

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 24
92ND GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, February 20, 2003, with recommendation that the Senate Committee Substitute do pass.

0494S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 660.058, 660.250, 660.260, and 660.300, RSMo, and to enact in lieu thereof six new sections relating to in-home services for the elderly, with penalty provisions.

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

Section A. Sections 660.058, 660.250, 660.260, and 660.300, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 660.250, 660.252, 660.260, 660.300, 660.302, and 1, to read as follows:

660.250. As used in sections 660.250 to 660.305, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;
- (2) "Court", the circuit court;
- (3) "Department", the department of **[social] health and senior** services;
- (4) "Director", director of the department of **[social] health and senior** services or his designees;
- (5) "Eligible adult", a person sixty years of age or older **who is unable to protect his or her own interests or is unable to meet his or her essential human needs** or an adult with a handicap, as defined in section 660.053, between the ages of eighteen and fifty-nine who is unable to protect his own interests or adequately perform or obtain services which are necessary to meet his essential human needs;
- (6) "**Home health agency**", an entity licensed pursuant to section 197.400, RSMo;
- (7) "**Home health agency employee**", a person employed by a home health

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

agency;

(8) "Home health patient", an eligible adult who is receiving services through any home health agency;

[(6)] (9) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

[(7)] (10) "In-home services employee", a person employed by an in-home services provider agency;

[(8)] (11) "In-home services provider agency", a business entity under contract with the department or with a Medicaid participation agreement [or an agency licensed by the department of health and senior services as provided in sections 197.400 to 197.470, RSMo], which employs persons to deliver any kind of services provided for eligible adults in their private homes;

[(9)] (12) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

[(10)] (13) "Likelihood of serious physical harm", one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of his failure or inability to provide for his essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself, as evidenced by recent credible threats, acts, or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

[(11)] (14) "Neglect", the failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

[(12)] (15) "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his essential human needs.

660.252. 1. This act shall be known as the "Safe at Home Act".

2. All Medicaid participation agreements entered into between the department of health and senior services and in-home service provider agencies shall include, as part of the initial aide training requirement, training on abuse and neglect identification, prevention and reporting, which shall be successfully completed prior to unsupervised contact with clients.

660.260. Upon receipt of a report, the department shall [make] **initiate** a prompt and thorough investigation [to]. **Within twenty-four hours, the department shall investigate reports which indicate a clear and immediate danger. The department shall** determine whether or not an eligible adult is facing a likelihood of serious physical harm and is in need of protective services. The department shall provide for any of the following:

(1) Identification of the eligible adult and determination that the eligible adult is eligible for services;

(2) Evaluation and diagnosis of the needs of eligible adults;

(3) Provision of social casework, counseling or referral to the appropriate local or state authority;

(4) Assistance in locating and receiving alternative living arrangements as necessary;

(5) Assistance in locating and receiving necessary protective services; [or]

(6) **Referral to the department of mental health for protective intervention and oversight of clients being served by the department of mental health; or**

(7) The coordination and cooperation with other state agencies and public and private agencies in exchange of information and the avoidance of duplication of services.

660.300. 1. [Beginning January 1, 1993,] When any physician, dentist, chiropractor, optometrist, podiatrist, [intern,] nurse, **nurse practitioner, physician's assistant, hospital and clinic personnel engaged in examination, care, or treatment of persons, or other health practitioners,** medical examiner, **coroner, mental health professional,** social worker, psychologist, minister, **funeral director, embalmer,** Christian Science practitioner, peace officer, **probation or parole officer, law enforcement officer,** pharmacist, physical therapist, in-home services owner, **in-home services provider,** in-home services operator, in-home services employee, **home health agency or home health agency employee, adult day care worker,** or employee of the department of social services or of the department of health and senior services or of the department of mental health **or employee for a local area agency on aging or for an organized area agency on aging program** has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he **or she** shall immediately report or cause a report to be made to the department. **If the report is made by a physician of the in-home services client, then the department shall maintain contact with the physician regarding the progress of the investigation.**

2. When a report of suspected abuse or neglect of an in-home services client

is received by the department, the client's case manager and the department nurse shall be notified. The client's case manager shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize the in-home services provider nurse to assist the case manager with the investigation.

3. Local area agencies on aging shall provide volunteer training, if requested, to those persons listed in subsection 1 of this section regarding the detection and report of abuse and neglect, pursuant to this section.

[2.] 4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

[3.] 5. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, **the home health agency, the home health agency employee**, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

[4.] 6. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an in-home services client **or home health patient** has been abused or neglected by an in-home services employee **or home health agency employee** may report such information to the department.

[5.] 7. Upon receipt of a report, the department shall initiate a prompt and thorough investigation.

[6.] 7. If the investigation indicates possible abuse or neglect of an in-home services client **or home health patient**, the investigator shall refer the complaint together with his **or her** report to the department director or his **or her** designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate **[removal] action** is necessary to protect the in-home services client **or home health patient** from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the in-home services client **or home health patient** in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client **or home health patient**, for a period not to exceed thirty days.

[7.] 8. Reports shall be confidential, as provided under section 660.320.

[8.] 9. Anyone, except any person who has abused or neglected an in-home services client **or home health patient**, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil

or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

[9.] 10. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

[10.] 11. No person who directs or exercises any authority in an in-home services provider agency **or home health agency** shall harass, dismiss or retaliate against an in-home services client **or home health patient**, or an in-home services employee **or a home health agency employee** because he or any member of his **or her** family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency **or home health agency** or any in-home services employee **or home health agency employee** which he has reasonable cause to believe has been committed or has occurred.

[11.] 12. Any person who knowingly abuses or neglects an in-home services client **or home health patient** shall be guilty of a class D felony. **If such person is an in-home services employee and has been determined guilty by a court, and if the supervising in-home services provider willfully and knowingly failed to report known abuse by said employee to the department, then the supervising in-home services provider may be subject to administrative penalties of one thousand dollars per violation to be collected by the department and the money received therefor shall be paid to the director of revenue and deposited in the state treasury to the credit of the general revenue fund. Any in-home services provider which has had administrative penalties imposed by the department or which has had its contract terminated may seek an administrative review of the department's action pursuant to chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed to the circuit court in the county where the violation occurred for a trial de novo. For purposes of this subsection, the term "violation" shall mean a determination of guilt by a court. The department shall establish a quality assurance and supervision process for clients. The process shall require an in-home services provider agency to conduct random visits to verify compliance with program standards and verify the accuracy of records kept by an in-home services employee.**

[12.] 13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client **or home health patient** while employed by an in-home services provider agency[.] **or home health agency. Any in-home services provider agency or home health agency which knowingly employs a person who**

refuses to register with the Family Care Safety Registry or who is listed on any of the background check lists in the Family Care Safety Registry, pursuant to sections 210.900 to 210.936, RSMo, will be guilty of a class A misdemeanor.

14. At the time a client has been assessed to determine the level of care as required by rule and is eligible for in-home services, the department shall conduct a "Safe at Home Evaluation" to determine the client's physical, mental and environmental capacity. The department shall develop the safe at home evaluation tool by rule in accordance with chapter 536, RSMo. The purpose of the safe at home evaluation is to assure that each client has the appropriate level of services and professionals involved in the client's care. The plan of service or care for each in-home services client shall be authorized by a nurse. The department may authorize the in-home services nurse, licensed pursuant to chapter 335, RSMo, in lieu of the department nurse to conduct the assessment of the client's condition and to establish a plan of services or care. The department may use the expertise, services or programs of other departments and agencies on a case-by-case basis to establish the plan of service or care. The department may, as indicated by the safe at home evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030, for evaluation and treatment as necessary.

15. Authorized nurse visits shall be at least twice annually for the purpose of assessing the client and the client's plan of services. The provider nurse shall report the results of his or her visits to the client's case manager. If the provider nurse believes that the plan of service requires alteration, the department shall be notified and the department shall make a client evaluation. All authorized nurse visits shall be reimbursed to the in-home services provider. All authorized nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients whose services have reached one hundred percent of the average statewide charge for care and treatment in an intermediate care facility, provided that the services have been pre-authorized by the department.

16. All in-home services clients shall be advised of their rights by the department at the initial evaluation. The rights shall include, but not be limited to, the right to call the department for any reason, including dissatisfaction with the provider or services. The department shall establish a process to receive these nonabuse and neglect calls other than the elder abuse and neglect hotline.

17. Subject to appropriations, all nurse visits authorized in sections 660.250 to 660.300 shall be reimbursed to the in-home services provider agency.

660.302. 1. The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections

660.250 to 660.295 and shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295.

2. The division of senior services and law enforcement agencies shall require training and cross-training of personnel regarding the proper handling of cases involving elder abuse. The division of senior services, in cooperation with law enforcement agencies, shall, by rule, develop a checklist for division and law enforcement personnel to follow when investigating possible elder abuse.

3. 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, 2003, shall be invalid and void.

Section 1. 1. Before July 1, 2004, the department shall establish a telephone check-in pilot project. Such pilot project shall require that a telephone check-in system be established for in-home service employees, as defined in section 660.250, RSMo, to accurately document the actual time that such employees spend in clients' homes by requiring such employees to clock in and out of the client's home by telephone. Participating providers will be allowed to round to the nearest half hour in order to meet the requirement to submit billing to the state in full sixty-minute increments. The state shall track the relevant outcomes of the pilot project related to client satisfaction and cost savings to the state.

2. In connection with implementing the telephone check-in project authorized pursuant to this section, in order to remedy any over-collections or under-collections of the involved costs from previous period, the department shall follow a true-up procedure. As used in this section, "true-up" procedure shall accurately and appropriately remedy any over-billings or under-billings from previous months to assure cost-neutrality.

3. The department may promulgate rules to implement the provisions of this section. 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, 2003, shall be invalid and void.

[660.058. 1. The division of aging shall provide budget allotment tables to each area agency on aging by January first of each year. Each area agency on aging shall submit its area plan, area budget and service contracts to the division of aging by March first of each year. Each April, the area agencies on aging shall present their plans to the division of aging in a public hearing scheduled by the division and held in the area served by the area agency on aging. Within thirty days of such hearing, the division shall report findings and recommendations to the board of directors for the area agency on aging, the area agency on aging advisory council, the members of the senate budget committee and the members of the house appropriations committee for social services and corrections.

2. Each area agency on aging shall include in its area plan performance measures and outcomes to be achieved for each year covered by the plan. Such measures and outcomes shall also be presented to the division during the public hearing.

3. The division of aging shall conduct on-site monitoring of each area agency on aging at least once a year. The division of aging shall send all monitoring reports to the area agency on aging advisory council and the board of directors for the area agency which is the subject of the reports.]

Bill

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