

FIRST REGULAR SESSION

HOUSE BILL NO. 671

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SUTHERLAND (Sponsor) AND BRUNS (Co-sponsor).

Read 1st time March 1, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1701L.02I

AN ACT

To repeal sections 198.006 and 198.073, RSMo, and to enact in lieu thereof three new sections relating to assisted living residences.

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

Section A. Sections 198.006 and 198.073, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 198.005, 198.006, and 198.073, to read as
3 follows:

**198.005. For purposes of long-term care provided to the elderly and disabled, the
2 term "residential care facility I" shall be referred to as "assisted living residence I" and
3 the term "residential care facility II" shall be referred to as "assisted living residence II".
4 The revisor of statutes shall, when the context clearly indicates, replace all references in
5 the revised statutes to "residential care facility" with "assisted living residence"; except
6 that references to residential care facilities as defined in section 210.481, RSMo, or
7 residential facilities licensed by the department of mental health shall not be replaced.**

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates
2 otherwise, the following terms mean:

- 3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
- 4 (2) "**Activities of daily living**" or "**ADL**", one or more of the following activities of
5 **daily living:**
 - 6 (a) **Eating;**
 - 7 (b) **Dressing;**
 - 8 (c) **Bathing;**

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.

- 9 (d) **Toileting;**
10 (e) **Transferring; and**
11 (f) **Walking;**
12 (3) "Administrator", the person who is in general administrative charge of a facility;
13 [(3)] (4) "Affiliate":
14 (a) With respect to a partnership, each partner thereof;
15 (b) With respect to a limited partnership, the general partner and each limited partner
16 with an interest of five percent or more in the limited partnership;
17 (c) With respect to a corporation, each person who owns, holds or has the power to vote
18 five percent or more of any class of securities issued by the corporation, and each officer and
19 director;
20 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;
21 (5) **"Assisted living residence I" or "assisted living facility I", any premises, other**
22 **than an assisted living residence II, intermediate care facility, or skilled nursing facility**
23 **that is utilized by its owner, operator, or manager to provide twenty-four hour care,**
24 **services, and protective oversight to three or more residents who need or are provided with**
25 **shelter and board; provided that such care may include storage and distribution of**
26 **medications, including administration of medications during short-term illness or**
27 **recuperation, provided that such services are consistent with a social model based on the**
28 **premise that the resident's unit is his or her own home, and provided further that it shall**
29 **not include a residence where all of the residents are related within the fourth degree of**
30 **consanguinity or affinity to the owner, operator, or manager of the residence;**
31 (6) **"Assisted living residence II" or "assisted living facility II", any premises, other**
32 **than an assisted living residence I, intermediate care facility, or skilled nursing facility that**
33 **is utilized by its owner, operator, or manager to provide twenty-four hour care and**
34 **services and protective oversight to three or more residents who need or may be provided**
35 **with shelter, board, and assistance with any activities of daily living, or any instrumental**
36 **activities of daily living, provided that such care may include storage, distribution, or**
37 **administration of medications, or supervision of health care under the direction of a**
38 **licensed physician, provided that such services are consistent with a social model based on**
39 **the premise that the resident's unit is his or her own home, and provided further that it**
40 **shall not include a residence where all of the residents are related within the fourth degree**
41 **of consanguinity or affinity to the owner, operator, or manager of the residence;**
42 (7) **"Dementia", a general term for the loss of thinking, remembering, and**
43 **reasoning so severe that it interferes with an individual's daily functioning and may cause**
44 **symptoms which include changes in personality, mood, and behavior;**

45 [(4)] (8) "Department", the Missouri department of health and senior services;
46 [(5)] (9) "Emergency", a situation, physical condition or one or more practices, methods
47 or operations which presents imminent danger of death or serious physical or mental harm to
48 residents of a facility;

49 [(6)] (10) "Facility", any [residential care facility I, residential care facility II,] immediate
50 care facility, or skilled nursing facility;

51 [(7)] (11) "Health care provider", any person providing health care services or goods to
52 residents and who receives funds in payment for such goods or services under Medicaid;

53 (12) "**Instrumental activities of daily living**", or "**IADL**", **one or more of the**
54 **following activities:**

55 (a) **Preparing meals;**

56 (b) **Shopping for personal items;**

57 (c) **Medication management;**

58 (d) **Managing money;**

59 (e) **Using the telephone;**

60 (f) **Housework; and**

61 (g) **Transportation ability;**

62 [(8)] (13) "Intermediate care facility", any premises, other than [a residential care facility]
63 **an assisted living residence I**, [residential care facility] **assisted living residence II**, or skilled
64 nursing facility, which is utilized by its owner, operator, or manager to provide twenty-four hour
65 accommodation, board, personal care, and basic health and nursing care services under the daily
66 supervision of a licensed nurse and under the direction of a licensed physician to three or more
67 residents dependent for care and supervision and who are not related within the fourth degree of
68 consanguinity or affinity to the owner, operator or manager of the facility;

69 [(9)] (14) "Manager", any person other than the administrator of a facility who contracts
70 or otherwise agrees with an owner or operator to supervise the general operation of a facility ,
71 providing such services as hiring and training personnel, purchasing supplies, keeping financial
72 records, and making reports;

73 [(10)] (15) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
74 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
75 U.S.C. 301 et seq.), as amended;

76 [(11)] (16) "Neglect", the failure to provide, by those responsible for the care, custody,
77 and control of a resident in a **residence or** facility, the services which are reasonable and
78 necessary to maintain the physical and mental health of the resident, when such failure presents
79 either an imminent danger to the health, safety or welfare of the resident or a substantial
80 probability that death or serious physical harm would result;

81 [(12)] (17) "Operator", any person licensed or required to be licensed under the
82 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

83 [(13)] (18) "Owner", any person who owns an interest of five percent or more in:

84 (a) The land on which any facility is located;

85 (b) The structure or structures in which any facility is located;

86 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
87 the land or structure in or on which a facility is located; or

88 (d) Any lease or sublease of the land or structure in or on which a facility is located.

89

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

93 [(14)] (19) "Protective oversight", an awareness twenty-four hours a day of the location
94 of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
95 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
96 except where the resident is on voluntary leave;

97 (20) "**Residence**", **an assisted living residence I or an assisted living residence II**;

98 [(15)] (21) "Resident", a person who by reason of aging, illness, disease, or physical or
99 mental infirmity receives or requires care and services furnished by a facility and who resides
100 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period
101 exceeding twenty-four consecutive hours;

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

109 (17) "Residential care facility II", any premises, other than a residential care facility I,
110 an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator
111 or manager to provide twenty-four hour accommodation, board, and care to three or more
112 residents who are not related within the fourth degree of consanguinity or affinity to the owner,
113 operator, or manager of the facility, and who need or are provided with supervision of diets,
114 assistance in personal care, storage and distribution or administration of medications, supervision
115 of health care under the direction of a licensed physician, and protective oversight, including care
116 during short-term illness or recuperation;

117 (18)] **(22)** "Skilled nursing facility", any premises, other than a [residential care facility]
118 **assisted living residence I**, [a residential care facility] **an assisted living residence II**, or an
119 intermediate care facility, which is utilized by its owner, operator or manager to provide for
120 twenty-four hour accommodation, board and skilled nursing care and treatment services to at
121 least three residents who are not related within the fourth degree of consanguinity or affinity to
122 the owner, operator or manager of the facility. Skilled nursing care and treatment services are
123 those services commonly performed by or under the supervision of a registered professional
124 nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel
125 including acts of observation, care and counsel of the aged, ill, injured or infirm, the
126 administration of medications and treatments as prescribed by a licensed physician or dentist, and
127 other nursing functions requiring substantial specialized judgment and skill;

128 [(19)] **(23)** "Vendor", any person selling goods or services to a health care provider;

129 [(20)] **(24)** "Voluntary leave", an off-premise leave initiated by:

130 (a) A resident that has not been declared mentally incompetent or incapacitated by a
131 court; or

132 (b) A legal guardian of a resident that has been declared mentally incompetent or
133 incapacitated by a court.

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

6 2.] Notwithstanding the provisions of [subsection] **subsections 2 and 3** of this section,
7 those persons previously qualified for residence who may have a temporary period of incapacity
8 due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed
9 to remain in [a residential care facility] **an assisted living residence II** or [residential care
10 facility] **assisted living residence I** if approved by a physician.

11 [3. A residential care facility II may admit or continue to care for those persons who are
12 physically capable of negotiating a normal path to safety using assistive devices or aids when
13 necessary but are mentally incapable of negotiating such a path to safety that have been
14 diagnosed with Alzheimer's disease or Alzheimer's related dementia, if the following
15 requirements are met:

16 (1) A family member or legal representative of the resident, in consultation with the
17 resident's primary physician and the facility, determines that the facility can meet the needs of
18 the resident. The facility shall document the decision regarding continued placement in the
19 facility through written verification by the family member, physician and the facility

20 representative;

21 (2) The facility is equipped with an automatic sprinkler system, in compliance with
22 National Fire Protection Association Code 13 or National Fire Protection Association Code 13R,
23 and an automated fire door system and smoke alarms in compliance with 13-3.4 of the 1997 Life
24 Safety Codes for Existing Health Care Occupancy;

25 (3) In a multilevel facility, residents who are mentally incapable of negotiating a pathway
26 to safety are housed only on the ground floor;

27 (4) The facility shall take necessary measures to provide residents with the opportunity
28 to explore the facility and, if appropriate, its grounds;

29 (5) The facility shall be staffed twenty-four hours a day by the appropriate number and
30 type of personnel necessary for the proper care of residents and upkeep of the facility. In meeting
31 such staffing requirements, every resident who is mentally incapable of negotiating a pathway
32 to safety shall count as three residents. All on-duty staff of the facility shall, at all times, be
33 awake, dressed and prepared to assist residents in case of emergency;

34 (6) Every resident mentally incapable of negotiating a pathway to safety in the facility
35 shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo,
36 chapter 335, RSMo, or chapter 337, RSMo, with an assessment instrument utilized by the
37 division of aging known as the minimum data set used for assessing residents of skilled nursing
38 facilities:

39 (a) Upon admission;

40 (b) At least semiannually; and

41 (c) When a significant change has occurred in the resident's condition which may require
42 additional services;

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

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

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

55 (10) All personnel of the facility, regardless of whether such personnel provides direct

56 care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at
57 least four hours of in- service training, with at least two such hours relating to the care and safety
58 of residents who are mentally incapable of negotiating a pathway to safety;

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

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

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

67 (a) Has exhibited behaviors which indicate such resident is a danger to self or others;

68 (b) Is at constant risk of elopement;

69 (c) Requires physical restraint;

70 (d) Requires chemical restraint. As used in this subdivision, the following terms mean:

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

73 b. "Convenience", any action taken by the facility to control resident behavior or
74 maintain residents with a lesser amount of effort by the facility and not in the resident's best
75 interests;

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

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

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

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

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

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

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

90 7. The division of aging shall promulgate rules to ensure compliance with this section
91 and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as

92 that term is defined in section 536.010, RSMo, that is created under the authority delegated in
93 this section shall become effective only if it complies with and is subject to all of the provisions
94 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
95 RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to
96 chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are
97 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
98 or adopted after August 28, 1999, shall be invalid and void.]

99 **2. An individual may be accepted for residency in an assisted living residence I or**
100 **assisted living residence II, or remain in such residence, only if the individual does not**
101 **require hospitalization or skilled nursing care, and only if the residence:**

102 **(1) Provides for or coordinates oversight and services to meet the needs of the**
103 **resident;**

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

106 **(3) Has a written plan for the protection of all residents in the event of a disaster,**
107 **including keeping residents in place, evacuating residents to areas of refuge, evacuating**
108 **residents from the building if necessary, or other methods of protection based on the**
109 **disaster and the individual building design;**

110 **(4) Completes a screening prior to move in by an appropriately qualified and**
111 **trained professional with participation of the prospective resident;**

112 **(5) Completes a resident assessment by an appropriately qualified and trained**
113 **professional using an assessment tool, determined by the department of health and senior**
114 **services, for community based services:**

115 **(a) Upon admission;**

116 **(b) At least annually; and**

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

119 **(6) Based on the assessment in subdivision (5) of this subsection, develops and**
120 **implements an individualized service plan by an appropriately trained and qualified**
121 **professional in partnership with the resident or legal representative of the resident. The**
122 **individualized service plan will be reviewed with the resident or legal representative of the**
123 **resident at least annually or when there is a significant change in the resident's condition**
124 **which may require a change in services;**

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

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

- 128 (a) **Has exhibited behaviors which indicate such resident is a danger to self or**
129 **others;**
- 130 (b) **Is at constant risk of elopement;**
- 131 (c) **Requires physical restraint;**
- 132 (d) **Requires chemical restraint. As used in this paragraph, the following terms**
133 **mean:**
- 134 a. **"Chemical restraint", a psychopharmacologic drug that is used for discipline or**
135 **convenience and not required to treat medical symptoms;**
- 136 b. **"Convenience", any action taken by the facility to control resident behavior or**
137 **maintain residents with a lesser amount of effort by the residence and not in the resident's**
138 **best interest;**
- 139 c. **"Discipline", any action taken by the facility for the purpose of punishing or**
140 **penalizing residents;**
- 141 (e) **Requires skilled nursing services as defined in section 198.006 for which the**
142 **residence is not licensed or able to provide;**
- 143 (f) **Requires more than one person to simultaneously physically assist the resident**
144 **with any activity of daily living, with the exception of bathing;**
- 145 (g) **Is bed-bound or similarly immobilized due to a debilitating or chronic**
146 **condition;**
- 147 (9) **Develops and implements a plan to protect the rights, privacy, and safety of all**
148 **residents and to prevent the financial exploitation of all residents; and**
- 149 (10) **Complies with the training requirements of subsection 8 of section 660.050,**
150 **RSMo.**
- 151 3. **If an assisted living residence accepts any individual with a physical, cognitive,**
152 **or other impairment that prevents the individual from safely evacuating the residence with**
153 **minimal assistance, the residence shall:**
- 154 (1) **Have sufficient staff present and awake twenty-four hours a day to assist in the**
155 **evacuation;**
- 156 (2) **Include an individualized evacuation plan in the service plan of the resident;**
157 **and**
- 158 (3) **Be equipped with an automatic sprinkler system in compliance with National**
159 **Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and**
160 **an automated fire door system and smoke alarms in compliance with 13-3.4 of the 1997**
161 **Life Safety Codes for Existing Health Care Occupancy;**
- 162 (4) **Take necessary measures to provide residents with the opportunity to explore**
163 **the facility and, if appropriate, its grounds; and**

164 **(5) Use a personal electronic monitoring device for any resident whose physician**
165 **recommends the use of the such device.**

166 **4. The department of health and senior services shall promulgate rules to ensure**
167 **compliance with this section and to sanction facilities that fail to comply with this section.**
168 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**
169 **created under the authority delegated in this section shall become effective only if it**
170 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
171 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
172 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
173 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
174 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
175 **adopted after August 28, 2005, shall be invalid and void.**