

FIRST REGULAR SESSION

SENATE BILL NO. 24

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0494S.011

AN ACT

To repeal sections 660.058, 660.250, 660.260, and 660.300, RSMo, and to enact in lieu thereof three 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Section A. Sections 660.058, 660.250, 660.260, and 660.300, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 660.250, 660.260, and 660.300, to read as follows: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 services;

(4) "Director", director of the department of social 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) "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) "In-home services employee", a person employed by an in-home services provider agency;

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

(8) "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) "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) "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) "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) "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.

660.260. Upon receipt of a report, the department shall make a prompt and thorough investigation to 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, Christian Science practitioner, peace officer, **probation or parole officer, law enforcement officer**, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services 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 has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he shall immediately report or cause a report to be made to the department.

2. 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. 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, 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. 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 has been abused or neglected by an in-home services employee may report such information to the department.

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

6. If the investigation indicates possible abuse or neglect of an in-home services client, the investigator shall refer the complaint together with his report to the department director or his 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 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 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, for a period not to exceed thirty days.

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

8. Anyone, except any person who has abused or neglected an in-home services client, 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. 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. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services employee because he or any member of his 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 any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

11. Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony.

12. 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 while employed by an in-home services provider agency.

[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.]

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