

FIRST REGULAR SESSION
[CORRECTED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS NOS. 952 & 674
94TH GENERAL ASSEMBLY

Reported from the Committee on Health and Mental Health, May 14, 2007, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

2306S.09C

AN ACT

To repeal sections 198.073 and 198.086, RSMo, and to enact in lieu thereof five new sections relating to protection of vulnerable persons in long-term care facilities, with a termination date for a certain section.

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

Section A. Sections 198.073 and 198.086, RSMo, are repealed and five new
2 sections enacted in lieu thereof, to be known as sections 198.073, 198.074,
3 198.075, 198.086, and 1, to read as follows:

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

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

11 3. Any facility licensed as a residential care facility II on August 27, 2006,
12 shall be granted a license as an assisted living facility, as defined in section
13 198.006, on August 28, 2006, regardless of the laws, rules, and regulations for
14 licensure as an assisted living facility as long as such facility continues to meet

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

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

26 4. Any facility licensed as an assisted living facility, as defined in section
27 198.006, except for facilities licensed under subsection 3 of this section, may
28 admit or retain an individual for residency in an assisted living facility only if the
29 individual does not require hospitalization or skilled nursing placement, and only
30 if the facility:

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

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

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

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

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

44 (a) Upon admission;

45 (b) At least semiannually; and

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

48 (6) Based on the assessment in subsection 7 of this section and
49 subdivision (5) of this subsection, develops an individualized service plan in
50 partnership with the resident, or legal representative of the resident, that

51 outlines the needs and preferences of the resident. The individualized service
52 plan will be reviewed with the resident, or legal representative of the resident,
53 at least annually, or when there is a significant change in the resident's condition
54 which may require a change in services. The signatures of an authorized
55 representative of the facility and the resident, or the resident's legal
56 representative, shall be contained on the individualized service plan to
57 acknowledge that the service plan has been reviewed and understood by the
58 resident or legal representative;

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

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

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

65 (b) Requires physical restraint;

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

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

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

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

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

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

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

82 (9) Develops and implements a plan to protect the rights, privacy, and
83 safety of all residents and to protect against the financial exploitation of all
84 residents;

85 (10) Complies with the training requirements of subsection 8 of section
86 660.050, RSMo.

87 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of
88 this section shall be made for residents on hospice, provided the resident,
89 designated representative, or both, and the assisted living provider, physician,
90 and licensed hospice provider all agree that such program of care is appropriate
91 for the resident.

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

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

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

99 (3) Be equipped with an automatic sprinkler system in compliance with
100 National Fire Protection Association Code 13 or National Fire Protection
101 Association Code 13R, and an automated fire door system and smoke alarms in
102 compliance with 13-3.4 of the 1997 Life Safety Codes for Existing Health Care
103 Occupancy, or for multilevel facilities, be equipped with an automatic sprinkler
104 system in compliance with National Fire Protection Association Code 13 and each
105 floor shall be divided into at least two smoke sections and fire alarms in
106 compliance with 13-3.4 of the 1997 Life Safety Codes for Existing Health Care
107 Occupancy;

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

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

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

120 8. Facilities licensed as an assisted living facility shall disclose to a
121 prospective resident, or legal representative of the resident, information
122 regarding the services the facility is able to provide or coordinate, the costs of

123 such services to the resident, and the resident conditions that will require
124 discharge or transfer, including the provisions of subdivision (8) of subsection 4
125 of this section.

126 9. After January 1, 2008, no entity shall hold itself out as an assisted
127 living facility or advertise itself as an assisted living facility without obtaining
128 a license from the department to operate as an assisted living facility. Any
129 residential care facility II licensed under this chapter that does not use the term
130 assisted living in the name of its licensed facility on or before May 1, 2006, shall
131 be prohibited from using such term after August 28, 2006, unless such facility
132 meets the requirements for an assisted living facility in subsection 4 of this
133 section. **Any facility licensed as an intermediate care facility prior to**
134 **August 28, 2006, that provides the services of an assisted living facility,**
135 **as described in paragraphs (a), (b), and (c) of subdivision (6) of section**
136 **198.006, utilizing the social model of care, may advertise itself as an**
137 **assisted living facility without obtaining a license from the department**
138 **to operate as an assisted living facility.**

139 10. For assisted living facilities built after August 28, 2006, or which have
140 major renovations after August 27, 2006, such single-level assisted living
141 facilities or the major renovation portion shall be equipped with an automatic
142 sprinkler system in compliance with National Fire Protection Association Code
143 13 or 13R of the 1997 Life Safety Codes for Existing Health Care Occupancy, or
144 for such multilevel assisted living facilities or the major renovation portion shall
145 be equipped with an automatic sprinkler system in compliance with National Fire
146 Protection Association Code 13 and each floor shall be divided into two smoke
147 sections and fire alarms in compliance with 13-3.4 of the 1997 Life Safety Codes
148 for Existing Health Care Occupancy. Existing facilities seeking to be licensed as
149 assisted living facilities shall meet the fire safety standards for residential care
150 facilities II in effect on August 28, 2006, unless such facilities seek to admit one
151 or more individuals with physical, cognitive, or other impairments that prevent
152 the individuals from safely evacuating the facility with minimal assistance, in
153 which case such facilities shall comply with subsection 6 of this section.

154 11. The department of health and senior services shall promulgate rules
155 to ensure compliance with this section. Any rule or portion of a rule, as that term
156 is defined in section 536.010, RSMo, that is created under the authority delegated
157 in this section shall become effective only if it complies with and is subject to all
158 of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,

159 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the
160 powers vested with the general assembly pursuant to chapter 536, RSMo, to
161 review, to delay the effective date, or to disapprove and annul a rule are
162 subsequently held unconstitutional, then the grant of rulemaking authority and
163 any rule proposed or adopted after August 28, 2006, shall be invalid and void.

**198.074. 1. Effective August 28, 2007, all new facilities built on
2 or after August 28, 2007, or any facilities completing a major renovation
3 to the facility on or after August 28, 2007, as defined and approved by
4 the department, and which are licensed under this chapter shall install
5 and maintain an approved sprinkler system in accordance with
6 National Fire Protection Association (NFPA) 13.**

**7 2. Facilities that were initially licensed and had an approved
8 sprinkler system and were required to have an approved sprinkler
9 system installed under section 198.073, prior to August 28, 2007, shall
10 continue to meet all laws, rules, and regulations for testing, inspection
11 and maintenance of the sprinkler system that were in effect for such
12 facilities on August 27, 2007.**

**13 3. All facilities initially licensed under this chapter prior to
14 August 28, 2007, and that do not have installed an approved sprinkler
15 system in accordance with NFPA 13R prior to August 28, 2007, shall
16 install and maintain an approved sprinkler system in accordance with
17 NFPA 13R by December 31, 2012, unless the facility receives an
18 exemption from the department and presents evidence in writing from
19 a certified sprinkler system representative or licensed engineer that
20 the facility is unable to install an approved National Fire Protection
21 Association 13R system due to the unavailability of water supply
22 requirements associated with this system or the facility meets the
23 safety requirements of Chapter 33 of NFPA guidelines pertaining to
24 existing residential board and care occupancies. Facilities that take a
25 substantial step, as specified in subsection 7 of this section, to install
26 an approved NFPA 13R system prior to December 31, 2012, may apply
27 to the department for a loan in accordance with section 198.075, to
28 install such system. However, such loan shall not be available if by
29 December 31, 2009, the average total reimbursement for the care of
30 persons eligible for Medicaid public assistance in an assisted living
31 facility and residential care facility is equal to or exceeds fifty-two
32 dollars per day. The average total reimbursement includes room,**

33 board, and care which are not health services provided by the facility.
34 If a facility under this subsection does not have an approved sprinkler
35 system installed by December 31, 2012, such facility shall be required
36 to install and maintain an approved sprinkler system in accordance
37 with NFPA 13 by December 31, 2013. Such loans received under this
38 subsection and in accordance with section 198.075, shall be paid in full
39 as follows:

40 (1) Ten years for those facilities approved for the loan and whose
41 average total reimbursement rate for the care of persons eligible for
42 Medicaid public assistance is equal to forty-eight and no more than
43 forty-nine dollars per day;

44 (2) Eight years for those facilities approved for the loan and
45 whose average total reimbursement rate for the care of persons eligible
46 for Medicaid public assistance is greater than forty-nine and no more
47 than fifty-two dollars per day; or

48 (3) Five years for those facilities approved for the loan and
49 whose average total reimbursement rate for the care of persons eligible
50 for Medicaid public assistance is greater than fifty-two dollars per day.

51 4. (1) All facilities licensed under this chapter shall be equipped
52 with a complete fire alarm system in compliance with NFPA 101, Life
53 Safety Code for Detection, Alarm, and Communication Systems as
54 referenced in NFPA 72, or shall maintain a system that was approved
55 by the department when such facility was constructed so long as such
56 system is a complete fire alarm system. A complete fire alarm system
57 shall include, but not be limited to, interconnected smoke detectors
58 throughout the facility, automatic transmission to the fire department,
59 dispatching agency, or central monitoring company, manual pull
60 stations at each required exit and attendant's station, heat detectors,
61 and audible and visual alarm indicators.

62 (2) In addition, each floor accessed by residents shall be divided
63 into at least two smoke sections by one-hour rated smoke partitions. No
64 smoke section shall exceed one hundred fifty feet in length. If neither
65 the length nor the width of the floor exceeds seventy-five feet, no
66 smoke-stop partition shall be required. Facilities with a complete fire
67 alarm system and smoke sections meeting the requirements of this
68 subsection prior to August 28, 2007, shall continue to meet such
69 requirements. Facilities initially licensed on or after August 28, 2007,

70 shall comply with such requirements beginning August 28, 2007, or on
71 the effective date of licensure.

72 (3) Except as otherwise provided in this subsection, the
73 requirements for complete fire alarm systems and smoke sections shall
74 be enforceable on December 31, 2008.

75 5. The requirements of this section shall be construed to
76 supersede the provisions of section 198.058 relating to the exemption
77 of facilities from construction standards.

78 6. Notwithstanding section 320.202, RSMo, to the contrary,
79 inspections of facilities licensed under this chapter for compliance with
80 this section shall be conducted annually by the state fire marshal if
81 such inspections are not available to be conducted by local fire
82 protection districts or fire departments. The provisions of this section
83 shall be enforced by the state fire marshal or by the local fire
84 protection district or fire department, depending on which entity
85 conducted the inspection.

86 7. By July 1, 2008, all facilities licensed under this chapter shall
87 submit a plan for compliance with the provisions of this section to the
88 state fire marshal.

198.075. 1. There is hereby created in the state treasury the
2 "Fire Safety Standards Loan Fund", for implementing the provisions of
3 subsection 3 of section 198.074. Moneys deposited in the fund shall be
4 considered state funds under article IV, section 15 of the Missouri
5 Constitution. The state treasurer shall be custodian of the fund and
6 may disburse moneys from the fund in accordance with sections 30.170
7 and 30.180, RSMo. Any moneys remaining in the fund at the end of the
8 biennium shall revert to the credit of the general revenue fund. The
9 state treasurer shall invest moneys in the fund in the same manner as
10 other funds are invested. Any interest and moneys earned on such
11 investments shall be credited to the fund.

12 2. Qualifying facilities shall make an application to the
13 department of health and senior services upon forms provided by the
14 department. Upon receipt of an application for a loan, the department
15 shall review the application and advise the governor before state funds
16 are allocated for a loan. For purposes of this section, a "qualifying
17 facility" shall mean a facility licensed under this chapter that has been

18 **in substantial compliance with rules and regulations promulgated by**
19 **the department of health and senior services within the previous year.**

20 **3. The fund shall be a loan of which the interest rate shall not**
21 **exceed two and one half percent.**

22 **4. The fund shall be administered by the department of health**
23 **and senior services.**

198.086. 1. The department of health and senior services shall develop
2 and implement a demonstration project designed to establish a licensure category
3 for health care facilities that wish to provide treatment to persons with
4 Alzheimer's disease or Alzheimer's-related dementia. The division shall also:

5 (1) Inform potential providers of the demonstration project and seek
6 letters of intent;

7 (2) Review letters of intent and select provider organizations to
8 participate in the demonstration project. Ten such organizations may develop
9 such projects using an existing license and additional organizations shall be
10 newly licensed facilities with no more than thirty beds per project. One
11 demonstration project shall be at a stand-alone facility of no more than one
12 hundred twenty beds designed and operated exclusively for the care of residents
13 with Alzheimer's disease or dementia within a county of the first classification
14 with a charter form of government with a population over nine hundred thousand.
15 A total of not more than three hundred beds may be newly licensed through the
16 demonstration projects. All projects shall maintain their pilot status until a
17 complete evaluation is completed by the division of aging, in conjunction with a
18 qualified Missouri school or university, and a written determination is made from
19 such evaluation that the pilot project is successful;

20 (3) Monitor the participants' compliance with the criteria established in
21 this section;

22 (4) Recommend legislation regarding the licensure of dementia-specific
23 residential care based on the results of the demonstration project; and

24 (5) Submit a report regarding the division's activities and
25 recommendations for administrative or legislative action on or before November
26 fifteenth of each year to the governor, the president pro tem of the senate and the
27 speaker of the house of representatives.

28 2. The director of the division [of aging] shall:

29 (1) Develop a reimbursement methodology to reasonably and adequately
30 compensate the pilot projects for the costs of operation of the project, and require

31 the filing of annual cost reports by each participating facility which shall include,
32 but not be limited to, the cost equivalent of unpaid volunteer or donated labor;

33 (2) Process the license applications of project participants;

34 (3) Monitor each participant to assure its compliance with the
35 requirements and that the life, health and safety of residents are assured;

36 (4) Require each participating facility to complete a minimum data set
37 form for each resident occupying a pilot bed;

38 (5) Require the division of aging to assign a single team of the same
39 surveyors to inspect and survey all participating facilities at least twice a year
40 for the entire period of the project; and

41 (6) Submit to the president pro tem of the senate and speaker of the house
42 of representatives copies of any statements of deficiencies, plans of correction and
43 complaint investigation reports applying to project participants.

44 3. Project participants shall:

45 (1) Be licensed by the division [of aging];

46 (2) Provide care only to persons who have been diagnosed with
47 Alzheimer's disease or Alzheimer's-related dementia;

48 (3) Have buildings and furnishings that are designed to provide for the
49 resident's safety. Facilities shall have indoor and outdoor activity areas, and
50 electronically controlled exits from the buildings and grounds to allow residents
51 the ability to explore while preventing them from exiting the facility's grounds
52 unattended;

53 (4) Be staffed twenty-four hours a day by the appropriate number and
54 type of personnel necessary for the proper care of residents and upkeep of the
55 facility;

56 (5) Conduct special staff training relating to the needs, care and safety of
57 persons with Alzheimer's disease or Alzheimer's-related dementia within the first
58 thirty days of employment;

59 (6) Utilize personal electronic monitoring devices for any resident whose
60 physician recommends use of such device;

61 (7) Permit the resident's physician, in consultation with the family
62 members or health care advocates of the resident, to determine whether the
63 facility meets the needs of the resident; **and**

64 (8) [Be equipped with an automatic sprinkler system, in compliance with
65 the National Fire Protection Association Code 13 or National Fire Protection
66 Association Code 13R, and an automated fire alarm system and smoke barriers

67 in compliance with the 1997 Life Safety Codes for Existing Health Care
68 Occupancy; and

69 (9)] Implement a social model for the residential environment rather than
70 an institutional medical model.

71 4. For purposes of this section, "health care facilities for persons with
72 Alzheimer's disease or Alzheimer's-related dementia" means facilities that are
73 specifically designed and operated to provide elderly individuals who have chronic
74 confusion or dementia illness, or both, with a safe, structured but flexible
75 environment that encourages physical activity through a well-developed
76 recreational and aging-in-place and activity program. Such program shall
77 continually strive to promote the highest practicable physical and mental abilities
78 and functioning of each resident.

79 5. Nothing in this section shall be construed to prohibit project
80 participants from accommodating a family member or other caregiver from
81 residing with the resident in accordance with all life, health, and safety standards
82 of the facility.

**Section 1. 1. There is hereby established the "Fire Mitigation
2 System Installer Statewide Qualification Commission". The commission
3 shall study and review the development of a statewide standard for
4 persons installing and inspecting fire mitigation systems. The
5 commission shall be comprised of the following members:**

6 (1) **The directors of the departments of health and senior
7 services, economic development, and public safety, or the directors'
8 designees;**

9 (2) **The following members to be appointed by the governor:**

10 (a) **Two individuals who have been practicing as fire mitigation
11 system installers/inspectors for the preceding five years;**

12 (b) **A member of a local jurisdiction with current standards and
13 qualifications for fire mitigation system installers practicing in the
14 jurisdiction;**

15 (c) **One representative from the relevant skill trade
16 organizations; and**

17 (d) **One public citizen.**

18 2. **The members of the commission shall select a chair of the
19 commission from among its membership.**

20 3. **The commission shall meet as necessary.**

21 4. Commission members shall serve without compensation but
22 shall be reimbursed for their actual and necessary expenses incurred
23 in the performance of their official duties as members of the
24 commission.

25 5. The commission shall submit a report to the governor and
26 general assembly by July 1, 2008. The report shall contain
27 recommendations either in support of or in opposition to such a
28 statewide standard. If the commission is in support of a statewide
29 standard, the report shall also contain the recommended requirements
30 for the statewide standard, the estimated costs of implementing a
31 statewide standard, and a recommended time line for compliance with
32 the statewide standard.

33 6. This section shall terminate on July 1, 2008.

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