

FIRST REGULAR SESSION

HOUSE BILL NO. 767

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES AULL (Sponsor), WALSH, McGHEE, FISHER, KINGERY,
LAMPE, BOWMAN AND HUGHES (Co-sponsors).

Read 1st time February 6, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1545L.01I

AN ACT

To repeal sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, and 633.005, RSMo, and to enact in lieu thereof twenty new sections relating to private mental health facilities and group homes, with penalty provisions.

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210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, and 633.005, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 610.010, 630.005, 630.165, 630.167, 630.410, 630.705, 630.715, 630.755, 633.005, 633.300, 633.303, 633.306, and 1, 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 as defined in section 289.005, RSMo. The term

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.

8 "child-care provider" does not include summer camps or voluntary associations designed
9 primarily for recreational or educational purposes;

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

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

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

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

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

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

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

28 (8) **"Mental health worker", any person employed by a mental health provider or**
29 **group home;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210.906. 1. Every child-care worker or elder-care worker hired on or after January 1, 2001, or personal-care worker hired on or after January 1, 2002, **or mental health worker hired on or after January 1, 2007**, shall complete a registration form provided by the department. The department shall make such forms available no later than January 1, 2001, and may, by rule, determine the specific content of such form, but every form shall:

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

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

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

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

13 2. Every child-care worker or elder-care worker hired on or after January 1, 2001, and
14 every personal-care worker hired on or after January 1, 2002, **and every mental health worker**
15 **hired on or after January 1, 2008**, shall complete a registration form within fifteen days of the
16 beginning of such person's employment. Any person employed as a child-care, elder-care,
17 **mental health**, or personal-care worker who fails to submit a completed registration form to the
18 department of health and senior services as required by sections 210.900 to 210.936 without
19 good cause, as determined by the department, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

610.010. As used in this chapter, unless the context otherwise indicates, the following
2 terms mean:

3 (1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote
4 closed to the public;

5 (2) "Copying", if requested by a member of the public, copies provided as detailed in
6 section 610.026, if duplication equipment is available;

7 (3) "Public business", all matters which relate in any way to the performance of the
8 public governmental body's functions or the conduct of its business;

9 (4) "Public governmental body", any legislative, administrative or governmental entity
10 created by the constitution or statutes of this state, by order or ordinance of any political
11 subdivision or district, judicial entities when operating in an administrative capacity, or by
12 executive order, including:

13 (a) Any body, agency, board, bureau, council, commission, committee, board of regents
14 or board of curators or any other governing body of any institution of higher education, including
15 a community college, which is supported in whole or in part from state funds, including but not
16 limited to the administrative entity known as "The Curators of the University of Missouri" as
17 established by section 172.020, RSMo;

18 (b) Any advisory committee or commission appointed by the governor by executive
19 order;

20 (c) Any department or division of the state, of any political subdivision of the state, of
21 any county or of any municipal government, school district or special purpose district including
22 but not limited to sewer districts, water districts, and other subdistricts of any political
23 subdivision;

24 (d) Any other legislative or administrative governmental deliberative body under the
25 direction of three or more elected or appointed members having rulemaking or quasi-judicial
26 power;

27 (e) Any committee appointed by or at the direction of any of the entities and which is
28 authorized to report to any of the above-named entities, any advisory committee appointed by
29 or at the direction of any of the named entities for the specific purpose of recommending, directly
30 to the public governmental body's governing board or its chief administrative officer, policy or
31 policy revisions or expenditures of public funds including, but not limited to, entities created to
32 advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory
33 body, policy advisory committee or policy advisory group appointed by a president, chancellor
34 or chief executive officer of any college or university system or individual institution at the
35 direction of the governing body of such institution which is supported in whole or in part with
36 state funds for the specific purpose of recommending directly to the public governmental body's

37 governing board or the president, chancellor or chief executive officer policy, policy revisions
38 or expenditures of public funds provided, however, the staff of the college or university
39 president, chancellor or chief executive officer shall not constitute such a policy advisory
40 committee. The custodian of the records of any public governmental body shall maintain a list
41 of the policy advisory committees described in this subdivision;

42 (f) Any quasi-public governmental body. The term "quasi-public governmental body"
43 means any person, corporation or partnership organized or authorized to do business in this state
44 pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association
45 which either:

46 a. Has as its primary purpose to enter into contracts with public governmental bodies,
47 or to engage primarily in activities carried out pursuant to an agreement or agreements with
48 public governmental bodies; or

49 b. Performs a public function as evidenced by a statutorily based capacity to confer or
50 otherwise advance, through approval, recommendation or other means, the allocation or issuance
51 of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the
52 contracting of leaseback agreements on structures whose annualized payments commit public
53 tax revenues; or any association that directly accepts the appropriation of money from a public
54 governmental body, but only to the extent that a meeting, record, or vote relates to such
55 appropriation; [and]

56 (g) Any bi-state development agency established pursuant to section 70.370, RSMo; **and**

57 **(h) Any private mental health facility or group home as defined in section 633.005,**
58 **RSMo;**

59 (5) "Public meeting", any meeting of a public governmental body subject to sections
60 610.010 to 610.030 at which any public business is discussed, decided, or public policy
61 formulated, whether such meeting is conducted in person or by means of communication
62 equipment, including, but not limited to, conference call, video conference, Internet chat, or
63 Internet message board. The term "public meeting" shall not include an informal gathering of
64 members of a public governmental body for ministerial or social purposes when there is no intent
65 to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority
66 of the members of a public governmental body, by electronic communication or any other means,
67 conducted in lieu of holding a public meeting with the members of the public governmental body
68 gathered at one location in order to conduct public business;

69 (6) "Public record", any record, whether written or electronically stored, retained by or
70 of any public governmental body including any report, survey, memorandum, or other document
71 or study prepared for the public governmental body by a consultant or other professional service
72 paid for in whole or in part by public funds, including records created or maintained by private

73 contractors under an agreement with a public governmental body or on behalf of a public
74 governmental body; provided, however, that personally identifiable student records maintained
75 by public educational institutions shall be open for inspection by the parents, guardian or other
76 custodian of students under the age of eighteen years and by the parents, guardian or other
77 custodian and the student if the student is over the age of eighteen years. The term "public
78 record" shall not include any internal memorandum or letter received or prepared by or on behalf
79 of a member of a public governmental body consisting of advice, opinions and recommendations
80 in connection with the deliberative decision-making process of said body, unless such records
81 are retained by the public governmental body or presented at a public meeting. Any document
82 or study prepared for a public governmental body by a consultant or other professional service
83 as described in this subdivision shall be retained by the public governmental body in the same
84 manner as any other public record;

85 (7) "Public vote", any vote, whether conducted in person, by telephone, or by any other
86 electronic means, cast at any public meeting of any public governmental body.

630.005. As used in this chapter and chapters 631, 632, and 633, RSMo, unless the
2 context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than transportation
4 to clients of the department on behalf of a division of the department;

5 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results in intoxication
6 or in a psychological or physiological dependency from continued use, which dependency
7 induces a mental, emotional or physical impairment and which causes socially dysfunctional
8 behavior;

9 (3) "Chemical restraint", medication administered with the primary intent of restraining
10 a patient who presents a likelihood of serious physical injury to himself or others, and not
11 prescribed to treat a person's medical condition;

12 (4) "Client", any person who is placed by the department in a facility or program,
13 **including private mental health facilities and group homes**, licensed and funded by the
14 department or who is a recipient of services from a regional center, as defined in section 633.005,
15 RSMo;

16 (5) "Commission", the state mental health commission;

17 (6) "Consumer", a person:

18 (a) Who qualifies to receive department services; or

19 (b) Who is a parent, child or sibling of a person who receives department services; or

20 (c) Who has a personal interest in services provided by the department. A person who
21 provides services to persons affected by mental retardation, developmental disabilities, mental
22 disorders, mental illness, or alcohol or drug abuse shall not be considered a consumer;

- 23 (7) "Day program", a **privately or publicly funded** place conducted or maintained by
24 any person who advertises or holds himself out as providing prevention, evaluation, treatment,
25 habilitation or rehabilitation for persons affected by mental disorders, mental illness, mental
26 retardation, developmental disabilities or alcohol or drug abuse for less than the full twenty-four
27 hours comprising each daily period;
- 28 (8) "Department", the department of mental health of the state of Missouri;
- 29 (9) "Developmental disability", a disability:
- 30 (a) Which is attributable to:
- 31 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or a learning
32 disability related to a brain dysfunction; or
- 33 b. Any other mental or physical impairment or combination of mental or physical
34 impairments; and
- 35 (b) Is manifested before the person attains age twenty-two; and
- 36 (c) Is likely to continue indefinitely; and
- 37 (d) Results in substantial functional limitations in two or more of the following areas of
38 major life activities:
- 39 a. Self-care;
- 40 b. Receptive and expressive language development and use;
- 41 c. Learning;
- 42 d. Self-direction;
- 43 e. Capacity for independent living or economic self-sufficiency;
- 44 f. Mobility; and
- 45 (e) Reflects the person's need for a combination and sequence of special,
46 interdisciplinary, or generic care, habilitation or other services which may be of lifelong or
47 extended duration and are individually planned and coordinated;
- 48 (10) "Director", the director of the department of mental health, or his designee;
- 49 (11) "Domiciled in Missouri", a permanent connection between an individual and the
50 state of Missouri, which is more than mere residence in the state; it may be established by the
51 individual being physically present in Missouri with the intention to abandon his previous
52 domicile and to remain in Missouri permanently or indefinitely;
- 53 (12) "Drug abuse", the use of any drug without compelling medical reason, which use
54 results in a temporary mental, emotional or physical impairment and causes socially
55 dysfunctional behavior, or in psychological or physiological dependency resulting from
56 continued use, which dependency induces a mental, emotional or physical impairment and causes
57 socially dysfunctional behavior;

58 (13) "Habilitation", a process of treatment, training, care or specialized attention which
59 seeks to enhance and maximize the mentally retarded or developmentally disabled person's
60 abilities to cope with the environment and to live as normally as possible;

61 (14) "Habilitation center", a residential facility operated by the department **or a private**
62 **mental health facility or group home, as defined in section 633.005, RSMo**, and serving only
63 persons who are mentally retarded, including developmentally disabled;

64 (15) "Head of the facility", the chief administrative officer, or his **or her** designee, of any
65 residential facility;

66 (16) "Head of the program", the chief administrative officer, or his **or her** designee, of
67 any day program;

68 (17) "Individualized habilitation plan", a document which sets forth habilitation goals
69 and objectives for mentally retarded or developmentally disabled residents and clients, and which
70 details the habilitation program as required by law, rules and funding sources;

71 (18) "Individualized rehabilitation plan", a document which sets forth the care, treatment
72 and rehabilitation goals and objectives for patients and clients affected by alcohol or drug abuse,
73 and which details the rehabilitation program as required by law, rules and funding sources;

74 (19) "Individualized treatment plan", a document which sets forth the care, treatment and
75 rehabilitation goals and objectives for mentally disordered or mentally ill patients and clients,
76 and which details the treatment program as required by law, rules and funding sources;

77 (20) "Investigator", an employee [or contract agent] of the department of mental health
78 who is performing an investigation regarding an allegation of abuse or neglect or an investigation
79 at the request of the director of the department of mental health or his designee;

80 (21) "Least restrictive environment", a reasonably available setting or mental health
81 program where care, treatment, habilitation or rehabilitation is particularly suited to the level and
82 quality of services necessary to implement a person's individualized treatment, habilitation or
83 rehabilitation plan and to enable the person to maximize his **or her** functioning potential to
84 participate as freely as feasible in normal living activities, giving due consideration to potentially
85 harmful effects on the person and the safety of other facility or program clients and public safety.
86 For some mentally disordered or mentally retarded persons, the least restrictive environment may
87 be a facility operated by the department, a private facility, a supported community living
88 situation, or an alternative community program designed for persons who are civilly detained for
89 outpatient treatment or who are conditionally released pursuant to chapter 632, RSMo;

90 (22) "Mental disorder", any organic, mental or emotional impairment which has
91 substantial adverse effects on a person's cognitive, volitional or emotional function and which
92 constitutes a substantial impairment in a person's ability to participate in activities of normal
93 living;

94 (23) "Mental illness", a state of impaired mental processes, which impairment results in
95 a distortion of a person's capacity to recognize reality due to hallucinations, delusions, faulty
96 perceptions or alterations of mood, and interferes with an individual's ability to reason,
97 understand or exercise conscious control over his **or her** actions. The term "mental illness" does
98 not include the following conditions unless they are accompanied by a mental illness as
99 otherwise defined in this subdivision:

- 100 (a) Mental retardation, developmental disability or narcolepsy;
- 101 (b) Simple intoxication caused by substances such as alcohol or drugs;
- 102 (c) Dependence upon or addiction to any substances such as alcohol or drugs;
- 103 (d) Any other disorders such as senility, which are not of an actively psychotic nature;

104 (24) "Mental retardation", significantly subaverage general intellectual functioning
105 which:

- 106 (a) Originates before age eighteen; and
 - 107 (b) Is associated with a significant impairment in adaptive behavior;
- 108 (25) "Minor", any person under the age of eighteen years;
- 109 (26) "Patient", an individual under observation, care, treatment or rehabilitation by any

110 hospital or other mental health facility or mental health program pursuant to the provisions of
111 chapter 632, RSMo;

112 (27) "Psychosurgery",

113 (a) Surgery on the normal brain tissue of an individual not suffering from physical
114 disease for the purpose of changing or controlling behavior; or

115 (b) Surgery on diseased brain tissue of an individual if the sole object of the surgery is
116 to control, change or affect behavioral disturbances, except seizure disorders;

117 (28) "Rehabilitation", a process of restoration of a person's ability to attain or maintain
118 normal or optimum health or constructive activity through care, treatment, training, counseling
119 or specialized attention;

120 (29) "Residence", the place where the patient has last generally lodged prior to admission
121 or, in case of a minor, where his **or her** family has so lodged; except, that admission or detention
122 in any facility of the department shall not be deemed an absence from the place of residence and
123 shall not constitute a change in residence;

124 (30) "Resident", a person receiving residential services from a facility, other than mental
125 health facility, operated, funded or licensed by the department;

126 (31) "Residential facility", any premises, **public or private**, where residential
127 prevention, evaluation, care, treatment, habilitation or rehabilitation is provided for persons
128 affected by mental disorders, mental illness, mental retardation, developmental disabilities or
129 alcohol or drug abuse; except the person's dwelling;

130 (32) "Specialized service", an entity which provides prevention, evaluation,
131 transportation, care, treatment, habilitation or rehabilitation services to persons affected by
132 mental disorders, mental illness, mental retardation, developmental disabilities or alcohol or drug
133 abuse;

134 (33) "Vendor", a person or entity under contract with the department, other than as a
135 department employee, who provides services to patients, residents or clients.

630.165. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern,
2 nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner,
3 peace officer, pharmacist, physical therapist, facility administrator, nurse's aide [or] , orderly **or**
4 **any other direct care staff** in a residential facility, day program, **including privately funded,**
5 or specialized service operated, funded or licensed by the department or in a mental health
6 facility or mental health program in which people may be admitted on a voluntary basis or are
7 civilly detained pursuant to chapter 632, RSMo, or employee of the department **or any private**
8 **mental health facility or group home, as defined in section 633.005, RSMo,** has reasonable
9 cause to believe that a patient, resident or client of a facility, program or service has been abused
10 or neglected, he or she shall immediately report or cause a report to be made to the department
11 or the department of health and senior services, if such facility or program is licensed pursuant
12 to chapter 197, RSMo.

13 2. The report shall contain the name and address of the residential facility, day program
14 or specialized service; the name of the patient, resident or client; information regarding the
15 nature of the abuse or neglect; the name of the complainant, and any other information which
16 might be helpful in an investigation.

17 3. Any person required in subsection 1 of this section to report or cause a report to be
18 made to the department who fails to do so within a reasonable time after the act of abuse or
19 neglect is guilty of an infraction.

20 4. In addition to those persons required to report under subsection 1 of this section, any
21 other person having reasonable cause to believe that a resident has been abused or neglected may
22 report such information to the department.

23 5. Any person who knowingly files a false report of abuse or neglect is guilty of a class
24 A misdemeanor.

25 6. Any person having a prior conviction of filing false reports and who subsequently files
26 a false report of abuse or neglect pursuant to this section or section 565.188, RSMo, is guilty of
27 a class D felony.

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

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

14 3. (1) Reports referred to in section 630.165 and the investigative reports referred to in
15 this section shall be confidential, shall not be deemed a public record, and shall not be subject
16 to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that complete copies
17 of all such reports shall be open and available to the parents or other guardian of the patient,
18 resident, or client who is the subject of such report, but the names and any other descriptive
19 information of the complainant or other person mentioned in the reports shall not be disclosed
20 unless such complainant or person specifically consents to such disclosure. All reports referred
21 to in this section shall be admissible in any judicial proceedings or hearing in accordance with
22 section 36.390, RSMo, or any administrative hearing before the director of the department of
23 mental health, or the director's designee. All such reports may be disclosed by the department
24 of mental health to law enforcement officers and public health officers, but only to the extent
25 necessary to carry out the responsibilities of their offices, and to the department of social
26 services, and the department of health and senior services, and to boards appointed pursuant to
27 sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or client
28 as necessary to report or have investigated abuse, neglect, or rights violations of patients,
29 residents or clients provided that all such law enforcement officers, public health officers,
30 department of social services' officers, department of health and senior services' officers, and
31 boards shall be obligated to keep such information confidential;

32 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,
33 reports and minutes of committees of health care professionals as defined in section 537.035,
34 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the
35 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health
36 services are privileged and shall not be subject to the discovery, subpoena or other means of legal
37 compulsion for their release to any person or entity or be admissible into evidence into any
38 judicial or administrative action for failure to provide adequate or appropriate care. Such
39 committees may exist, either within department facilities or its agents, contractors, or vendors,

40 as applicable. Except as otherwise provided in this section, no person who was in attendance at
41 any investigation or committee proceeding shall be permitted or required to disclose any
42 information acquired in connection with or in the course of such proceeding or to disclose any
43 opinion, recommendation or evaluation of the committee or board or any member thereof;
44 provided, however, that information otherwise discoverable or admissible from original sources
45 is not to be construed as immune from discovery or use in any proceeding merely because it was
46 presented during proceedings before any committee or in the course of any investigation, nor is
47 any member, employee or agent of such committee or other person appearing before it to be
48 prevented from testifying as to matters within their personal knowledge and in accordance with
49 the other provisions of this section, but such witness cannot be questioned about the testimony
50 or other proceedings before any investigation or before any committee;

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

58 (4) Nothing in this section shall limit authority otherwise provided by law in
59 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the
60 entity or agency authorized to implement a system to protect and advocate the rights of persons
61 with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and
62 the entity or agency authorized to implement a system to protect and advocate the rights of
63 persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this
64 section shall serve to negate assurances that have been given by the governor of Missouri to the
65 U.S. Administration on Developmental Disabilities, Office of Human Development Services,
66 Department of Health and Human Services concerning access to records by the agency
67 designated as the protection and advocacy system for the state of Missouri. However, such
68 information, once obtained by such entity or agency, shall be governed in accordance with the
69 provisions of this subsection.

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

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

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

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

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

 630.410. 1. The department shall evaluate any proposed contract to determine whether
2 it meets the following criteria:

- 3 (1) Conformance with the conditions and priorities of the regional and state division
4 plans;
5 (2) Compliance with department rules and regulations.

6 **2. The department shall terminate a contract with a vendor having a pattern of**
7 **abuse and neglect of patients, residents, or clients or misappropriation of client funds or**
8 **property.**

 630.705. 1. The department shall promulgate rules setting forth reasonable standards
2 for residential facilities and day programs for persons who are affected by a mental disorder,
3 mental illness, mental retardation or developmental disability, **including private mental health**
4 **facilities and group homes as defined in section 633.005, RSMo. The exemptions from**
5 **licensure under subdivision (6) of subsection 3 of this section shall not apply to such private**
6 **mental health facilities and group homes.**

7 2. The rules shall provide for the facilities and programs to be reasonably classified as
8 to resident or client population, size, type of services or other reasonable classification. The
9 department shall design the rules to promote and regulate safe, humane and adequate facilities

10 and programs for the care, treatment, habilitation and rehabilitation of persons described in
11 subsection 1 of this section.

12 3. The following residential facilities and day programs shall not be licensed by the
13 department:

14 (1) Any facility or program which relies solely upon the use of prayer or spiritual
15 healing;

16 (2) Any educational, special educational or vocational program operated, certified or
17 approved by the state board of education pursuant to chapters 161, 162 and 178, RSMo, and
18 regulations promulgated by the board;

19 (3) Any hospital, facility, program or entity operated by this state or the United States;
20 except that facilities operated by the department shall meet these standards;

21 (4) Any hospital, facility or other entity, excluding those with persons who are mentally
22 retarded and developmentally disabled as defined in section 630.005 otherwise licensed by the
23 state and operating under such license and within the limits of such license, unless the majority
24 of the persons served receive activities and services normally provided by a licensed facility
25 pursuant to this chapter;

26 (5) Any hospital licensed by the department of social services as a psychiatric hospital
27 pursuant to chapter 197, RSMo;

28 (6) Any facility or program accredited by the Joint Commission on Accreditation of
29 Hospitals, the American Osteopathic Association, Accreditation Council for Services for
30 Mentally Retarded or other Developmentally Disabled Persons, Council on Accreditation of
31 Services for Children and Families, Inc., or the Commission on Accreditation of Rehabilitation
32 Facilities;

33 (7) Any facility or program caring for less than four persons whose care is not funded
34 by the department.

35 **4. In establishing standards for each type of facility, program, or group home listed**
36 **in subsection 1 of this section, the department shall classify the standards into three**
37 **categories for each type of facility, program, or group home as follows:**

38 (1) **Class I standards are standards the violation of which would present either an**
39 **imminent danger to the health, safety, or welfare of any resident or client or a substantial**
40 **probability that death or serious physical harm would result;**

41 (2) **Class II standards are standards which have a direct or immediate relationship**
42 **to the health, safety, or welfare of any resident or client, but which do not create imminent**
43 **danger;**

44 (3) **Class III standards are standards which have an indirect or a potential impact**
45 **on the health, safety, or welfare of any resident or client.**

630.715. 1. The department shall establish a procedure for the licensing of residential facilities and day programs, **including privately funded**, for persons described in section 630.705, which procedure shall provide for the acceptance of a license, a temporary operating permit or a probationary license issued by the department of social services under sections 198.006 to 198.096, RSMo, as regards the licensing requirements in the following areas:

- (1) General medical and health care;
- (2) Adequate physical plant facilities including fire safety, housekeeping and maintenance standards;
- (3) Food service facilities;
- (4) Safety precautions;
- (5) Drugs and medications;
- (6) Uniform system of recordkeeping;
- (7) Resident and client rights and grievance procedures.

However, the department shall require annually that any facilities and programs already licensed by the department of social services under chapter 198, RSMo, which desire to provide services to persons diagnosed as mentally disordered, mentally ill, mentally retarded or developmentally disabled in accordance with sections 630.705 to 630.760 meet the department's requirements in excess of those required for licensure or certification under chapter 198, RSMo, which are appropriate to admission criteria and care, treatment, habilitation and rehabilitation needs of such persons.

2. Applications for licenses shall be made to the department upon forms provided by it and shall contain such information and documents as the department requires, including, but not limited to, affirmative evidence of ability to comply with the rules adopted by the department. Each application for a license, except applications from a governmental unit or a facility caring for less than four persons, which shall not pay any fee, shall be accompanied by a license fee of ten dollars for establishments which accept more than three but less than ten persons and fifty dollars from establishments which accept ten or more. The license fee shall be paid to the director of revenue for deposit to the general revenue fund of the state treasury.

3. An applicant for a license shall submit an affidavit under oath that all documents required by the department to be filed pursuant to this section are true and correct to the best of his knowledge and belief, that the statements contained in the application are true and correct to the best of his knowledge and belief and that all required documents are either included with the application or are currently on file with the department.

630.755. 1. An action may be brought by the department, or by the attorney general on his own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 630.705 to 630.760, to

4 enjoin the acceptance of new residents until substantial compliance with sections 630.705 to
5 630.760 is achieved, or to enjoin any specific action or practice of the residential facility or day
6 program, **including any private mental health facility or group home as defined in section**
7 **633.005, RSMo.** Any action brought under the provisions of this section shall be placed at the
8 head of the docket by the court and the court shall hold a hearing on any action brought under
9 the provisions of this section no less than fifteen days after the filing of the action.

10 2. [Any facility or program which has received a notice of noncompliance as provided
11 by sections 630.745 to 630.750 is liable to the state for civil penalties of up to one hundred
12 dollars for each day that noncompliance continues after the notice of noncompliance is received.]
13 The attorney general shall, upon the request of the department, bring an action in a circuit court
14 of competent jurisdiction to recover [the] **a civil penalty against the operator of the facility,**
15 **group home, or program. Such action shall be brought in the circuit court for the county**
16 **in which the facility, group home, or program is located.** The circuit court shall [have the
17 authority to] determine the amount of civil penalty to be assessed **within the limits set out in**
18 **this section. Appeals may be taken from the judgment of the circuit court as in other civil**
19 **cases.**

20 3. **The operator of any facility, group home, or program which has been cited with**
21 **a violation of sections 630.705 to 630.760 or the rules established thereunder is liable to the**
22 **state for civil penalties of up to twenty-five thousand dollars for each day that the**
23 **violations existed or continue to exist. Violations shall be presumed to continue to exist**
24 **from the time they are found until the time the department of mental health finds them to**
25 **have been corrected. When applicable, the amount of the penalty shall be determined as**
26 **follows:**

27 (1) **For each violation of a class I standard, not less than one thousand dollars nor**
28 **more than ten thousand dollars;**

29 (2) **For each violation of a class II standard, not less than two hundred fifty dollars**
30 **nor more than one thousand dollars;**

31 (3) **For each violation of a class III standard, not less than fifty dollars nor more**
32 **than two hundred fifty dollars;**

33 (4) **For each specific class I violation by the same operator at a particular facility,**
34 **program, or group home which has been previously cited within the past twenty-four**
35 **months and for each specific class II or III violation by the same operator at a particular**
36 **facility, program, or group home which has been previously cited within the past twelve**
37 **months, double the amount last imposed;**

38 (5) **In accordance with the provisions of this section, if the department imposes a**
39 **civil monetary penalty for a class I violation, the liability for such penalty shall be incurred**

40 immediately upon the imposition of the penalty for the violation regardless of any
41 subsequent correction of the violation by the facility, program, or group home. For class
42 II or III violations, if the department imposes a civil monetary penalty, the liability for such
43 penalty shall be incurred if a breach of a specific state law or regulation remains
44 uncorrected and not in accord with the accepted plan of correction at the time of the
45 reinspection conducted under subsection 3 of section 630.745. A judgment rendered
46 against the operator of a facility, program, or group home under this subsection shall bear
47 interest as provided in subsection 1 of section 408.040, RSMo.

48 4. The imposition of any remedy provided for in sections 630.705 to 630.760 shall
49 not bar the imposition of any other remedy.

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

54 6. To recover any civil penalty, the moving party shall prove by a preponderance
55 of the evidence that the violation occurred.

56 7. The operator of a facility, group home, or program against whom an action to
57 recover a civil penalty is brought under this section may confess judgment as provided in
58 section 511.070, RSMo, at any time prior to hearing. If such operator agrees to confess
59 judgment, the amount of the civil penalty recommended by the moving party in its petition
60 shall be reduced by twenty-five percent and the confessed judgment shall be entered by the
61 circuit court at the reduced amount.

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

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

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

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

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

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

21 [(5)] (6) "Regional center", an entity so designated by the department to provide, directly
22 or indirectly, for comprehensive mental retardation and developmental disability services under
23 this chapter in a particular region;

24 [(6)] (7) "Respite care", temporary and short-term residential care, sustenance and
25 supervision of a mentally retarded or developmentally disabled person who otherwise resides in
26 a family home;

27 [(7)] (8) "State advisory council", the Missouri advisory council on mental retardation
28 and developmental disabilities as created in section 633.020.

**633.300. 1. All private group homes and mental health facilities shall be licensed
2 by the department of mental health and shall be subject to the same state laws and
3 regulations as the state-operated mental health facilities, including but not limited to
4 sections 630.705 to 630.805, RSMo.**

5 **2. All employees of private group homes and mental health facilities shall be subject
6 to the same training requirements established for state mental health workers with
7 comparable positions in public group homes and mental health facilities. Such required
8 training shall be paid for by the employer.**

9 **3. Private facilities and group homes that are Medicaid-waiver providers shall be
10 subject to the same medical errors reporting requirements of other mental health facilities
11 and group homes.**

12 **4. The division shall promulgate rules or amend existing rules to implement the
13 provisions of this section. Any rule or portion of a rule, as that term is defined in section
14 536.010, RSMo, that is created under the authority delegated in this section shall become
15 effective only if it complies with and is subject to all of the provisions of chapter 536,
16 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
17 nonseverable and if any of the powers vested with the general assembly pursuant to
18 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
19 are subsequently held unconstitutional, then the grant of rulemaking authority and any
20 rule proposed or adopted after August 28, 2007, shall be invalid and void.**

**633.303. Any employee, including supervisory personnel, of a private mental health
2 facility who purposely, knowingly, and willfully violates a stated or written policy of the**

3 division, any rule promulgated by the division, or any state law directly related to provision
4 of mental health services regulated by the division shall be dismissed; except that, an
5 employee's good faith efforts to follow the stated or written policies of the division, the
6 rules promulgated by the division, or the state laws directly related to the provision of
7 mental health services shall be a mitigating factor in determining whether an employee of
8 a private group home is dismissed under this section.

633.306. 1. Beginning January 1, 2008, all private mental health facilities and
2 group homes shall, on a quarterly basis, submit a comprehensive report to the department
3 on any staff and personnel turnover at the facility or group home. Such report shall
4 include the number, job description, salary, and duration of employment regarding such
5 staff and personnel turnover. Such reports shall be submitted no later than thirty days
6 after the end of each calendar quarter.

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

Section 1. The department of mental health shall not transfer any person to or
2 utilize the services of any private mental health facility or group home after the effective
3 date of this section until such time as the department has fully implemented the
4 requirements of this act.

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