

SECOND REGULAR SESSION

# HOUSE BILL NO. 2180

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HARRIS (23).

Read 1st time February 18, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4980L.01I

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### AN ACT

To repeal sections 630.005, 630.115, 630.167, 630.410, 630.705, 630.715, 630.755, 633.005, and 633.032, RSMo, and to enact in lieu thereof fifteen new sections relating to the provision of mental health services.

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

Section A. Sections 630.005, 630.115, 630.167, 630.410, 630.705, 630.715, 630.755, 2 633.005, and 633.032, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to 3 be known as sections 630.005, 630.115, 630.167, 630.410, 630.463, 630.555, 630.705, 630.715, 4 630.755, 633.005, 633.032, 633.300, 633.303, 633.306, and 633.309, to read as follows:

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;

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.

- 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;

136 (34) "Vulnerable person", any person in the custody, care, or control of the department  
137 that is receiving services from an operated, funded, licensed, or certified program.

630.115. 1. Each patient, resident or client shall be entitled to the following without  
2 limitation:

3 (1) To humane care and treatment;

4 (2) To the extent that the facilities, equipment and personnel are available, to medical  
5 care and treatment in accordance with the highest standards accepted in medical practice;

6 (3) To safe and sanitary housing;

7 (4) To not participate in nontherapeutic labor;

8 (5) To attend or not attend religious services;

9 (6) To receive prompt evaluation and care, treatment, habilitation or rehabilitation about  
10 which he is informed insofar as he is capable of understanding;

11 (7) To be treated with dignity as a human being;

12 (8) To not be the subject of experimental research without his prior written and informed  
13 consent or that of his parent, if a minor, or his guardian; except that no involuntary patient shall  
14 be subject to experimental research, except as provided within this chapter;

15 (9) To decide not to participate or may withdraw from any research at any time for any  
16 reason;

17 (10) To have access to consultation with a private physician at his own expense;

18 (11) To be evaluated, treated or habilitated in the least restrictive environment;

19 (12) To not be subjected to any hazardous treatment or surgical procedure unless he, his  
20 parent, if he is a minor, or his guardian consents; or unless such treatment or surgical procedure  
21 is ordered by a court of competent jurisdiction;

22 (13) In the case of hazardous treatment or irreversible surgical procedures, to have, upon  
23 request, an impartial review prior to implementation, except in case of emergency procedures  
24 required for the preservation of his life;

25 (14) To a nourishing, well-balanced and varied diet;

26 (15) To be free from verbal and physical abuse;

27 **(16) In state-operated facilities, to request and receive services only from employees**  
28 **of the state of Missouri rather than from private persons or entities under contract with**  
29 **the state for provisions of services, including but not limited to services in transitioning**  
30 **residents back into the community;**

31 **(17) For patients, residents, or clients who receive state-subsidized care or services,**  
32 **to have such patient's, resident's, or client's case managed by a qualified state employee**  
33 **case worker.**

34 2. Notwithstanding any other sections of this chapter, each patient, resident or client shall  
35 have the right to an impartial administrative review of alleged violations of the rights assured  
36 under this chapter. The impartial administration review process shall be a mechanism for:

37 (1) Reporting alleged violations of rights assured under this chapter;

38 (2) Investigating alleged violations of these rights;

39 (3) Presenting patient, resident or client grievances on the record to a neutral decision  
40 maker; and

41 (4) Requiring that the neutral decision maker issue findings of fact, conclusions and  
42 recommendations.

43 3. The impartial administrative review process shall be completed within a timely  
44 manner after the alleged violation is reported.

45 4. This impartial review process shall not apply to investigations of alleged patient,  
46 resident or client abuse or neglect conducted pursuant to section 630.167.

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) Except as otherwise provided in this section, reports referred to in section 630.165  
15 and the investigative reports referred to in this section shall be confidential, shall not be deemed  
16 a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter  
17 610, RSMo. Investigative reports pertaining to abuse and neglect shall remain confidential until  
18 a final report is complete, subject to the conditions contained in this section. Final reports of  
19 substantiated abuse or neglect issued on or after August 28, 2007, are open and shall be available  
20 for release in accordance with chapter 610, RSMo. The names and all other identifying  
21 information in such final substantiated reports, including diagnosis and treatment information  
22 about the patient, resident, or client who is the subject of such report, shall be confidential and  
23 may only be released to the patient, resident, or client who has not been adjudged incapacitated  
24 under chapter 475, RSMo, the custodial parent or guardian parent, or other guardian of the  
25 patient, resident or client. The names and other descriptive information of the complainant,  
26 witnesses, or other persons for whom findings are not made against in the final substantiated  
27 report shall be confidential and not deemed a public record. Final reports of unsubstantiated  
28 allegations of abuse and neglect shall remain closed records and shall only be released to the  
29 parents or other guardian of the patient, resident, or client who is the subject of such report,  
30 patient, resident, or client and the department vendor, provider, agent, or facility where the  
31 patient, resident, or client was receiving department services at the time of the unsubstantiated  
32 allegations of abuse and neglect, but the names and any other descriptive information of the  
33 complainant or any other person mentioned in the reports shall not be disclosed unless such  
34 complainant or person specifically consents to such disclosure. Requests for final reports of  
35 substantiated or unsubstantiated abuse or neglect from a patient, resident or client who has not  
36 been adjudged incapacitated under chapter 475, RSMo, may be denied or withheld if the director  
37 of the department or his or her designee determines that such release would jeopardize the  
38 person's therapeutic care, treatment, habilitation, or rehabilitation, or the safety of others and  
39 provided that the reasons for such denial or withholding are submitted in writing to the patient,  
40 resident or client who has not been adjudged incapacitated under chapter 475, RSMo. All reports  
41 referred to in this section shall be admissible in any judicial proceedings or hearing in accordance  
42 with section 36.390, RSMo, or any administrative hearing before the director of the department  
43 of mental health, or the director's designee. All such reports may be disclosed by the department  
44 of mental health to law enforcement officers and public health officers, but only to the extent

45 necessary to carry out the responsibilities of their offices, and to the department of social  
46 services, and the department of health and senior services, and to boards appointed pursuant to  
47 sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or client  
48 as necessary to report or have investigated abuse, neglect, or rights violations of patients,  
49 residents or clients provided that all such law enforcement officers, public health officers,  
50 department of social services' officers, department of health and senior services' officers, and  
51 boards shall be obligated to keep such information confidential;

52 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,  
53 reports and minutes of committees of health care professionals as defined in section 537.035,  
54 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the  
55 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health  
56 services are privileged and shall not be subject to the discovery, subpoena or other means of legal  
57 compulsion for their release to any person or entity or be admissible into evidence into any  
58 judicial or administrative action for failure to provide adequate or appropriate care. Such  
59 committees may exist, either within department facilities or its agents, contractors, or vendors,  
60 as applicable. Except as otherwise provided in this section, no person who was in attendance at  
61 any investigation or committee proceeding shall be permitted or required to disclose any  
62 information acquired in connection with or in the course of such proceeding or to disclose any  
63 opinion, recommendation or evaluation of the committee or board or any member thereof;  
64 provided, however, that information otherwise discoverable or admissible from original sources  
65 is not to be construed as immune from discovery or use in any proceeding merely because it was  
66 presented during proceedings before any committee or in the course of any investigation, nor is  
67 any member, employee or agent of such committee or other person appearing before it to be  
68 prevented from testifying as to matters within their personal knowledge and in accordance with  
69 the other provisions of this section, but such witness cannot be questioned about the testimony  
70 or other proceedings before any investigation or before any committee;

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

78 (4) Nothing in this section shall limit authority otherwise provided by law in  
79 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the  
80 entity or agency authorized to implement a system to protect and advocate the rights of persons



81 with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and  
82 the entity or agency authorized to implement a system to protect and advocate the rights of  
83 persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this  
84 section shall serve to negate assurances that have been given by the governor of Missouri to the  
85 U.S. Administration on Developmental Disabilities, Office of Human Development Services,  
86 Department of Health and Human Services concerning access to records by the agency  
87 designated as the protection and advocacy system for the state of Missouri. However, such  
88 information, once obtained by such entity or agency, shall be governed in accordance with the  
89 provisions of this subsection.

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

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

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

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

- 108 (1) Good cause exists for the untimely commencement of the request for the review;  
109 (2) If the opportunity to appeal is not granted it will adversely affect the party's  
110 opportunity for employment; and  
111 (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.**

**630.463. The department shall not reduce the availability of the type and amount**  
2 **of comprehensive psychiatric services currently provided by the state of Missouri, even if**  
3 **all or a portion of such services are provided by private entities.**

**630.555. Prior to closure or downsizing of any state facility operated by the**  
2 **department of mental health, the director of the department shall submit a cost-benefit**  
3 **analysis of and written plan for the closure or downsizing of the facility to the senate and**  
4 **the house appropriations committees on mental health for their consideration.**

          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  
2 facilities and day programs, **including privately funded**, for persons described in section  
3 630.705, which procedure shall provide for the acceptance of a license, a temporary operating  
4 permit or a probationary license issued by the department of social services under sections  
5 198.006 to 198.096, RSMo, as regards the licensing requirements in the following areas:

6 (1) General medical and health care;

7 (2) Adequate physical plant facilities including fire safety, housekeeping and  
8 maintenance standards;

9 (3) Food service facilities;

10 (4) Safety precautions;

11 (5) Drugs and medications;

12 (6) Uniform system of recordkeeping;

13 (7) Resident and client rights and grievance procedures.

14

15 However, the department shall require annually that any facilities and programs already licensed  
16 by the department of social services under chapter 198, RSMo, which desire to provide services

17 to persons diagnosed as mentally disordered, mentally ill, mentally retarded or developmentally  
18 disabled in accordance with sections 630.705 to 630.760 meet the department's requirements in  
19 excess of those required for licensure or certification under chapter 198, RSMo, which are  
20 appropriate to admission criteria and care, treatment, habilitation and rehabilitation needs of such  
21 persons.

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

30 3. An applicant for a license shall submit an affidavit under oath that all documents  
31 required by the department to be filed pursuant to this section are true and correct to the best of  
32 his knowledge and belief, that the statements contained in the application are true and correct to  
33 the best of his knowledge and belief and that all required documents are either included with the  
34 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  
2 his own volition or at the request of the department or any other appropriate state agency, to  
3 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 ten thousand  
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 this  
18 section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

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

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

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

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

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

37           **(5) In accordance with the provisions of this section, if the department imposes a**  
38 **civil monetary penalty for a class I violation, the liability for such penalty shall be incurred**  
39 **immediately upon the imposition of the penalty for the violation regardless of any**  
40 **subsequent correction of the violation by the facility, program, or group home. For class**  
41 **II or III violations, if the department imposes a civil monetary penalty, the liability for such**  
42 **penalty shall be incurred if a breach of a specific state law or regulation remains**  
43 **uncorrected and not in accord with the accepted plan of correction at the time of the**  
44 **reinspection conducted under subsection 3 of section 630.745.**

45  
46 **A judgment rendered against the operator of a facility, program, or group home under this**  
47 **subsection shall bear 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 not**  
49 **bar the imposition of any other remedy.**

50           **[4.] 5. Penalties collected for violations of this section shall be transferred to the state**  
51 **schools moneys established under section 166.051, RSMo. Such penalties shall not be**  
52 **considered a charitable contribution for tax purposes.**

53           **[5.] 6. To recover any civil penalty, the moving party shall prove by a preponderance of**  
54 **the evidence that the violation occurred.**

55           **7. The operator of a facility, group home, or program against whom an action to**  
56 **recover a civil penalty is brought under this section may confess judgment as provided in**  
57 **section 511.070, RSMo, at any time prior to hearing. If such operator agrees to confess**  
58 **judgment, the amount of the civil penalty recommended by the moving party in its petition**  
59 **shall be reduced by twenty-five percent and the confessed judgment shall be entered by the**  
60 **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 serving nine or fewer residents, similar in**  
12 **appearance to a single-family dwelling and providing basic health supervision, habilitation**  
13 **training in skills of daily and independent living and community integration, and social**  
14 **support. Group homes do not include family living arrangements or individualized**  
15 **supported living;**

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

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

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

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

633.032. 1. The department of mental health shall develop a plan to address the needs of persons who are on a waitlist for services, including persons in habilitation centers waiting for community placement. Such plan shall reflect the partnership between persons with developmental disabilities and their families, community providers, and state officials, and shall support the choice and control of consumers and their families in the delivery of services and supports. Such plan shall include the following:

(1) A method to reduce the waitlist for services over a period of five years and to reduce the waiting period to ninety days;

(2) A description of minimum supports and services available to all eligible individuals and their families;

(3) An evaluation of the capacity of current providers to serve more individuals;

(4) A method of adjusting support and service levels based on the needs of the eligible individual combined with family or other relevant circumstances affecting the support of such individual;

(5) A method for determining the circumstances when out-of-home twenty-four-hour care may be necessary;

(6) A description of how the plan will be implemented on a statewide basis;

(7) Any changes in state law that will be required to implement the plan; and

(8) An analysis of the budgetary and programmatic effects of providing supports and services for all eligible individuals and their families.

2. The plan required pursuant to this section shall be completed on or before November first each year beginning November 1, 2007. The director of the department of mental health shall annually submit a copy of the plan to the speaker of the house of representatives, the president pro tem of the senate, and the governor.

**3. If any individuals are on a waitlist for residential services, the number of residential beds operated by state facilities shall not be reduced.**

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

**2. All employees of private group homes and mental health facilities shall:**

**(1) Be subject to the same training requirements established for state mental health workers with comparable positions in public group homes and mental health facilities. Such required training shall be paid for by the employer; and**

9           (2) Be compensated by the employer in an amount at least equal to the average  
10 hourly wage paid by the state to mental health workers with comparable positions in  
11 public group homes and mental health facilities.

12           3. Private facilities and group homes that are Medicaid-waiver providers shall be  
13 subject to the same medical errors reporting requirements of other mental health facilities  
14 and group homes.

15           4. The division shall promulgate rules or amend existing rules to implement the  
16 provisions of this section. Any rule or portion of a rule, as that term is defined in section  
17 536.010, RSMo, that is created under the authority delegated in this section shall become  
18 effective only if it complies with and is subject to all of the provisions of chapter 536,  
19 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
20 nonseverable and if any of the powers vested with the general assembly pursuant to  
21 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
22 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
23 rule proposed or adopted after August 28, 2008, 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, 2009, 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, 2010, 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.



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

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