

SECOND EXTRAORDINARY SESSION
HOUSE BILL NO. 7

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SUTHERLAND, CROWELL,
JETTON AND WRIGHT (Co-sponsors).

Read 1st time September 9, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2349L.011

AN ACT

To repeal sections 660.300 and 660.317, RSMo, and to enact in lieu thereof two new sections relating to nursing homes, with penalty provisions and an emergency clause.

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

Section A. Sections 660.300 and 660.317, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 660.300 and 660.317, to read as follows:

660.300. 1. When any adult day care worker; chiropractor; Christian Science
2 practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental
3 health, or health and senior services; employee of a local area agency on aging or an organized
4 area agency on aging program; funeral director; home health agency or home health agency
5 employee; hospital and clinic personnel engaged in examination, care, or treatment of persons;
6 in-home services owner, provider, operator, or employee; law enforcement officer; long-term
7 care facility administrator or employee; medical examiner; medical resident or intern; mental
8 health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner;
9 peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist;
10 probation or parole officer; psychologist; or social worker has reasonable cause to believe that
11 an in-home services client has been abused or neglected, as a result of in-home services, he or
12 she shall immediately report or cause a report to be made to the department. If the report is made
13 by a physician of the in-home services client, the department shall maintain contact with the
14 physician regarding the progress of the investigation.

15 2. When a report of deteriorating physical condition resulting in possible abuse or
16 neglect of an in-home services client is received by the department, the client's case manager and

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

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

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

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

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

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

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

45 8. Reports shall be confidential, as provided under section 660.320.

46 9. Anyone, except any person who has abused or neglected an in-home services client
47 or home health patient, who makes a report pursuant to this section or who testifies in any
48 administrative or judicial proceeding arising from the report shall be immune from any civil or
49 criminal liability for making such a report or for testifying except for liability for perjury, unless
50 such person acted negligently, recklessly, in bad faith, or with malicious purpose.

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

53 initiation of the investigation.

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

61 12. Any person who abuses or neglects an in-home services client or home health patient
62 is subject to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo. If such
63 person is an in-home services employee and has been found guilty by a court, and if the
64 supervising in-home services provider willfully and knowingly failed to report known abuse by
65 such employee to the department, the supervising in-home services provider may be subject to
66 administrative penalties of one thousand dollars per violation to be collected by the department
67 and the money received therefor shall be paid to the director of revenue and deposited in the state
68 treasury to the credit of the general revenue fund. Any in-home services provider which has had
69 administrative penalties imposed by the department or which has had its contract terminated may
70 seek an administrative review of the department's action pursuant to chapter 621, RSMo. Any
71 decision of the administrative hearing commission may be appealed to the circuit court in the
72 county where the violation occurred for a trial de novo. For purposes of this subsection, the term
73 "violation" means a determination of guilt by a court.

74 13. The department shall establish a quality assurance and supervision process for clients
75 that requires an in-home services provider agency to conduct random visits to verify compliance
76 with program standards and verify the accuracy of records kept by an in-home services employee.

77 14. The department shall maintain the employee disqualification list and place on the
78 employee disqualification list the names of any persons who have been finally determined by the
79 department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or
80 neglected an in-home services client or home health patient while employed by an in-home
81 services provider agency or home health agency. For purposes of this section only, "knowingly"
82 and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts
83 "knowingly" with respect to the person's conduct when a reasonable person should be aware of
84 the result caused by his or her conduct. A person acts "recklessly" when the person consciously
85 disregards a substantial and unjustifiable risk that the person's conduct will result in serious
86 physical injury and such disregard constitutes a gross deviation from the standard of care that a
87 reasonable person would exercise in the situation. [Any in-home services provider agency or
88 home health agency that knowingly employs a person who refuses to register with the family care

89 safety registry or who is listed on any of the background check lists in the family care safety
90 registry, pursuant to sections 210.900 to 210.937, RSMo, is guilty of a class A misdemeanor.]

91 15. At the time a client has been assessed to determine the level of care as required by
92 rule and is eligible for in-home services, the department shall conduct a "Safe at Home
93 Evaluation" to determine the client's physical, mental, and environmental capacity. The
94 department shall develop the safe at home evaluation tool by rule in accordance with chapter
95 536, RSMo. The purpose of the safe at home evaluation is to assure that each client has the
96 appropriate level of services and professionals involved in the client's care. The plan of service
97 or care for each in-home services client shall be authorized by a nurse. The department may
98 authorize the licensed in-home services nurse, in lieu of the department nurse, to conduct the
99 assessment of the client's condition and to establish a plan of services or care. The department
100 may use the expertise, services, or programs of other departments and agencies on a case-by-case
101 basis to establish the plan of service or care. The department may, as indicated by the safe at
102 home evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030,
103 for evaluation and treatment as necessary.

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

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

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

660.317. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:

- 3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- 4 (2) Provides in-home services under contract with the department;
- 5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in

6 health care facilities;

7 (4) Is an entity licensed pursuant to chapter 197, RSMo;

8 (5) Is a public or private facility, day program, residential facility or specialized service
9 operated, funded or licensed by the department of mental health; or

10 (6) Is a licensed adult day care provider.

11 2. For the purpose of this section "patient or resident" has the same meaning as such term
12 is defined in section 43.540, RSMo.

13 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary
14 position to have contact with any patient or resident the provider shall, or in the case of
15 temporary employees hired through or contracted for an employment agency, the employment
16 agency shall prior to sending a temporary employee to a provider:

17 (1) Request a criminal background check as provided in section 43.540, RSMo.
18 Completion of an inquiry to the highway patrol for criminal records that are available for
19 disclosure to a provider for the purpose of conducting an employee criminal records background
20 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
21 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
22 shall not be construed to exempt a provider from further inquiry pursuant to common law
23 requirements governing due diligence. If an applicant has not resided in this state for five
24 consecutive years prior to the date of his or her application for employment, the provider shall
25 request a nationwide check for the purpose of determining if the applicant has a prior criminal
26 history in other states. The fingerprint cards and any required fees shall be sent to the highway
27 patrol's criminal records division. The first set of fingerprints shall be used for searching the
28 state repository of criminal history information. If no identification is made, the second set of
29 fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division,
30 for the searching of the federal criminal history files. The patrol shall notify the submitting state
31 agency of any criminal history information or lack of criminal history information discovered
32 on the individual. The provisions relating to applicants for employment who have not resided
33 in this state for five consecutive years shall apply only to persons who have no employment
34 history with a licensed Missouri facility during that five-year period. Notwithstanding the
35 provisions of section 610.120, RSMo, all records related to any criminal history information
36 discovered shall be accessible and available to the provider making the record request; and

37 (2) Make an inquiry to the department of health and senior services whether the person
38 is listed on the employee disqualification list as provided in section 660.315.

39 4. When the provider requests a criminal background check pursuant to section 43.540,
40 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
41 of such record check. When a provider requests a nationwide criminal background check

42 pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any
43 background check required pursuant to this section shall not exceed five dollars which shall be
44 paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal
45 background check shall be subject to the availability of appropriations.

46 5. An applicant for a position to have contact with patients or residents of a provider
47 shall:

48 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
49 request a criminal records review;

50 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
51 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
52 and shall include any suspended imposition of sentence, any suspended execution of sentence
53 or any period of probation or parole; and

54 (3) Disclose if the applicant is listed on the employee disqualification list as provided
55 in section 660.315.

56 6. An applicant who knowingly fails to disclose his or her criminal history as required
57 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
58 A misdemeanor if the provider knowingly hires or retains a person to have contact with patients
59 or residents and the person has been convicted of, pled guilty to or nolo contendere in this state
60 or any other state or has been found guilty of a crime, which if committed in Missouri would be
61 a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection
62 3 of section 198.070, RSMo, or section 568.020, RSMo.

63 **7. Any in-home services provider agency or home health agency shall be guilty of**
64 **a class A misdemeanor if such agency knowingly employs a person to provide in-home**
65 **services or home health services to any in-home services client or home health patient and**
66 **such person either refuses to register with the family care safety registry or is listed on any**
67 **of the background check lists in the family care safety registry pursuant to sections 210.900**
68 **to 210.937, RSMo.**

69 [7.] **8.** The highway patrol shall examine whether protocols can be developed to allow
70 a provider to request a statewide fingerprint criminal records review check through local law
71 enforcement agencies.

72 [8.] **9.** A provider may use a private investigatory agency rather than the highway patrol
73 to do a criminal history records review check, and alternatively, the applicant pays the private
74 investigatory agency such fees as the provider and such agency shall agree.

75 [9.] **10. Except for the hiring restriction based on the department of health and**
76 **senior services employee disqualification list established pursuant to section 660.315, the**
77 **department of health and senior services shall promulgate rules and regulations to waive the**

78 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
79 cause" means the department has made a determination by examining the employee's prior work
80 history and other relevant factors that such employee does not present a risk to the health or
81 safety of residents.

Section B. Because immediate action is necessary to clarify the laws regarding
2 disqualification of employees of in-home service provider agencies and in home health care
3 agencies, section A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and section A of this act shall be in full force and effect upon its
6 passage and approval.