

FIRST REGULAR SESSION

SENATE BILL NO. 487

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 25, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2159S.011

AN ACT

To repeal sections 192.735, 192.737, 192.739, 192.742, 192.745, 199.001, 199.003, 199.007, 199.009, 199.010, 199.029, 199.031, 199.037, 199.039, 199.041, 199.043, 199.051, and 304.028, RSMo, and to enact in lieu thereof eighteen new sections relating to the brain injury advisory council.

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

Section A. Sections 192.735, 192.737, 192.739, 192.742, 192.745, 199.001, 199.003, 199.007, 199.009, 199.010, 199.029, 199.031, 199.037, 199.039, 199.041, 199.043, 199.051, and 304.028, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 192.735, 192.737, 192.739, 192.742, 192.745, 199.001, 199.003, 199.007, 199.009, 199.010, 199.029, 199.031, 199.037, 199.039, 199.041, 199.043, 199.051, and 304.028, to read as follows:

192.735. As used in sections 192.735 to 192.745, unless the context clearly indicates otherwise, the following terms shall mean:

- (1) "[Department]", the department of health and senior services;
- (2) "Head] **Brain** injury" or "traumatic [head] **brain** injury", a sudden insult or damage to the brain or its coverings, not of a degenerative nature. Such insult or damage may produce an altered state of consciousness and may result in a decrease of one or more of the following: mental, cognitive, behavioral or physical functioning resulting in partial or total disability. Cerebral vascular accidents, aneurisms and congenital deficits are specifically excluded from this definition;
- (2) "**Department**", the department of health and senior services;
- (3) "Spinal cord injury", an injury that occurs as a result of trauma, which may involve spinal vertebral fracture, and where the injured person suffers two

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

14 or more of the following effects either immediately or within forty-eight hours of
15 injury:

16 (a) Effects on the sensory system including numbness, tingling or loss of
17 sensation in the body or in one or more extremities;

18 (b) Effects on the motor system including weakness or paralysis in one or
19 more extremities;

20 (c) Effects on the visceral system including bowel or bladder dysfunction
21 or hypotension.

192.737. 1. The department of health and senior services shall establish
2 and maintain an information registry and reporting system for the purpose of
3 data collection and needs assessment of head and spinal cord injured persons in
4 this state.

5 2. Reports of traumatic [head] **brain** and spinal cord injuries shall be
6 filed with the department by a treating physician or his designee within seven
7 days of identification. The attending physician of any patient with traumatic
8 [head] **brain** or spinal cord injury who is in the hospital shall provide in writing
9 to the chief administrative officer the information required to be reported by this
10 section. The chief administrative officer of the hospital shall then have the duty
11 to submit the required reports.

12 3. Reporting forms and the manner in which the information is to be
13 reported shall be provided by the department. Such reports shall include, but
14 shall not be limited to, the following information: name, age, and residence of the
15 injured person, the date and cause of the injury, the initial diagnosis and such
16 other information as required by the department.

192.739. 1. All reports and records made pursuant to sections 192.735 to
2 192.744 and maintained by the department and other appropriate persons,
3 officials and institutions pursuant to sections 192.735 to 192.744 shall be
4 confidential. Information shall not be made available to any individual or
5 institution except to:

6 (1) Appropriate staff of the department;

7 (2) Any person engaged in a bona fide research project, with the
8 permission of the director of the department, except that no information
9 identifying the subjects of the reports or the reporters shall be made available to
10 researchers unless the department requests and receives consent for such release
11 pursuant to the provisions of this section;

12 (3) The Missouri [head] **brain** injury advisory council, except that no

13 information identifying the subjects of the reports or the reporters shall be made
14 available to the council unless consent for release is requested and received
15 pursuant to the provisions of this section. Only information pertaining to [head]
16 **brain** injuries as defined in section 192.735 shall be released to the council.

17 2. The department shall not reveal the identity of a patient, a reporting
18 physician or hospital, except that the identity of the patient may be released upon
19 written consent of the patient, parent or guardian, the identity of the physician
20 may be released upon written consent of the physician, and the identity of the
21 hospital may be released upon written consent of the hospital.

22 3. The department shall request consent for release from a patient, a
23 reporting physician or hospital only upon a showing by the applicant for such
24 release that obtaining the identities of certain patients, physicians or hospitals
25 is necessary for his research.

26 4. The department shall at least annually compile a report of the data
27 accumulated through the reporting system established under section 192.737 and
28 shall submit such data relating to [head] **brain** injuries as defined in section
29 192.735 and in accordance with confidentiality restrictions established pursuant
30 to sections 192.735 to 192.744 to the director of the Missouri [head] **brain** injury
31 advisory council.

192.742. The department, in consultation with the Missouri [head] **brain**
2 injury advisory council, shall promulgate rules and regulations necessary to carry
3 out the provisions of sections 192.735 to 192.744, pursuant to the provisions of
4 section 192.006 and chapter 536, RSMo.

192.745. 1. The "Missouri [Head] **Brain** Injury Advisory Council" [is
2 hereby established] as created by executive order of the governor on March 5,
3 1985 **is hereby transferred to the department of health and senior**
4 **services by executive order 05-09 issued on February 2, 2005.** The council
5 shall consist of twenty-five members. The members of the council that are
6 serving on [August 13, 1986] **February 2, 2005**, shall continue [serving on the
7 following basis: the two members of the council who are members of the house
8 of representatives and appointed by the speaker of the house of representatives
9 shall serve for the remainder of their terms; the two members of the council who
10 are members of the senate appointed by the president pro tempore of the senate
11 shall serve for the remainder of their terms; and the remaining twenty-one
12 members shall determine by lot which seven are to have a one-year term, which
13 seven are to have a two-year term, and which seven are to have a three-year

14 term] to fulfill their current terms. Through attrition, the council will
15 decrease from the present twenty-five members to eighteen
16 members. Thereafter, the successors to each of these [twenty-one] members
17 shall be appointed by the department director to serve a three-year term
18 and [until the member's successor is appointed by the governor with the advice
19 and consent of the senate. In addition, two members who are members of the
20 house of representatives shall be appointed by the speaker of the house and two
21 members who are members of the senate shall be appointed by the president pro
22 tempore of the senate. The members appointed by the governor shall represent]
23 shall be appointed on the following basis: four people with [head] brain
24 injuries[,] or relatives of persons with [head] brain injuries, [proprietary schools
25 as defined in section 173.600, RSMo,] and fourteen others from professional
26 groups, health institutions, [or] community groups, and private industry [and
27 state agencies which administer programs regarding mental health, education,
28 public health, public safety, insurance, and Medicaid. The appointment of
29 individuals representing state agencies shall be conditioned on their continued
30 employment with their respective agencies]. In addition to the eighteen
31 council members, individuals representing state agencies with services
32 that impact brain injury survivors and their families shall participate
33 on the council in an ex officio, nonvoting capacity. These individuals
34 shall be appointed by the respective agency.

35 2. The Missouri [head] brain injury advisory council is assigned to the
36 [division of general services in the office of administration] department. The
37 [office of administration] department shall submit estimates of requirements for
38 appropriations on behalf of the council for the necessary staff and expenses to
39 carry out the duties and responsibilities assigned by the council. [Such staff shall
40 consist of a director and other support staff.]

41 3. Meetings of the full council shall be held at least [every ninety days]
42 four times a year or at the call of the council chairperson, who shall be elected
43 by the council. Subcommittees may meet on an as needed basis.

44 4. [Each member shall, subject to appropriations, be reimbursed for
45 reasonable and necessary expenses actually incurred in the performance of the
46 member's official duties.] Members of the council shall not receive any
47 compensation for their services, but they shall, subject to
48 appropriations, be reimbursed for actual and necessary expenses
49 incurred in the performance of their duties from funds appropriated

50 **for this purpose.**

51 5. The council shall adopt written procedures to govern its
52 activities. [Staff and consultants shall be provided for the council from
53 appropriations requested by the commissioner of the office of administration for
54 such purpose.]

55 6. The council shall make recommendations to the [governor]
56 **department director** for developing and administering a state plan to provide
57 services for [head] **brain** injured persons.

58 7. No member of the council may participate in or seek to influence a
59 decision or vote of the council if the member would be directly involved with the
60 matter or if the member would derive income from it. A violation of the
61 prohibition contained herein shall be grounds for a person to be removed as a
62 member of the council by the [governor] **department director**.

63 8. The council shall be advisory and shall:

64 (1) Promote meetings and programs for the discussion of reducing the
65 debilitating effects of [head] **brain** injuries and disseminate information in
66 cooperation with any other department, agency or entity on the prevention,
67 evaluation, care, treatment and rehabilitation of persons affected by [head] **brain**
68 injuries;

69 (2) Study and review current prevention, evaluation, care, treatment and
70 rehabilitation technologies and recommend appropriate preparation, training,
71 retraining and distribution of manpower and resources in the provision of services
72 to [head-injured] **brain-injured** persons through private and public residential
73 facilities, day programs and other specialized services;

74 (3) Recommend [what] specific methods, means and procedures [should
75 be adopted] to improve and upgrade the state's service delivery system for
76 [head-injured] **brain-injured** citizens of this state;

77 (4) Participate in developing and disseminating criteria and standards
78 which may be required for future funding or licensing of facilities, day programs
79 and other specialized services for [head-injured] **brain-injured** persons in this
80 state;

81 (5) Report annually to the [commissioner of administration, the governor,
82 and the general assembly] **director of the department of health and senior**
83 **services** on its activities, and on the results of its studies and the
84 recommendations of the council.

85 9. The [office of administration] **department** may accept on behalf of the

86 council federal funds, gifts and donations from individuals, private organizations
87 and foundations, and any other funds that may become available.

199.001. As used in sections 199.001 to [199.055] **199.051**, the following
2 terms mean:

3 (1) "[Division", the division of injury prevention, head injury
4 rehabilitation and local health services of the department of health and senior
5 services;

6 (2) "Head] **Brain** injury" includes [head] **brain** injury[, and traumatic
7 [head] **brain** injury[, and spinal cord injury] as defined in section 192.735,
8 RSMo;

9 (2) "**Department**", the **department of health and senior services**;

10 (3) "Injury or trauma", any unintentional or intentional damage to the
11 body resulting from acute exposure to thermal, mechanical, electrical, or chemical
12 energy or from the absence of such essentials as heat or oxygen;

13 (4) "Rehabilitation", a comprehensive series of interventions for physical,
14 medical, cognitive and psychological disabilities designed to restore a person to
15 his maximum functional potential.

199.003. 1. [The "Division of Injury Prevention, Head Injury
2 Rehabilitation and Local Health Services" is hereby created and shall be a
3 division of the department of health and senior services.] The [division]
4 **department** shall have the responsibility, **subject to appropriations**, of
5 ensuring that injury prevention and [head] **brain** injury rehabilitation
6 evaluation, [case management] **service coordination**, treatment, rehabilitation,
7 and community support services are accessible, wherever possible. [The division
8 shall have and exercise supervision of division rehabilitation facilities, residential
9 programs and specialized services operated by the division and oversight of
10 facilities, programs and services funded by the division. The division may also
11 plan for prevention, treatment, rehabilitation and care, including hospice, for
12 persons with other diseases as determined by the general assembly by
13 appropriations. The division shall also have responsibilities for the support,
14 development, and coordination of local health services.]

15 2. The powers, functions and duties of the [division] **department** shall
16 include the following:

17 (1) [Provision of funds for] **Planning and implementing**, in cooperation
18 with the Missouri [head] **brain** injury advisory council [and implementation of],
19 accessible programs to [rehabilitate and care for] **promote rehabilitation and**

20 **community reintegration of** persons with [head injuries, injury prevention
21 and research] **brain injuries;**

22 (2) Provision of technical assistance and training to community-based
23 programs [and assistance and cooperation to programs of political subdivisions
24 designed to assist in planning and implementing quality services] **assisting**
25 **persons with brain injuries;**

26 (3) Assurance of [program] quality [in compliance with such appropriate
27 standards for residential facilities, day programs, and specialized programs as
28 may be established by the division] **for brain injury services funded by the**
29 **department;**

30 (4) Sponsorship and encouragement of research into the causes, effects,
31 prevention, treatment and rehabilitation of injuries and appropriateness and cost
32 and benefit effectiveness of [head] **brain** injury rehabilitation, residential
33 programs and specialized services;

34 (5) Provision of public information relating to injury prevention and
35 [head] **brain** injury treatment and rehabilitation;

36 (6) Cooperation with nonstate governmental agencies and [the] private
37 sector [in establishing, conducting, integrating and coordinating] programs and
38 projects relating to injury prevention and [head] **brain** injury treatment and
39 rehabilitation;

40 (7) [Review and oversight of those portions of the department's annual
41 budget which are directed for injury prevention and head injury services;

42 (8) Encouragement of the utilization, support, assistance and dedication
43 of volunteers to assist persons affected by head injuries to be accepted and
44 integrated into normal community activities;

45 (9) Support, development, and coordination of local health services, which
46 shall include but shall not be limited to:

47 (a) Professional resources and staff development;

48 (b) Services assessment and coordination;

49 (c) Standards development, implementation and quality assurance;

50 (d) Provision of basic public health services in areas not served by local
51 public health agencies;

52 (e) Fiscal resources and management;

53 (f) Technical assistance; and

54 (g) Assistance with public health problems, emergencies and conditions.]

55 **Receiving federal grants and aids for injury prevention and for persons**

56 with brain injuries and brain injury rehabilitation under the terms of
57 the grants and aids and administering or paying them out. The
58 director shall approve such applications for federal assistance
59 administered through the department as may be considered advisable
60 in consultation with the Missouri brain injury advisory council;

61 (8) Promulgating rules under the provisions of this section, as
62 necessary to prescribe policies or standards which affect charging and
63 funding of adult brain injury rehabilitation services. The rules
64 applicable to each program or service operated or funded by the
65 department shall be available for public inspection and review at such
66 program or service. The rules and policies shall be compatible with
67 and appropriate to the program mission, population served, size, type
68 of service, and other reasonable classifications;

69 (9) Promulgating reasonable rules relative to the implementation
70 of participant rights described in sections 199.001 to 199.051;

71 (10) Promulgating rules setting forth a reasonable standard
72 means test which shall be applied to all programs and services funded
73 by the department in determining eligibility for such services.

74 3. Any rule or portion of a rule, as that term is defined in section
75 536.010, RSMo, that is created under the authority delegated in this
76 section shall become effective only if it complies with and is subject to
77 all of the provisions of chapter 536, RSMo, and, if applicable, section
78 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
79 and if any of the powers vested with the general assembly pursuant to
80 chapter 536, RSMo, to review, to delay the effective date, or to
81 disapprove and annul a rule are subsequently held unconstitutional,
82 then the grant of rulemaking authority and any rule proposed or
83 adopted after August 28, 2009, shall be invalid and void.

199.007. The Missouri [head] brain injury advisory council, created by
2 section 192.745, RSMo, shall act as the advisory body to the [division and the
3 division] **department and the department** director. Any power or function of
4 the [division] **department** requiring planning activities shall be undertaken
5 with the direct input and cooperation of the advisory council. The [division]
6 **department** shall not undertake or duplicate any activity or function of the
7 council under the provisions of section 192.745, RSMo.

199.009. 1. The [division] **department** may provide injury prevention,
2 and [head] brain injury evaluation, care, treatment, rehabilitation and such

3 related services directly or through contracts from private and public vendors in
4 this state, the quality of the services being equal, appropriate and consistent with
5 professional advice in the least restrictive environment and as close to an
6 individual's home community as possible, with funds appropriated for this
7 purpose.

8 2. If it is determined through a comprehensive evaluation that a person
9 **[is suffering from a head] has a traumatic brain** injury so as to require the
10 coordination of provision of services, including other state governmental agencies,
11 nongovernmental and the private sector, and if such person, such person's parent,
12 if the person is a minor, or legal guardian, so requests, the **[division]**
13 **department** shall, within the limits of available resources and subject to
14 relevant federal and state laws, secure a comprehensive program of any necessary
15 services for such person. Such services **[may include, but need not be limited to,**
16 **the following:**

17 (1) Assessment and evaluation;
18 (2) Case management;
19 (3) Counseling;
20 (4) Respite care;
21 (5) Recreation;
22 (6) Rehabilitation;
23 (7) Cognitive retraining;
24 (8) Prevocational rehabilitation;
25 (9) Residential care;
26 (10) Homemaker services;
27 (11) Day activity programs;
28 (12) Supported living;
29 (13) Referral to appropriate services;
30 (14) Transportation;
31 (15) Supported work], **if provided by the department, shall be**
32 **directed toward preparation for education or vocational achievement,**
33 **independent living, and community participation. Long-term needs**
34 **shall be identified and efforts made to link participants with**
35 **appropriate resources.**

36 3. In securing the comprehensive program of services, the **[division]**
37 **department** shall involve the **[patient] participant**, his **or her** family or his
38 **or her** legal guardian in decisions affecting his **or her** care, rehabilitation,

39 services or referral. The quality of the services being equal, appropriate and
40 consistent with professional advice, services shall be offered in the least
41 restrictive environment and as close to an individual's home community as
42 possible.

199.010. The curators of the University of Missouri shall provide for the
2 care of persons needing [head] **brain** injury and other rehabilitation and further,
3 for the treatment and commitment of persons having tuberculosis subject to
4 appropriation by the general assembly.

199.029. 1. The [division] **department** shall promulgate rules under the
2 provisions of this section and chapter 536, RSMo, as necessary to prescribe
3 policies or standards which affect charging and funding of residential care
4 rehabilitation programs and specialized services for persons with [head] **brain**
5 injuries available to the public. The rules applicable to each facility, program or
6 service operated or funded by the [division] **department** shall be available for
7 public inspection and review at such facility, program or service. These rules
8 shall not apply to facilities, programs or services operated or provided by curators
9 of the University of Missouri.

10 2. The rules, operating regulations and facility policies shall be compatible
11 with and appropriate to the facility or program mission, population served, size,
12 type of service and other reasonable classifications. No rule or portion of a rule
13 promulgated under the authority of this chapter shall become effective unless it
14 has been promulgated pursuant to the provisions of section 536.024, RSMo.

199.031. 1. The [division] **department** may receive federal grants and
2 aids for injury prevention and for persons with [head] **brain** injuries and [head]
3 **brain** injury rehabilitation under the terms of the grants and aids and
4 administer or pay them out subject to the provisions attached.

5 2. The director shall approve such applications for federal assistance
6 administered through the [division] **department** as may be considered advisable
7 after consultation with the Missouri [head] **brain** injury advisory council.

199.037. The director of the [division] **department** shall promulgate
2 reasonable rules relative to the implementation of patient rights described in
3 sections 199.001 to 199.055. These rules shall not apply to facilities, programs
4 or services operated or provided by the curators of the University of Missouri.

199.039. The director of the [division] **department** shall promulgate
2 rules setting forth a reasonable standard means test which shall be applied to all
3 facilities, programs and services operated or funded by the [division]

4 **department** in determining the amount to be charged to persons receiving
5 services. Notwithstanding other provisions of sections 199.001 to 199.055, the
6 department shall accept funds from federal reimbursement, third-party
7 reimbursement, private pay or other funding sources.

199.041. 1. Any probate division of the circuit court having knowledge of
2 the existence of an estate of a patient receiving services from residential facilities
3 or other programs operated or funded by the [division] **department** shall
4 promptly notify the director of the nature and extent of the estate and the
5 identity of the attorney of record and conservator. The director shall then apply
6 the standard means test contained in the rules of the [division] **department** to
7 determine if the estate shall be charged for services rendered by the [division]
8 **department**.

9 2. If the director determines that the estate should be charged for the
10 evaluation, care, treatment, rehabilitation or room and board provided or funded
11 by the [division] **department**, and notifies the conservator, the conservator shall
12 pay the charges. If the conservator fails to pay for the charges, after reasonable
13 delay, the head of the [division] **department**, residential facility or day program
14 may discharge the patient.

15 3. The decision of the director shall be final, and appeal may be made to
16 the circuit court of Cole County or the county where the person responsible for
17 payment resides in the manner provided by chapter 536, RSMo. The director
18 shall notify the conservator and the supervising court of such failure to pay for
19 services rendered by a facility or program operated or funded by the [division]
20 **department** at least thirty days before the patient is discharged. If the
21 conservator appeals the decision of the director, the patient shall remain in the
22 facility or program pending final disposition of the appeal.

199.043. In accordance with state and federal law, no residential facility,
2 day program or specialized service operated or funded by the [division]
3 **department** shall deny admission or other services to any person because of his
4 race, sex, creed, marital status, national origin, handicap or age.

199.051. The [division] **department** may inspect any facility or program
2 at any time if a contract has been issued or an application for a contract has been
3 filed.

304.028. 1. There is hereby created in the state treasury for use by the
2 [Missouri Head Injury Advisory Council] **department of health and senior**
3 **services** a fund to be known as the "[Head] **Brain Injury Fund**". All judgments

4 collected pursuant to this section, federal grants, private donations and any other
5 moneys designated for the [head] **brain** injury fund shall be deposited in the
6 fund. Moneys deposited in the fund shall, upon appropriation by the general
7 assembly to the [office of administration] **department of health and senior**
8 **services**, be received and expended by the [council] **department of health and**
9 **senior services** for the purpose of transition and integration of medical, social
10 and educational services or activities for purposes of outreach and [short-term]
11 supports to enable individuals with traumatic [head] **brain** injury and their
12 families to live in the community[, including counseling and mentoring the
13 families]. Notwithstanding the provisions of section 33.080, RSMo, to the
14 contrary, any unexpended balance in the [head] **brain** injury fund at the end of
15 any biennium shall not be transferred to the general revenue fund.

16 2. In all criminal cases including violations of any county ordinance or any
17 violation of criminal or traffic laws of this state, including an infraction, there
18 shall be assessed as costs a surcharge in the amount of two dollars. No such
19 surcharge shall be collected in any proceeding involving a violation of an
20 ordinance or state law when the proceeding or defendant has been dismissed by
21 the court or when costs are to be paid by the state, county or municipality.

22 3. Such surcharge shall be collected and distributed by the clerk of the
23 court as provided in **section 479.080, RSMo, and** sections 488.010 to 488.020,
24 RSMo. The surcharge collected pursuant to this section shall be paid to the state
25 treasury to the credit of the [head] **brain** injury fund established in this section.

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