

FIRST REGULAR SESSION

# SENATE BILL NO. 225

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MATHEWSON.

Pre-filed January 2, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0970S.011

## AN ACT

To repeal section 660.050, RSMo 2000, relating to the department of health and senior services, and to enact in lieu thereof two new sections relating to the same subject, with an emergency clause.

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

Section A. Section 660.050, RSMo 2000, is repealed and two new sections enacted in lieu thereof, to be known as sections 192.002 and 660.050, to read as follows:

**192.002. The department of health shall be known as the "Department of Health and Senior Services".**

660.050. 1. **Effective July 1, 2001**, the "Division of Aging" is hereby [created and established as a division of the department of social services] **transferred from the department of social services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974.** The division shall aid and assist the elderly and low-income handicapped adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The division shall regulate adult long-term care facilities under the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

2. In addition to its duties and responsibilities enumerated under other provisions of law, the division shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

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

- (2) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;
- (3) Provide technical assistance, planning and training to local area agencies on aging;
- (4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;
- (5) Serve as liaison between the department of **[social services] health and senior services** and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;
- (6) Conduct medical review (inspections of care) activities such as utilization reviews, independent professional reviews, and periodic medical reviews to determine medical and social needs for the purpose of eligibility for Title XIX, and for level of care determination;
- (7) Certify long-term care facilities for participation in the Title XIX program;
- (8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the liaison between the Social Security Administration and the department of **[social services] health and senior services** concerning Supplemental Security Income beneficiaries;
- (9) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;
- (10) Provide consultation to long-term care facilities in all areas governed by state and federal regulations;
- (11) Serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of subsection 1 of this section and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;
- (12) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities for elderly and handicapped persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;
- (13) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division or to the state for the benefit of elderly persons in this state;
- (14) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;
- (15) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the division;

(16) After consultation with the governor's advisory council on aging, make recommendations for legislative action to the governor and to the general assembly;

(17) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs;

(18) Maintain a clearinghouse for information related to the needs and interests of elderly persons, including information on the Missouri care options program;

(19) Provide area agencies on aging with assistance in applying for federal, state, and private grants and identifying new funding sources;

(20) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures;

(21) Provide transportation services, home delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income handicapped adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

(22) Monitor the process pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills.

3. The division director, subject to the supervision of the director of the department of [social services] **health and senior services**, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority under chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for the performance of the duties and responsibilities of the division.

4. The division may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of [social services] **health and senior services** and the governor. In the event that the division withdraws the area agency on aging designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency on aging until a new area agency on aging is designated.

5. Any person hired by the department of [social services] **health and senior services** after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall complete at least one hundred hours of basic orientation regarding the

inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of [social services] **health and senior services** shall by rule describe the curriculum and structure of such continuing education.

6. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in sections 198.070 and 198.090, RSMo, and sections 660.050, 660.250 and 660.300 to 660.320. [No rule or portion of a rule promulgated under the authority of this chapter and sections 198.070 and 198.090, RSMo, shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.**

7. Missouri care options is a program, operated and coordinated by the division of aging, which informs individuals of the variety of care options available to them when they may need long-term care.

Section B. Because action is necessary to assure the orderly transfer of programs between the departments of health and social services and the continuity of services for senior citizens, sections 192.002 and 660.050 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and sections 192.002 and 660.050 of this act shall be in full force and effect upon its passage and approval.