

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1081
94TH GENERAL ASSEMBLY

Reported from the Committee on Health and Mental Health, March 13, 2008, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Removed from the Consent Calendar March 26, 2008.

Re-reported from the Committee on Health and Mental Health, March 27, 2008, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 1081, adopted April 14, 2008.

Taken up for Perfection April 14, 2008. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

4634S.04P

AN ACT

To repeal sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 630.165, 630.167, and 633.005, RSMo, and to enact in lieu thereof fifteen new sections relating to quality assurance and safety in the division of mental retardation and developmental disabilities community programs, with penalty provisions, an emergency clause for a certain section, and an expiration date 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A. Sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 630.165, 630.167, and 633.005, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 630.165, 630.167, 633.005, 633.300, 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 "Family Care Safety Act".

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

(1) "Child-care provider", any licensed or license-exempt child-care home, any licensed or license-exempt child-care center, child-placing agency, residential care facility for children, group home, foster family group home, foster family home, employment agency that refers a child-care worker to parents or guardians

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

8 as defined in section 289.005, RSMo. The term "child-care provider" does not
9 include summer camps or voluntary associations designed primarily for
10 recreational or educational purposes;

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

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

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

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

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

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

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

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

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

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

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

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

43 [(11)] (13) "Related elder care", care provided only to an elder by an

44 adult child, a spouse, a grandchild, a great-grandchild or a sibling of such elder.

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

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

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

13 (2) Probable cause findings of abuse and neglect prior to August 28, 2004,
14 or findings of abuse and neglect by a preponderance of the evidence after August
15 28, 2004, pursuant to sections 210.109 to 210.183 and, as of January 1, 2003,
16 financial exploitation of the elderly or disabled, pursuant to section 570.145,
17 RSMo;

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

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

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

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

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

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

210.906. 1. Every child-care worker or elder-care worker hired on or after
2 January 1, 2001, or personal-care worker hired on or after January 1, 2002, **or**
3 **mental health worker hired on or after January 1, 2009**, shall complete
4 a registration form provided by the department. The department shall make such

5 forms available no later than January 1, 2001, and may, by rule, determine the
6 specific content of such form, but every form shall:

- 7 (1) Request the valid Social Security number of the applicant;
- 8 (2) Include information on the person's right to appeal the information
9 contained in the registry pursuant to section 210.912;
- 10 (3) Contain the signed consent of the applicant for the background checks
11 required pursuant to this section; and
- 12 (4) Contain the signed consent for the release of information contained in
13 the background check for employment purposes only.

14 2. Every child-care worker or elder-care worker hired on or after January
15 1, 2001, and every personal-care worker hired on or after January 1, 2002, **and**
16 **every mental health worker hired on or after January 1, 2009**, shall
17 complete a registration form within fifteen days of the beginning of such person's
18 employment. Any person employed as a child-care, elder-care, **mental health**,
19 or personal-care worker who fails to submit a completed registration form to the
20 department of health and senior services as required by sections 210.900 to
21 210.936 without good cause, as determined by the department, is guilty of a class
22 B misdemeanor.

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

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

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

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

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

3 attendant, the department shall:

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

10 (2) Determine if the applicant has been refused licensure or has
11 experienced involuntary licensure suspension or revocation pursuant to section
12 210.496;

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

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

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

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

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

28 2. Upon completion of the background check described in subsection 1 of
29 this section, the department shall include information in the registry for each
30 registrant as to whether any convictions, employee disqualification listings,
31 registry listings, probable cause findings, pleas of guilty or nolo contendere, or
32 license denial, revocation or suspension have been documented through the
33 records checks authorized pursuant to the provisions of sections 210.900 to
34 210.936.

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

210.915. The department of corrections, the department of public safety,
2 the department of social services and the department of mental health shall

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

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

11 (1) Confirming whether the individual is listed in the registry; and
12 (2) Indicating whether the individual has been listed or named in any of
13 the background checks listed in subsection 2 of section 210.903. If such
14 individual has been so listed, the department of health and senior services shall
15 only disclose the name of the background check in which the individual has been
16 identified. With the exception of any agency licensed **or contracted** by the state
17 to provide child care, elder care, **mental health services**, or personal care
18 which shall receive specific information immediately if requested, any specific
19 information related to such background check shall only be disclosed after the
20 department has received a signed request from the person calling, with the
21 person's name, address and reason for requesting the information.

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

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

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

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

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

 630.165. 1. When any physician, physician assistant, dentist,
2 chiropractor, optometrist, podiatrist, intern, resident, nurse, nurse practitioner,
3 medical examiner, social worker, licensed professional counselor, certified
4 substance abuse counselor, psychologist, other health practitioner, minister,
5 Christian Science practitioner, peace officer, pharmacist, physical therapist,
6 facility administrator, nurse's aide, [or] orderly **or any other direct care staff**
7 in a residential facility, day program, **group home or mental retardation**
8 **facility as defined in section 633.005, RSMo**, or specialized service operated,
9 **licensed, certified, or funded [or licensed]** by the department or in a mental
10 health facility or mental health program in which people may be admitted on a
11 voluntary basis or are civilly detained pursuant to chapter 632, RSMo, or
12 employee of the departments of social services, mental health, or health and
13 senior services; or home health agency or home health agency employee; hospital
14 and clinic personnel engaged in examination, care, or treatment of persons;

15 in-home services owner, provider, operator, or employee; law enforcement officer,
16 long-term care facility administrator or employee; mental health professional,
17 probation or parole officer, or other nonfamilial person with responsibility for the
18 care of a patient, resident, or client of a facility, program, or service has
19 reasonable cause to suspect that a patient, resident or client of a facility, program
20 or service has been subjected to abuse or neglect or observes such person being
21 subjected to conditions or circumstances that would reasonably result in abuse
22 or neglect, he or she shall immediately report or cause a report to be made to the
23 department in accordance with section 630.163.

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

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

40 4. Any person who knowingly files a false report of vulnerable person
41 abuse or neglect is guilty of a class A misdemeanor and shall be subject to a fine
42 up to one thousand dollars. Penalties collected for violations of this subsection
43 shall be transferred to the state school moneys fund as established in section
44 166.051, RSMo, and distributed to the public schools of this state in the manner
45 provided in section 163.031, RSMo. Such penalties shall not considered
46 charitable for tax purposes.

47 5. Every person who has been previously convicted of or pled guilty to
48 making a false report to the department and who is subsequently convicted of
49 making a false report under subsection 4 of this section is guilty of a class D
50 felony and shall be subject to a fine up to five thousand dollars. Penalties

51 collected for violations of this subsection shall be transferred to the state school
52 moneys fund as established in section 166.051, RSMo, and distributed to the
53 public schools of this state in the manner provided in section 163.031,
54 RSMo. Such penalties shall not considered charitable for tax purposes.

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

58 7. Any residential facility, day program, or specialized service operated,
59 funded, or licensed by the department that prevents or discourages a patient,
60 resident, or client, employee, or other person from reporting that a patient,
61 resident, or client of a facility, program, or service has been abused or neglected
62 shall be subject to loss of their license issued pursuant to sections 630.705 to
63 630.760 and civil fines of up to five thousand dollars for each attempt to prevent
64 or discourage reporting.

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

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

17 3. (1) Except as otherwise provided in this section, reports referred to in
18 section 630.165 and the investigative reports referred to in this section shall be
19 confidential, shall not be deemed a public record, and shall not be subject to the
20 provisions of section 109.180, RSMo, or chapter 610, RSMo. Investigative reports
21 pertaining to abuse and neglect shall remain confidential until a final report is
22 complete, subject to the conditions contained in this section. Final reports of

23 substantiated abuse or neglect issued on or after August 28, 2007, are open and
24 shall be available for release in accordance with chapter 610, RSMo. The names
25 and all other identifying information in such final substantiated reports,
26 including diagnosis and treatment information about the patient, resident, or
27 client who is the subject of such report, shall be confidential and may only be
28 released to the patient, resident, or client who has not been adjudged
29 incapacitated under chapter 475, RSMo, the custodial parent or guardian parent,
30 or other guardian of the patient, resident or client. The names and other
31 descriptive information of the complainant, witnesses, or other persons for whom
32 findings are not made against in the final substantiated report shall be
33 confidential and not deemed a public record. Final reports of unsubstantiated
34 allegations of abuse and neglect shall remain closed records and shall only be
35 released to the parents or other guardian of the patient, resident, or client who
36 is the subject of such report, patient, resident, or client and the department
37 vendor, provider, agent, or facility where the patient, resident, or client was
38 receiving department services at the time of the unsubstantiated allegations of
39 abuse and neglect, but the names and any other descriptive information of the
40 complainant or any other person mentioned in the reports shall not be disclosed
41 unless such complainant or person specifically consents to such
42 disclosure. Requests for final reports of substantiated or unsubstantiated abuse
43 or neglect from a patient, resident or client who has not been adjudged
44 incapacitated under chapter 475, RSMo, may be denied or withheld if the director
45 of the department or his or her designee determines that such release would
46 jeopardize the person's therapeutic care, treatment, habilitation, or rehabilitation,
47 or the safety of others and provided that the reasons for such denial or
48 withholding are submitted in writing to the patient, resident or client who has
49 not been adjudged incapacitated under chapter 475, RSMo. All reports referred
50 to in this section shall be admissible in any judicial proceedings or hearing in
51 accordance with section 36.390, RSMo, or any administrative hearing before the
52 director of the department of mental health, or the director's designee. All such
53 reports may be disclosed by the department of mental health to law enforcement
54 officers and public health officers, but only to the extent necessary to carry out
55 the responsibilities of their offices, and to the department of social services, and
56 the department of health and senior services, and to boards appointed pursuant
57 to sections 205.968 to 205.990, RSMo, that are providing services to the patient,
58 resident or client as necessary to report or have investigated abuse, neglect, or

59 rights violations of patients, residents or clients provided that all such law
60 enforcement officers, public health officers, department of social services' officers,
61 department of health and senior services' officers, and boards shall be obligated
62 to keep such information confidential;

63 (2) Except as otherwise provided in this section, the proceedings, findings,
64 deliberations, reports and minutes of committees of health care professionals as
65 defined in section 537.035, RSMo, or mental health professionals as defined in
66 section 632.005, RSMo, who have the responsibility to evaluate, maintain, or
67 monitor the quality and utilization of mental health services are privileged and
68 shall not be subject to the discovery, subpoena or other means of legal compulsion
69 for their release to any person or entity or be admissible into evidence into any
70 judicial or administrative action for failure to provide adequate or appropriate
71 care. Such committees may exist, either within department facilities or its
72 agents, contractors, or vendors, as applicable. Except as otherwise provided in
73 this section, no person who was in attendance at any investigation or committee
74 proceeding shall be permitted or required to disclose any information acquired in
75 connection with or in the course of such proceeding or to disclose any opinion,
76 recommendation or evaluation of the committee or board or any member thereof;
77 provided, however, that information otherwise discoverable or admissible from
78 original sources is not to be construed as immune from discovery or use in any
79 proceeding merely because it was presented during proceedings before any
80 committee or in the course of any investigation, nor is any member, employee or
81 agent of such committee or other person appearing before it to be prevented from
82 testifying as to matters within their personal knowledge and in accordance with
83 the other provisions of this section, but such witness cannot be questioned about
84 the testimony or other proceedings before any investigation or before any
85 committee;

86 (3) Nothing in this section shall limit authority otherwise provided by law
87 of a health care licensing board of the state of Missouri to obtain information by
88 subpoena or other authorized process from investigation committees or to require
89 disclosure of otherwise confidential information relating to matters and
90 investigations within the jurisdiction of such health care licensing boards;
91 provided, however, that such information, once obtained by such board and
92 associated persons, shall be governed in accordance with the provisions of this
93 subsection;

94 (4) Nothing in this section shall limit authority otherwise provided by law

95 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
96 records by the entity or agency authorized to implement a system to protect and
97 advocate the rights of persons with developmental disabilities under the
98 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
99 authorized to implement a system to protect and advocate the rights of persons
100 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing
101 in this section shall serve to negate assurances that have been given by the
102 governor of Missouri to the U.S. Administration on Developmental Disabilities,
103 Office of Human Development Services, Department of Health and Human
104 Services concerning access to records by the agency designated as the protection
105 and advocacy system for the state of Missouri. However, such information, once
106 obtained by such entity or agency, shall be governed in accordance with the
107 provisions of this subsection.

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

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

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

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

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

130 (2) If the opportunity to appeal is not granted it will adversely affect the

131 party's opportunity for employment; and

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

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

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

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

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

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

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

26 [(5)] (6) "Regional center", an entity so designated by the department to
27 provide, directly or indirectly, for comprehensive mental retardation and
28 developmental disability services under this chapter in a particular region;

29 [(6)] (7) "Respite care", temporary and short-term residential care,
30 sustenance and supervision of a mentally retarded or developmentally disabled
31 person who otherwise resides in a family home;

32 [(7)] (8) "State advisory council", the Missouri advisory council on mental
33 retardation and developmental disabilities as created in section 633.020.

633.300. 1. All group homes and mental retardation facilities as

2 defined in section 633.005, shall be subject to all applicable federal and
3 state laws, regulations, and monitoring, including but not limited to
4 sections 630.705 to 630.805, RSMo.

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

10 3. Group homes and mental retardation facilities shall be subject
11 to the same medical errors reporting requirements of other mental
12 health facilities and group homes.

13 4. The department shall promulgate rules or amend existing
14 rules to implement the provisions of this section. Any rule or portion
15 of a rule, as that term is defined in section 536.010, RSMo, that is
16 created under the authority delegated in this section shall become
17 effective only if it complies with and is subject to all of the provisions
18 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
19 section and chapter 536, RSMo, are nonseverable and if any of the
20 powers vested with the general assembly pursuant to chapter 536,
21 RSMo, to review, to delay the effective date, or to disapprove and annul
22 a rule are subsequently held unconstitutional, then the grant of
23 rulemaking authority and any rule proposed or adopted after August
24 28, 2008, shall be invalid and void.

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

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

8 2. Beginning January 1, 2009, the department shall collect the
9 information submitted under subsection 1 of this section and submit an

10 annual report to the general assembly on or before March fifteenth of
11 each year regarding the staff and personnel turnover at mental health
12 facilities. Such report shall include information that is specific to each
13 facility, as well as information inclusive of all such facilities.

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

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

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

5 (2) "Intermediate care facility for the mentally retarded", a
6 private or department of mental health facility which admits persons
7 who are mentally retarded or developmentally disabled for residential
8 habilitation and other services pursuant to chapter 630, RSMo. Such
9 term shall include habilitation centers and private or public
10 intermediate care facilities for the mentally retarded that have been
11 certified to meet the conditions of participation under 42 CFR, Section
12 483, Subpart 1;

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

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

27 2. Beginning July 1, 2008, each provider of services of
28 intermediate care facilities for the mentally retarded shall, in addition
29 to all other fees and taxes now required or paid, pay assessments on

30 their net operating revenues for the privilege of engaging in the
31 business of providing services of the intermediate care facilities for the
32 mentally retarded or developmentally disabled in this state.

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

36 4. For purposes of determining rates of payment under the
37 medical assistance program for providers of services of intermediate
38 care facilities for the mentally retarded, the assessment imposed
39 pursuant to this section on net operating revenues shall be a
40 reimbursable cost to be reflected as timely as practicable in rates of
41 payment applicable within the assessment period, contingent, for
42 payments by governmental agencies, on all federal approvals necessary
43 by federal law and regulation for federal financial participation in
44 payments made for beneficiaries eligible for medical assistance under
45 Title XIX of the federal Social Security Act.

46 5. Assessments shall be submitted by or on behalf of each
47 provider of services of intermediate care facilities for the mentally
48 retarded on a monthly basis to the director of the department of mental
49 health or his or her designee and shall be made payable to the director
50 of the department of revenue.

51 6. In the alternative, a provider may direct that the director of
52 the department of social services offset, from the amount of any
53 payment to be made by the state to the provider, the amount of the
54 assessment payment owed for any month.

55 7. Assessment payments shall be deposited in the state treasury
56 to the credit of the "Intermediate Care Facility - Mentally Retarded
57 Reimbursement Allowance Fund", which is hereby created in the state
58 treasury. All investment earnings of this fund shall be credited to the
59 fund. Notwithstanding the provisions of section 33.080, RSMo, to the
60 contrary, any unexpended balance in the intermediate care facility -
61 mentally retarded reimbursement allowance fund at the end of the
62 biennium shall not revert to the general revenue fund but shall
63 accumulate from year to year. The state treasurer shall maintain
64 records that show the amount of money in the fund at any time and the
65 amount of any investment earnings on that amount.

66 8. Each provider of services of intermediate care facilities for

67 the mentally retarded shall keep such records as may be necessary to
68 determine the amount of the assessment for which it is liable under this
69 section. On or before the forty-fifth day after the end of each month
70 commencing July 1, 2008, each provider of services of intermediate care
71 facilities for the mentally retarded shall submit to the department of
72 social services a report on a cash basis that reflects such information
73 as is necessary to determine the amount of the assessment payable for
74 that month.

75 9. Every provider of services of intermediate care facilities for
76 the mentally retarded shall submit a certified annual report of net
77 operating revenues from the furnishing of services of intermediate care
78 facilities for the mentally retarded. The reports shall be in such form
79 as may be prescribed by rule by the director of the department of
80 mental health. Final payments of the assessment for each year shall be
81 due for all providers of services of intermediate care facilities for the
82 mentally retarded upon the due date for submission of the certified
83 annual report.

84 10. The director of the department of mental health shall
85 prescribe by rule the form and content of any document required to be
86 filed pursuant to the provisions of this section.

87 11. Upon receipt of notification from the director of the
88 department of mental health of a provider's delinquency in paying
89 assessments required under this section, the director of the department
90 of social services shall withhold, and shall remit to the director of the
91 department of revenue, an assessment amount estimated by the
92 director of the department of mental health from any payment to be
93 made by the state to the provider.

94 12. In the event a provider objects to the estimate described in
95 subsection 11 of this section, or any other decision of the department
96 of mental health related to this section, the provider of services may
97 request a hearing. If a hearing is requested, the director of the
98 department of mental health shall provide the provider of services an
99 opportunity to be heard and to present evidence bearing on the amount
100 due for an assessment or other issue related to this section, within
101 thirty days after collection of an amount due or receipt of a request for
102 a hearing, whichever is later. The director shall issue a final decision
103 within forty-five days of the completion of the hearing. After

104 **reconsideration of the assessment determination and a final decision**
105 **by the director of the department of mental health, an intermediate**
106 **care facility for the mentally retarded provider's appeal of the**
107 **director's final decision shall be to the administrative hearing**
108 **commission in accordance with sections 208.156 and 621.055, RSMo.**

109 **13. Notwithstanding any other provision of law to the contrary,**
110 **appeals regarding this assessment shall be to the circuit court of Cole**
111 **County or the circuit court in the county in which the facility is**
112 **located. The circuit court shall hear the matter as the court of original**
113 **jurisdiction.**

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

117 **15. The director of the department of mental health shall**
118 **promulgate rules and regulations to implement this section. Any rule**
119 **or portion of a rule, as that term is defined in section 536.010, RSMo,**
120 **that is created under the authority delegated in this section shall**
121 **become effective only if it complies with and is subject to all of the**
122 **provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
123 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**
124 **of the powers vested with the general assembly pursuant to chapter**
125 **536, RSMo, to review, to delay the effective date, or to disapprove and**
126 **annul a rule are subsequently held unconstitutional, then the grant of**
127 **rulemaking authority and any rule proposed or adopted after August**
128 **28, 2008, shall be invalid and void.**

129 **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
2 safety and quality in mental health community programs, the enactment of
3 section 633.401 of this act is deemed necessary for the immediate preservation of
4 the public health, welfare, peace and safety, and is hereby declared to be an
5 emergency act within the meaning of the constitution, and the enactment of
6 section 633.401 of this act shall be in full force and effect upon its passage and
7 approval.

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