 at any investigation or committee proceeding shall be permitted or required to disclose any
62 information acquired in connection with or in the course of such proceeding or to disclose any
63 opinion, recommendation or evaluation of the committee or board or any member thereof;

64 provided, however, that information otherwise discoverable or admissible from original sources
65 is not to be construed as immune from discovery or use in any proceeding merely because it was
66 presented during proceedings before any committee or in the course of any investigation, nor
67 is any member, employee or agent of such committee or other person appearing before it to be
68 prevented from testifying as to matters within their personal knowledge and in accordance with
69 the other provisions of this section, but such witness cannot be questioned about the testimony
70 or other proceedings before any investigation or before any committee;

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

78 (4) Nothing in this section shall limit authority otherwise provided by law in
79 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the
80 entity or agency authorized to implement a system to protect and advocate the rights of persons
81 with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and
82 the entity or agency authorized to implement a system to protect and advocate the rights of
83 persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this
84 section shall serve to negate assurances that have been given by the governor of Missouri to the
85 U.S. Administration on Developmental Disabilities, Office of Human Development Services,
86 Department of Health and Human Services concerning access to records by the agency
87 designated as the protection and advocacy system for the state of Missouri. However, such
88 information, once obtained by such entity or agency, shall be governed in accordance with the
89 provisions of this subsection.

90 4. Anyone who makes a report pursuant to this section or who testifies in any
91 administrative or judicial proceeding arising from the report shall be immune from any civil
92 liability for making such a report or for testifying unless such person acted in bad faith or with
93 malicious purpose.

94 5. Within five working days after a report required to be made pursuant to this section
95 is received, the person making the report shall be notified in writing of its receipt and of the
96 initiation of the investigation.

97 6. No person who directs or exercises any authority in a residential facility, day program
98 or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client
99 or employee because he or she or any member of his or her family has made a report of any

100 violation or suspected violation of laws, ordinances or regulations applying to the facility which
101 he or she has reasonable cause to believe has been committed or has occurred.

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

- 108 (1) Good cause exists for the untimely commencement of the request for the review;
109 (2) If the opportunity to appeal is not granted it will adversely affect the party's
110 opportunity for employment; and
111 (3) There is no other adequate remedy at law.

630.170. 1. A person who is listed on the department of mental health disqualification
2 registry pursuant to this section, who is listed on the department of social services or the
3 department of health and senior services employee disqualification list pursuant to section
4 660.315, RSMo, or who has been convicted of or pled guilty or nolo contendere to any crime
5 pursuant to section **565.210, 565.212, or 565.214, RSMo, or section** 630.155 or 630.160 shall
6 be disqualified from holding any position in any public or private facility or day program
7 operated, funded or licensed by the department or in any mental health facility or mental health
8 program in which people are admitted on a voluntary or involuntary basis or are civilly detained
9 pursuant to chapter 632, RSMo.

10 2. A person who has been convicted of or pled guilty or nolo contendere to any felony
11 offense against persons as defined in chapter 565, RSMo; any felony sexual offense as defined
12 in chapter 566, RSMo; any felony offense defined in section 568.020, 568.045, 568.050,
13 568.060, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, or 569.160, RSMo,
14 or of an equivalent felony offense, or who has been convicted of or pled guilty or nolo
15 contendere to any violation of subsection 3 of section 198.070, RSMo, **or has been convicted**
16 **of or pled guilty or nolo contendere to any offense requiring registration under section**
17 **589.400, RSMo,** shall be disqualified from holding any direct-care position in any public or
18 private facility, day program, residential facility or specialized service operated, funded or
19 licensed by the department or any mental health facility or mental health program in which
20 people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

21 3. A person who has received a suspended imposition of sentence or a suspended
22 execution of sentence following a plea of guilty to any of the disqualifying crimes listed in
23 subsection 1 or 2 of this section shall remain disqualified.

24 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section
25 may seek an exception to the disqualification from the director of the department or the director's

26 designee. The request shall be written and may not be made more than once every twelve
27 months. The request may be granted by the director or designee if in the judgment of the
28 director or designee a clear showing has been made by written submission only, that the person
29 will not commit any additional acts for which the person had originally been disqualified for or
30 any other acts that would be harmful to a patient, resident or client of a facility, program or
31 service. The director or designee may grant an exception subject to any conditions deemed
32 appropriate and failure to comply with such terms may result in the person again being
33 disqualified. Decisions by the director or designee pursuant to the provisions of this subsection
34 shall not be subject to appeal. The right to request an exception pursuant to this subsection shall
35 not apply to persons who are disqualified due to being listed on the department of social services
36 or department of health and senior services employee disqualification list pursuant to section
37 660.315, RSMo, nor to persons disqualified from employment due to any crime pursuant to the
38 provisions of chapter 566, RSMo, or section 565.020, 565.021, 568.020, 568.060, 569.025, or
39 569.070, RSMo.

40 5. An applicant for a direct care position in any public or private facility, day program,
41 residential facility, or specialized service operated, funded, or licensed by the department or any
42 mental health facility or mental health program in which people are admitted on a voluntary
43 basis or are civilly detained pursuant to chapter 632, RSMo, shall:

44 (1) Sign a consent form as required by section 43.540, RSMo, to provide written consent
45 for a criminal record review;

46 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
47 "criminal history" includes any suspended imposition of sentence, any suspended execution of
48 sentence, or any period of probation or parole; and

49 (3) Disclose if the applicant is listed on the employee disqualification list as provided
50 in section 660.315, RSMo, or the department of mental health disqualification registry as
51 provided for in this section.

52 6. Any person who has received a good cause waiver issued by the division of senior
53 services or its predecessor under subsection 9 of section 660.317, RSMo, shall not require an
54 additional exception under this section in order to be employed in a long-term care facility
55 licensed under chapter 198, RSMo.

56 7. Any public or private residential facility, day program, or specialized service licensed,
57 certified, or funded by the department shall, not later than two working days after hiring any
58 person for a full-time, part-time, or temporary position that will have contact with clients,
59 residents, or patients:

60 (1) Request a criminal background check as provided in section 43.540, RSMo;

61 (2) Make an inquiry to the department of social services and department of health and
62 senior services to determine whether the person is listed on the employee disqualification list as
63 provided in section 660.315, RSMo; and

64 (3) Make an inquiry to the department of mental health to determine whether the person
65 is listed on the disqualification registry as provided in this section.

66 8. An applicant who knowingly fails to disclose his or her criminal history as required
67 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
68 A misdemeanor if the provider hires a person to hold a direct care position knowing that such
69 person has been disqualified pursuant to the provisions of subsection 1 or 2 of this section.

70 9. The department may maintain a disqualification registry and place on the registry the
71 names of any persons who have been finally determined by the department to be disqualified
72 pursuant to this section, or who have had administrative substantiations made against them for
73 abuse or neglect pursuant to department rule. Such list shall reflect that the person is barred
74 from holding any position in any public or private facility or day program operated, funded or
75 licensed by the department, or any mental health facility or mental health program in which
76 persons are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

630.175. 1. No person admitted on a voluntary or involuntary basis to any mental health
2 facility or mental health program in which people are civilly detained pursuant to chapter 632,
3 RSMo, and no patient, resident or client of a residential facility or day program operated, funded
4 or licensed by the department shall be subject to physical or chemical restraint, isolation or
5 seclusion unless it is determined by the head of the facility or the attending licensed physician
6 that the chosen intervention is imminently necessary to protect the health and safety of the
7 patient, resident, client or others and that it provides the least restrictive environment.

8 2. Every use of physical or chemical restraint, isolation or seclusion and the reasons
9 therefor shall be made a part of the clinical record of the patient, resident or client under the
10 signature of the head of the facility or the attending licensed physician.

11 3. Physical or chemical restraint, isolation or seclusion shall not be considered standard
12 treatment or habilitation and shall cease as soon as the circumstances causing the need for such
13 action have ended.

14 **4. The use of security escort devices, including devices designed to restrict physical**
15 **movement, which are used to maintain safety and security and to prevent escape during**
16 **transport outside of a facility shall not be considered physical restraint within the meaning**
17 **of this section. Individuals who have been civilly detained under sections 632.300 to**
18 **632.475, RSMo, may be placed in security escort devices when transported outside of the**
19 **facility if it is determined by the head of the facility or the attending licensed physician that**
20 **the use of security escort devices is necessary to protect the health and safety of the patient,**
21 **resident, client, or other persons or is necessary to prevent escape. Individuals who have**

22 **been civilly detained under sections 632.480 to 632.513, RSMo, or committed under**
23 **chapter 552, RSMo, shall be placed in security escort devices when transported outside of**
24 **the facility unless it is determined by the head of the facility or the attending licensed**
25 **physician that security escort devices are not necessary to protect the health and safety of**
26 **the patient, resident, client, or other persons or is not necessary to prevent escape.**

27 **5. Extraordinary measures employed by the head of the facility to ensure the safety**
28 **and security of patients, residents, clients, and other persons during times of natural or**
29 **manmade disasters shall not be considered restraint, isolation, or seclusion within the**
30 **meaning of this section.**

632.005. As used in chapter 631, RSMo, and this chapter, unless the context clearly
2 requires otherwise, the following terms shall mean:

3 (1) "Comprehensive psychiatric services", any one, or any combination of two or more,
4 of the following services to persons affected by mental disorders other than mental retardation
5 or developmental disabilities: inpatient, outpatient, day program or other partial hospitalization,
6 emergency, diagnostic, treatment, liaison, follow-up, consultation, education, rehabilitation,
7 prevention, screening, transitional living, medical prevention and treatment for alcohol abuse,
8 and medical prevention and treatment for drug abuse;

9 (2) "Council", the Missouri advisory council for comprehensive psychiatric services;

10 (3) "Court", the court which has jurisdiction over the respondent or patient;

11 (4) "Division", the division of comprehensive psychiatric services of the department of
12 mental health;

13 (5) "Division director", director of the division of comprehensive psychiatric services
14 of the department of mental health, or his designee;

15 (6) "Head of mental health facility", superintendent or other chief administrative officer
16 of a mental health facility, or his designee;

17 (7) "Judicial day", any Monday, Tuesday, Wednesday, Thursday or Friday when the
18 court is open for business, but excluding Saturdays, Sundays and legal holidays;

19 (8) "Licensed physician", a physician licensed pursuant to the provisions of chapter 334,
20 RSMo, or a person authorized to practice medicine in this state pursuant to the provisions of
21 section 334.150, RSMo;

22 (9) "Likelihood of serious harm" means any one or more of the following but does not
23 require actual physical injury to have occurred:

24 (a) A substantial risk that serious physical harm will be inflicted by a person upon his
25 own person, as evidenced by recent threats, including verbal threats, or attempts to commit
26 suicide or inflict physical harm on himself. Evidence of substantial risk may also include
27 information about patterns of behavior that historically have resulted in serious harm previously
28 being inflicted by a person upon himself;

29 (b) A substantial risk that serious physical harm to a person will result or is occurring
30 because of an impairment in his capacity to make decisions with respect to his hospitalization
31 and need for treatment as evidenced by his current mental disorder or mental illness which
32 results in an inability to provide for his own basic necessities of food, clothing, shelter, safety
33 or medical care or his inability to provide for his own mental health care which may result in a
34 substantial risk of serious physical harm. Evidence of that substantial risk may also include
35 information about patterns of behavior that historically have resulted in serious harm to the
36 person previously taking place because of a mental disorder or mental illness which resulted in
37 his inability to provide for his basic necessities of food, clothing, shelter, safety or medical or
38 mental health care; or

39 (c) A substantial risk that serious physical harm will be inflicted by a person upon
40 another as evidenced by recent overt acts, behavior or threats, including verbal threats, which
41 have caused such harm or which would place a reasonable person in reasonable fear of
42 sustaining such harm. Evidence of that substantial risk may also include information about
43 patterns of behavior that historically have resulted in physical harm previously being inflicted
44 by a person upon another person;

45 (10) "Mental health coordinator", a mental health professional [employed by the state
46 of Missouri] who has knowledge of the laws relating to hospital admissions and civil
47 commitment and who is [appointed] **authorized** by the director of the department, or his
48 designee, to serve a designated geographic area or mental health facility and who has the powers,
49 duties and responsibilities provided in this chapter;

50 (11) "Mental health facility", any residential facility, public or private, or any public or
51 private hospital, which can provide evaluation, treatment and, inpatient care to persons suffering
52 from a mental disorder or mental illness and which is recognized as such by the department or
53 any outpatient treatment program certified by the department of mental health. No correctional
54 institution or facility, jail, regional center or mental retardation facility shall be a mental health
55 facility within the meaning of this chapter;

56 (12) "Mental health professional", a psychiatrist, resident in psychiatry, psychologist,
57 psychiatric nurse or psychiatric social worker;

58 (13) "Mental health program", any public or private residential facility, public or private
59 hospital, public or private specialized service or public or private day program that can provide
60 care, treatment, rehabilitation or services, either through its own staff or through contracted
61 providers, in an inpatient or outpatient setting to persons with a mental disorder or mental illness
62 or with a diagnosis of alcohol abuse or drug abuse which is recognized as such by the
63 department. No correctional institution or facility or jail may be a mental health program within
64 the meaning of this chapter;

65 (14) "Ninety-six hours" shall be construed and computed to exclude Saturdays, Sundays
66 and legal holidays which are observed either by the court or by the mental health facility where
67 the respondent is detained;

68 (15) "Peace officer", a sheriff, deputy sheriff, county or municipal police officer or
69 highway patrolman;

70 (16) "Psychiatric nurse", a registered professional nurse who is licensed under chapter
71 335, RSMo, and who has had at least two years of experience as a registered professional nurse
72 in providing psychiatric nursing treatment to individuals suffering from mental disorders;

73 (17) "Psychiatric social worker", a person with a master's or further advanced degree
74 from an accredited school of social work, practicing pursuant to chapter 337, RSMo, and with
75 a minimum of one year training or experience in providing psychiatric care, treatment or services
76 in a psychiatric setting to individuals suffering from a mental disorder;

77 (18) "Psychiatrist", a licensed physician who in addition has successfully completed a
78 training program in psychiatry approved by the American Medical Association, the American
79 Osteopathic Association or other training program certified as equivalent by the department;

80 (19) "Psychologist", a person licensed to practice psychology under chapter 337, RSMo,
81 with a minimum of one year training or experience in providing treatment or services to mentally
82 disordered or mentally ill individuals;

83 (20) "Resident in psychiatry", a licensed physician who is in a training program in
84 psychiatry approved by the American Medical Association, the American Osteopathic
85 Association or other training program certified as equivalent by the department;

86 (21) "Respondent", an individual against whom involuntary civil detention proceedings
87 are instituted pursuant to this chapter;

88 (22) "Treatment", any effort to accomplish a significant change in the mental or
89 emotional conditions or the behavior of the patient consistent with generally recognized
90 principles or standards in the mental health professions.

632.440. No officer of a public or private agency, mental health facility or mental health
2 program; no head, attending staff or consultant of any such agency, facility or mental health
3 program; no mental health coordinator, registered professional nurse, licensed physician, mental
4 health professional nor any other public official performing functions necessary for the
5 administration of this chapter; no peace officer responsible for detaining a person pursuant to
6 this chapter; and no peace officer responsible for detaining or transporting, or both, any person
7 upon the request of any mental health coordinator pursuant to section 632.300 or 632.305 or
8 acting pursuant to the request of a guardian who is acting pursuant to chapter 475, RSMo, or
9 upon the request of the head of any supervisory mental health program who is acting pursuant
10 to section 632.337, regardless of whether such peace officer is outside the jurisdiction for which
11 he serves as a peace officer during the course of such detention or transportation, or both, shall

12 be civilly liable for **investigating**, detaining, transporting, conditionally releasing or discharging
13 a person pursuant to this chapter or chapter 475, RSMo, at or before the end of the period for
14 which the person was admitted or detained for evaluation or treatment so long as such duties
15 were performed in good faith and without gross negligence.

633.005. As used in this chapter, unless the context clearly requires otherwise, the
2 following terms shall mean:

3 (1) "Comprehensive evaluation", a study, including a sequence of observations and
4 examinations, of an individual leading to conclusions and recommendations formulated jointly
5 by an interdisciplinary team of persons with special training and experience in the diagnosis and
6 habilitation of the mentally retarded and developmentally disabled;

7 (2) "Division", the division of mental retardation and developmental disabilities of the
8 department of mental health;

9 (3) "Division director", the director of the division of mental retardation and
10 developmental disabilities of the department of mental health, or his designee;

11 (4) **"Group home", a residential facility serving nine or fewer residents, similar in
12 appearance to a single-family dwelling and providing basic health supervision, habilitation
13 training in skills of daily and independent living and community integration, and social
14 support. Group homes do not include a family living arrangement or individualized
15 supported living;**

16 (5) "Mental retardation facility", a private or department facility, other than a regional
17 center, which admits persons who are mentally retarded or developmentally disabled for
18 residential habilitation and other services and which is qualified or licensed as such by the
19 department pursuant to chapter 630, RSMo. Such terms shall include, but shall not be limited
20 to, habilitation centers and private or public residential facilities for persons who are
21 developmentally disabled;

22 [(5)] (6) "Regional center", an entity so designated by the department to provide,
23 directly or indirectly, for comprehensive mental retardation and developmental disability
24 services under this chapter in a particular region;

25 [(6)] (7) "Respite care", temporary and short-term residential care, sustenance and
26 supervision of a mentally retarded or developmentally disabled person who otherwise resides
27 in a family home;

28 [(7)] (8) "State advisory council", the Missouri advisory council on mental retardation
29 and developmental disabilities as created in section 633.020.

**633.300. 1. All group homes and mental retardation facilities as defined in section
2 633.005, shall be subject to all applicable federal and state laws, regulations, and
3 monitoring, including but not limited to sections 630.705 to 630.805, RSMo.**

4 **2. All mental health workers, as defined in subdivision (8) of section 210.900,**
5 **RSMo, shall be subject to the same training requirements established for state mental**
6 **health workers with comparable positions in public group homes and mental health**
7 **facilities. Such required training shall be paid for by the employer.**

8 **3. Group homes and mental retardation facilities shall be subject to the same**
9 **medical errors reporting requirements of other mental health facilities and group homes.**

10 **4. The department shall promulgate rules or amend existing rules to implement the**
11 **provisions of this section. Any rule or portion of a rule, as that term is defined in section**
12 **536.010, RSMo, that is created under the authority delegated in this section shall become**
13 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
14 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
15 **nonseverable and if any of the powers vested with the general assembly pursuant to**
16 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
17 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
18 **rule proposed or adopted after August 28, 2008, shall be invalid and void.**

633.303. Any employee, including supervisory personnel, of a group home or
2 **mental retardation facility who has been placed on the disqualification registry pursuant**
3 **to section 630.170, RSMo, shall be terminated. Such requirements shall be specified in**
4 **contracts between the department and providers pursuant to this section.**

633.306. 1. Beginning January 1, 2009, all mental health facilities shall, on an
2 **annual basis, submit a comprehensive report to the department on any staff and personnel**
3 **turnover at the facility. Such report shall include the number, job description, salary, and**
4 **duration of employment regarding such staff and personnel turnover. Such reports shall**
5 **be submitted no later than thirty days after the end of each calendar year.**

6 **2. Beginning January 1, 2009, the department shall collect the information**
7 **submitted under subsection 1 of this section and submit an annual report to the general**
8 **assembly on or before March fifteenth of each year regarding the staff and personnel**
9 **turnover at mental health facilities. Such report shall include information that is specific**
10 **to each facility, as well as information inclusive of all such facilities.**

633.309. The department of mental health shall not transfer any person to any
2 **group home or mental retardation facility that has received a notice of noncompliance,**
3 **until there is an approved plan of correction pursuant to sections 630.745 and 630.750,**
4 **RSMo.**

633.401. 1. For purposes of this section, the following terms mean:

2 **(1) "Engaging in the business of providing health benefit services", accepting**
3 **payment for health benefit services;**

4 **(2) "Intermediate care facility for the mentally retarded", a private or department**
5 **of mental health facility which admits persons who are mentally retarded or**
6 **developmentally disabled for residential habilitation and other services pursuant to**
7 **chapter 630, RSMo. Such term shall include habilitation centers and private or public**
8 **intermediate care facilities for the mentally retarded that have been certified to meet the**
9 **conditions of participation under 42 CFR, Section 483, Subpart 1;**

10 **(3) "Net operating revenues from providing services of intermediate care facilities**
11 **for the mentally retarded" shall include, without limitation, all monies received on account**
12 **of such services pursuant to rates of reimbursement established and paid by the**
13 **department of social services, but shall not include charitable contributions, grants,**
14 **donations, bequests and income from non-service related fund raising activities and**
15 **government deficit financing, contractual allowance, discounts or bad debt;**

16 **(4) "Services of intermediate care facilities for the mentally retarded" has the same**
17 **meaning as the term used in Title 42 United States Code, Section 1396b(w)(7)(A)(iv), as**
18 **amended, and as such qualifies as a class of health care services recognized in federal**
19 **Public Law 102-234, the Medicaid Voluntary Contribution and Provider Specific Tax**
20 **Amendment of 1991.**

21 **2. Beginning July 1, 2008, each provider of services of intermediate care facilities**
22 **for the mentally retarded shall, in addition to all other fees and taxes now required or paid,**
23 **pay assessments on their net operating revenues for the privilege of engaging in the**
24 **business of providing services of the intermediate care facilities for the mentally retarded**
25 **or developmentally disabled in this state.**

26 **3. Each facility's assessment shall be based on a formula set forth in rules and**
27 **regulations promulgated by the department of mental health.**

28 **4. For purposes of determining rates of payment under the medical assistance**
29 **program for providers of services of intermediate care facilities for the mentally retarded,**
30 **the assessment imposed pursuant to this section on net operating revenues shall be a**
31 **reimbursable cost to be reflected as timely as practicable in rates of payment applicable**
32 **within the assessment period, contingent, for payments by governmental agencies, on all**
33 **federal approvals necessary by federal law and regulation for federal financial**
34 **participation in payments made for beneficiaries eligible for medical assistance under Title**
35 **XIX of the federal Social Security Act.**

36 **5. Assessments shall be submitted by or on behalf of each provider of services of**
37 **intermediate care facilities for the mentally retarded on a monthly basis to the director of**
38 **the department of mental health or his or her designee and shall be made payable to the**
39 **director of the department of revenue.**

40 **6. In the alternative, a provider may direct that the director of the department of**
41 **social services offset, from the amount of any payment to be made by the state to the**
42 **provider, the amount of the assessment payment owed for any month.**

43 **7. Assessment payments shall be deposited in the state treasury to the credit of the**
44 **"Intermediate Care Facility – Mentally Retarded Reimbursement Allowance Fund", which**
45 **is hereby created in the state treasury. All investment earnings of this fund shall be**
46 **credited to the fund. Notwithstanding the provisions of section 33.080, RSMo, to the**
47 **contrary, any unexpended balance in the intermediate care facility – mentally retarded**
48 **reimbursement allowance fund at the end of the biennium shall not revert to the general**
49 **revenue fund but shall accumulate from year to year. The state treasurer shall maintain**
50 **records that show the amount of money in the fund at any time and the amount of any**
51 **investment earnings on that amount.**

52 **8. Each provider of services of intermediate care facilities for the mentally retarded**
53 **shall keep such records as may be necessary to determine the amount of the assessment for**
54 **which it is liable under this section. On or before the forty-fifth day after the end of each**
55 **month commencing July 1, 2008, each provider of services of intermediate care facilities**
56 **for the mentally retarded shall submit to the department of social services a report on a**
57 **cash basis that reflects such information as is necessary to determine the amount of the**
58 **assessment payable for that month.**

59 **9. Every provider of services of intermediate care facilities for the mentally**
60 **retarded shall submit a certified annual report of net operating revenues from the**
61 **furnishing of services of intermediate care facilities for the mentally retarded. The reports**
62 **shall be in such form as may be prescribed by rule by the director of the department of**
63 **mental health. Final payments of the assessment for each year shall be due for all**
64 **providers of services of intermediate care facilities for the mentally retarded upon the due**
65 **date for submission of the certified annual report.**

66 **10. The director of the department of mental health shall prescribe by rule the**
67 **form and content of any document required to be filed pursuant to the provisions of this**
68 **section.**

69 **11. Upon receipt of notification from the director of the department of mental**
70 **health of a provider's delinquency in paying assessments required under this section, the**
71 **director of the department of social services shall withhold, and shall remit to the director**
72 **of the department of revenue, an assessment amount estimated by the director of the**
73 **department of mental health from any payment to be made by the state to the provider.**

74 **12. In the event a provider objects to the estimate described in subsection 11 of this**
75 **section, or any other decision of the department of mental health related to this section, the**
76 **provider of services may request a hearing. If a hearing is requested, the director of the**

77 department of mental health shall provide the provider of services an opportunity to be
78 heard and to present evidence bearing on the amount due for an assessment or other issue
79 related to this section, within thirty days after collection of an amount due or receipt of a
80 request for a hearing, whichever is later. The director shall issue a final decision within
81 forty-five days of the completion of the hearing. After reconsideration of the assessment
82 determination and a final decision by the director of the department of mental health, an
83 intermediate care facility for the mentally retarded provider's appeal of the director's final
84 decision shall be to the administrative hearing commission in accordance with sections
85 208.156 and 621.055, RSMo.

86 13. Notwithstanding any other provision of law to the contrary, appeals regarding
87 this assessment shall be to the circuit court of Cole County or the circuit court in the
88 county in which the facility is located. The circuit court shall hear the matter as the court
89 of original jurisdiction.

90 14. Nothing in this section shall be deemed to affect or in any way limit the tax-
91 exempt or nonprofit status of any intermediate care facility for the mentally retarded
92 granted by state law.

93 15. The director of the department of mental health shall promulgate rules and
94 regulations to implement this section. Any rule or portion of a rule, as that term is defined
95 in section 536.010, RSMo, that is created under the authority delegated in this section shall
96 become effective only if it complies with and is subject to all of the provisions of chapter
97 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
98 RSMo, are nonseverable and if any of the powers vested with the general assembly
99 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
100 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
101 authority and any rule proposed or adopted after August 28, 2008, shall be invalid and
102 void.

103 16. The provisions of this section shall expire on June 30, 2009.

Section B. Because of the need to preserve state revenue and to promote safety and
2 quality in mental health community programs, the enactment of section 633.401 of this act is
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the constitution, and the
5 enactment of section 633.401 of this act shall be in full force and effect upon its passage and
6 approval.

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