

SENATE BILL NO. 1528

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

6228S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 198.073 and 335.081, RSMo, and to enact in lieu thereof two new sections relating to health care providers.

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

Section A. Sections 198.073 and 335.081, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 198.073 and 335.081, to read as follows:

198.073. 1. A residential care facility shall admit
2 or retain only those persons who are capable mentally and
3 physically of negotiating a normal path to safety using
4 assistive devices or aids when necessary, and who may need
5 assisted personal care within the limitations of such
6 facilities, and who do not require hospitalization or
7 skilled nursing care.

8 2. Notwithstanding the provisions of subsection 1 of
9 this section, those persons previously qualified for
10 residence who may have a temporary period of incapacity due
11 to illness, surgery, or injury, which period does not exceed
12 forty-five days, may be allowed to remain in a residential
13 care facility or assisted living facility if approved by a
14 physician.

15 3. Any facility licensed as a residential care
16 facility II on August 27, 2006, shall be granted a license
17 as an assisted living facility, as defined in section

18 198.006, on August 28, 2006, regardless of the laws, rules,
19 and regulations for licensure as an assisted living facility
20 as long as such facility continues to meet all laws, rules,
21 and regulations that were in place on August 27, 2006, for a
22 residential care facility II. At such time that the average
23 total reimbursement, not including residents' cost-of-living
24 increases in their benefits from the Social Security
25 Administration after August 28, 2006, for the care of
26 persons eligible for Medicaid in an assisted living facility
27 is equal to or exceeds forty-one dollars per day, all
28 facilities with a license as an assisted living facility
29 shall meet all laws, rules, and regulations for licensure as
30 an assisted living facility. Nothing in this section shall
31 be construed to allow any facility that has not met the
32 requirements of subsections 4 and 6 of this section to care
33 for any individual with a physical, cognitive, or other
34 impairment that prevents the individual from safely
35 evacuating the facility.

36 4. Any facility licensed as an assisted living
37 facility, as defined in section 198.006, except for
38 facilities licensed under subsection 3 of this section, may
39 admit or retain an individual for residency in an assisted
40 living facility only if the individual does not require
41 hospitalization or skilled nursing placement, and only if
42 the facility:

43 (1) Provides for or coordinates oversight and services
44 to meet the needs of the resident as documented in a written
45 contract signed by the resident, or legal representative of
46 the resident;

47 (2) Has twenty-four-hour staff appropriate in numbers
48 and with appropriate skills to provide such services;

49 (3) Has a written plan for the protection of all
50 residents in the event of a disaster, including keeping
51 residents in place, evacuating residents to areas of refuge,
52 evacuating residents from the building if necessary, or
53 other methods of protection based on the disaster and the
54 individual building design;

55 (4) Completes a pre-move-in screening with
56 participation of the prospective resident;

57 (5) Completes for each resident a community-based
58 assessment, as defined in subdivision (7) of section 198.006:

59 (a) Upon admission;

60 (b) At least semiannually; and

61 (c) Whenever a significant change has occurred in the
62 resident's condition which may require a change in services;

63 (6) Based on the assessment in subsection 7 of this
64 section and subdivision (5) of this subsection, develops an
65 individualized service plan in partnership with the
66 resident, or legal representative of the resident, that
67 outlines the needs and preferences of the resident. The
68 individualized service plan will be reviewed with the
69 resident, or legal representative of the resident, at least
70 annually, or when there is a significant change in the
71 resident's condition which may require a change in
72 services. The signatures of an authorized representative of
73 the facility and the resident, or the resident's legal
74 representative, shall be contained on the individualized
75 service plan to acknowledge that the service plan has been
76 reviewed and understood by the resident or legal
77 representative;

78 (7) Makes available and implements self-care,
79 productive and leisure activity programs which maximize and
80 encourage the resident's optimal functional ability;

81 (8) Ensures that the residence does not accept or
82 retain a resident who:

83 (a) Has exhibited behaviors that present a reasonable
84 likelihood of serious harm to himself or herself or others;

85 (b) Requires physical restraint;

86 (c) Requires chemical restraint. As used in this
87 paragraph, the following terms mean:

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

91 b. "Convenience", any action taken by the facility to
92 control resident behavior or maintain residents with a
93 lesser amount of effort by the facility and not in the
94 resident's best interest;

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

97 (d) Requires skilled nursing services as defined in
98 subdivision (23) of section 198.006 for which the facility
99 is not licensed or able to provide;

100 (e) Requires more than one person to simultaneously
101 physically assist the resident with any activity of daily
102 living, with the exception of bathing and transferring;

103 (f) Is bed-bound or similarly immobilized due to a
104 debilitating or chronic condition; and

105 (9) Develops and implements a plan to protect the
106 rights, privacy, and safety of all residents and to protect
107 against the financial exploitation of all residents;

108 (10) Complies with the training requirements of
109 subsection 7 of section 192.2000.

110 5. Exceptions to paragraphs (d) to (f) of subdivision
111 (8) of subsection 4 of this section shall be made for
112 residents on hospice, provided the resident, designated

representative, or both, and the assisted living provider, physician, and licensed hospice provider all agree that such program of care is appropriate for the resident.

6. If an assisted living facility accepts or retains any individual with a physical, cognitive, or other impairment that prevents the individual from safely evacuating the facility with minimal assistance, the facility shall:

(1) Have sufficient staff present and awake twenty-four hours a day to assist in the evacuation;

(2) Include an individualized evacuation plan in the service plan of the resident; and

(3) Take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds; and

(4) Use a personal electronic monitoring device for any resident whose physician recommends the use of such device.

7. An individual admitted or readmitted to the facility shall have an admission physical examination by a licensed physician, **advanced practice registered nurse, or physician assistant**. Documentation should be obtained prior to admission but shall be on file not later than ten days after admission and shall contain information regarding the individual's current medical status and any special orders or procedures that should be followed. If the individual is admitted directly from a hospital or another long-term care facility and is accompanied on admission by a report that reflects his or her current medical status, an admission physical shall not be required.

8. Facilities licensed as an assisted living facility shall disclose to a prospective resident, or legal

145 representative of the resident, information regarding the
146 services the facility is able to provide or coordinate, the
147 costs of such services to the resident, and the resident
148 conditions that will require discharge or transfer,
149 including the provisions of subdivision (8) of subsection 4
150 of this section.

151 9. After January 1, 2008, no entity shall hold itself
152 out as an assisted living facility or advertise itself as an
153 assisted living facility without obtaining a license from
154 the department to operate as an assisted living facility.
155 Any residential care facility II licensed under this chapter
156 that does not use the term assisted living in the name of
157 its licensed facility on or before May 1, 2006, shall be
158 prohibited from using such term after August 28, 2006,
159 unless such facility meets the requirements for an assisted
160 living facility in subsection 4 of this section. Any
161 facility licensed as an intermediate care facility prior to
162 August 28, 2006, that provides the services of an assisted
163 living facility, as described in paragraphs (a), (b), and
164 (c) of subdivision (6) of section 198.006, utilizing the
165 social model of care, may advertise itself as an assisted
166 living facility without obtaining a license from the
167 department to operate as an assisted living facility.

168 10. The department of health and senior services shall
169 promulgate rules to ensure compliance with this section.
170 Any rule or portion of a rule, as that term is defined in
171 section 536.010, that is created under the authority
172 delegated in this section shall become effective only if it
173 complies with and is subject to all of the provisions of
174 chapter 536 and, if applicable, section 536.028. This
175 section and chapter 536 are nonseverable and if any of the
176 powers vested with the general assembly pursuant to chapter

177 536 to review, to delay the effective date, or to disapprove
178 and annul a rule are subsequently held unconstitutional,
179 then the grant of rulemaking authority and any rule proposed
180 or adopted after August 28, 2006, shall be invalid and void.

335.081. So long as the person involved does not
2 represent or hold himself or herself out as a nurse licensed
3 to practice in this state, no provision of sections 335.011
4 to 335.096 shall be construed as prohibiting:

5 (1) The practice of any profession for which a license
6 is required and issued pursuant to the laws of this state by
7 a person duly licensed to practice that profession;

8 (2) The services rendered by technicians, nurses'
9 aides or their equivalent trained and employed in public or
10 private hospitals and licensed long-term care facilities
11 except the services rendered in licensed long-term care
12 facilities shall be limited to administering medication,
13 excluding **the administration of medication by an** injectable
14 **route** other than:

15 (a) Insulin; and

16 (b) **Subcutaneous injectable medications, provided that**
17 **any such medication was prescribed by the physician for the**
18 **long-term care facility resident who receives the medication;**

19 (3) The providing of nursing care by friends or
20 members of the family of the person receiving such care;

21 (4) The incidental care of the sick, aged, or infirm
22 by domestic servants or persons primarily employed as
23 housekeepers;

24 (5) The furnishing of nursing assistance in the case
25 of an emergency situation;

26 (6) The practice of nursing under proper supervision:

27 (a) As a part of the course of study by students
28 enrolled in approved schools of professional nursing or in
29 schools of practical nursing;

30 (b) By graduates of accredited nursing programs
31 pending the results of the first licensing examination or
32 ninety days after graduation, whichever first occurs;

33 (c) A graduate nurse who is prevented from attending
34 the first licensing examination following graduation by
35 reason of active duty in the military may practice as a
36 graduate nurse pending the results of the first licensing
37 examination scheduled by the board following the release of
38 such graduate nurse from active military duty or pending the
39 results of the first licensing examination taken by the
40 graduate nurse while involved in active military service
41 whichever comes first;

42 (7) The practice of nursing in this state by any
43 legally qualified nurse duly licensed to practice in another
44 state whose engagement requires such nurse to accompany and
45 care for a patient temporarily residing in this state for a
46 period not to exceed six months;

47 (8) The practice of any legally qualified nurse who is
48 employed by the government of the United States or any
49 bureau, division or agency thereof, while in the discharge
50 of his or her official duties or to the practice of any
51 legally qualified nurse serving in the Armed Forces of the
52 United States while stationed within this state;

53 (9) Nonmedical nursing care of the sick with or
54 without compensation when done in connection with the
55 practice of the religious tenets of any church by adherents
56 thereof, as long as they do not engage in the practice of
57 nursing as defined in sections 335.011 to 335.096;

58 (10) The practice of any legally qualified and
59 licensed nurse of another state, territory, or foreign
60 country whose responsibilities include transporting patients
61 into, out of, or through this state while actively engaged
62 in patient transport that does not exceed forty-eight hours
63 in this state.

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