

SECOND REGULAR SESSION

# HOUSE BILL NO. 2413

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VAN SCHOIACK.

4766H.011

JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal sections 198.073 and 335.081, RSMo, and to enact in lieu thereof two new sections relating to long-term care facilities.

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

Section A. Sections 198.073 and 335.081, RSMo, are repealed and two new sections  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

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

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

9 3. Any facility licensed as a residential care facility II on August 27, 2006, shall be  
10 granted a license as an assisted living facility, as defined in section 198.006, on August 28,  
11 2006, regardless of the laws, rules, and regulations for licensure as an assisted living facility  
12 as long as such facility continues to meet all laws, rules, and regulations that were in place on  
13 August 27, 2006, for a residential care facility II. At such time that the average total  
14 reimbursement, not including residents' cost-of-living increases in their benefits from the  
15 Social Security Administration after August 28, 2006, for the care of persons eligible for  
16 Medicaid in an assisted living facility is equal to or exceeds forty-one dollars per day, all  
17 facilities with a license as an assisted living facility shall meet all laws, rules, and regulations

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.

18 for licensure as an assisted living facility. Nothing in this section shall be construed to allow  
19 any facility that has not met the requirements of subsections 4 and 6 of this section to care for  
20 any individual with a physical, cognitive, or other impairment that prevents the individual  
21 from safely evacuating the facility.

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

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

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

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

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

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

38 (a) Upon admission;

39 (b) At least semiannually; and

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

42 (6) Based on the assessment in subsection 7 of this section and subdivision (5) of this  
43 subsection, develops an individualized service plan in partnership with the resident, or legal  
44 representative of the resident, that outlines the needs and preferences of the resident. The  
45 individualized service plan will be reviewed with the resident, or legal representative of the  
46 resident, at least annually, or when there is a significant change in the resident's condition  
47 which may require a change in services. The signatures of an authorized representative of the  
48 facility and the resident, or the resident's legal representative, shall be contained on the  
49 individualized service plan to acknowledge that the service plan has been reviewed and  
50 understood by the resident or legal representative;

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

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

- 54 (a) Has exhibited behaviors that present a reasonable likelihood of serious harm to  
55 himself or herself or others;
- 56 (b) Requires physical restraint;
- 57 (c) Requires chemical restraint. As used in this paragraph, the following terms mean:
- 58 a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or  
59 convenience and not required to treat medical symptoms;
- 60 b. "Convenience", any action taken by the facility to control resident behavior or  
61 maintain residents with a lesser amount of effort by the facility and not in the resident's best  
62 interest;
- 63 c. "Discipline", any action taken by the facility for the purpose of punishing or  
64 penalizing residents;
- 65 (d) Requires skilled nursing services as defined in subdivision (23) of section 198.006  
66 for which the facility is not licensed or able to provide;
- 67 (e) Requires more than one person to simultaneously physically assist the resident  
68 with any activity of daily living, with the exception of bathing and transferring;
- 69 (f) Is bed-bound or similarly immobilized due to a debilitating or chronic condition;  
70 and
- 71 (9) Develops and implements a plan to protect the rights, privacy, and safety of all  
72 residents and to protect against the financial exploitation of all residents;
- 73 (10) Complies with the training requirements of subsection 7 of section 192.2000.
- 74 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of this section  
75 shall be made for residents on hospice, provided the resident, designated representative, or  
76 both, and the assisted living provider, physician, and licensed hospice provider all agree that  
77 such program of care is appropriate for the resident.
- 78 6. If an assisted living facility accepts or retains any individual with a physical,  
79 cognitive, or other impairment that prevents the individual from safely evacuating the facility  
80 with minimal assistance, the facility shall:
- 81 (1) Have sufficient staff present and awake twenty-four hours a day to assist in the  
82 evacuation;
- 83 (2) Include an individualized evacuation plan in the service plan of the resident; and
- 84 (3) Take necessary measures to provide residents with the opportunity to explore the  
85 facility and, if appropriate, its grounds; and
- 86 (4) Use a personal electronic monitoring device for any resident whose physician  
87 recommends the use of such device.
- 88 7. An individual admitted or readmitted to the facility shall have an admission  
89 physical examination by a licensed physician, **advanced practice registered nurse, or**  
90 **physician assistant**. Documentation should be obtained prior to admission but shall be on

91 file not later than ten days after admission and shall contain information regarding the  
92 individual's current medical status and any special orders or procedures that should be  
93 followed. If the individual is admitted directly from a hospital or another long-term care  
94 facility and is accompanied on admission by a report that reflects his or her current medical  
95 status, an admission physical shall not be required.

96 8. Facilities licensed as an assisted living facility shall disclose to a prospective  
97 resident, or legal representative of the resident, information regarding the services the facility  
98 is able to provide or coordinate, the costs of such services to the resident, and the resident  
99 conditions that will require discharge or transfer, including the provisions of subdivision (8)  
100 of subsection 4 of this section.

101 9. After January 1, 2008, no entity shall hold itself out as an assisted living facility or  
102 advertise itself as an assisted living facility without obtaining a license from the department to  
103 operate as an assisted living facility. Any residential care facility II licensed under this  
104 chapter that does not use the term assisted living in the name of its licensed facility on or  
105 before May 1, 2006, shall be prohibited from using such term after August 28, 2006, unless  
106 such facility meets the requirements for an assisted living facility in subsection 4 of this  
107 section. Any facility licensed as an intermediate care facility prior to August 28, 2006, that  
108 provides the services of an assisted living facility, as described in paragraphs (a), (b), and (c)  
109 of subdivision (6) of section 198.006, utilizing the social model of care, may advertise itself  
110 as an assisted living facility without obtaining a license from the department to operate as an  
111 assisted living facility.

112 10. The department of health and senior services shall promulgate rules to ensure  
113 compliance with this section. Any rule or portion of a rule, as that term is defined in section  
114 536.010, that is created under the authority delegated in this section shall become effective  
115 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,  
116 section 536.028. This section and chapter 536 are nonseverable and if any of the powers  
117 vested with the general assembly pursuant to chapter 536 to review, to delay the effective  
118 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant  
119 of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be  
120 invalid and void.

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

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

6 (2) The services rendered by technicians, nurses' aides or their equivalent trained and  
7 employed in public or private hospitals and licensed long-term care facilities except the

8 services rendered in licensed long-term care facilities shall be limited to administering  
9 medication, excluding **the administration of medications by an injectable route** other than:

10 (a) Insulin; and

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

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

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

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

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

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

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

24 (c) A graduate nurse who is prevented from attending the first licensing examination  
25 following graduation by reason of active duty in the military may practice as a graduate nurse  
26 pending the results of the first licensing examination scheduled by the board following the  
27 release of such graduate nurse from active military duty or pending the results of the first  
28 licensing examination taken by the graduate nurse while involved in active military service  
29 whichever comes first;

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

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

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

40 (10) The practice of any legally qualified and licensed nurse of another state, territory,  
41 or foreign country whose responsibilities include transporting patients into, out of, or through

42 this state while actively engaged in patient transport that does not exceed forty-eight hours in  
43 this state.

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