

SECOND REGULAR SESSION

HOUSE BILL NO. 1887

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LADD BAKER AND HOSMER (Co-sponsors).

Read 1st time February 11, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3870L.011

AN ACT

To repeal sections 660.058, 660.250, 660.260, 660.300, and 660.317, RSMo, and to enact in lieu thereof seven 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Section A. Sections 660.058, 660.250, 660.260, 660.300, and 660.317, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 660.250, 660.252, 660.260, 660.300, 660.302, 660.317, and 1, to read as follows: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] **the director's** designees;
- (5) "Eligible adult", a person sixty years of age or older 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 agency;
- (8) "**Home health patient**", an eligible adult who is receiving services through any

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

15 **home health agency;**

16 [(6)] (9) "In-home services client", an eligible adult who is receiving services in his or
17 her private residence through any in-home services provider agency;

18 [(7)] (10) "In-home services employee", a person employed by an in-home services
19 provider agency;

20 [(8)] (11) "In-home services provider agency", a business entity under contract with the
21 department **of health and senior services or the department of social services**, or with a
22 Medicaid participation agreement [or an agency licensed by the department of health as provided
23 in sections 197.400 to 197.470, RSMo], which employs persons to deliver any kind of services
24 provided for eligible adults in their private homes;

25 [(9)] (12) "Least restrictive environment", a physical setting where protective services
26 for the eligible adult and accommodation is provided in a manner no more restrictive of an
27 individual's personal liberty and no more intrusive than necessary to achieve care and treatment
28 objectives;

29 [(10)] (13) "Likelihood of serious physical harm", one or more of the following:

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

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

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

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

43 [(11)] (14) "Neglect", the failure to provide services to an eligible adult by any person,
44 firm or corporation with a legal or contractual duty to do so, when such failure presents either
45 an imminent danger to the health, safety, or welfare of the client or a substantial probability that
46 death or serious physical harm would result;

47 [(12)] (15) "Protective services", services provided by the state or other governmental
48 or private organizations or individuals which are necessary for the eligible adult to meet his **or**
49 **her** essential human needs.

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

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

6 660.260. Upon receipt of a report, the department shall [make] **initiate** a prompt and
2 thorough investigation [to]. Within twenty-four hours, the department shall investigate reports
3 which indicate a clear and immediate danger. The department shall determine whether or not
4 an eligible adult is facing a likelihood of serious physical harm and is in need of protective
5 services. The department shall provide for any of the following:

- 6 (1) Identification of the eligible adult and determination that the eligible adult is eligible
7 for services;
8 (2) Evaluation and diagnosis of the needs of eligible adults;
9 (3) Provision of social casework, counseling or referral to the appropriate local or state
10 authority;
11 (4) Assistance in locating and receiving alternative living arrangements as necessary;
12 (5) Assistance in locating and receiving necessary protective services; or
13 (6) The coordination and cooperation with other state agencies and public and private
14 agencies in exchange of information and the avoidance of duplication of services.

660.300. 1. [Beginning January 1, 1993,] When any physician, dentist, chiropractor,
2 optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,
3 Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services
4 owner, **in-home services provider**, in-home services operator, in-home services employee,
5 **home health agency or home health agency employee**, or employee of the department of social
6 services or of the department of health or of the department of mental health **or employee for**
7 **a local area agency on aging or for an organized area agency on aging program** has
8 reasonable cause to believe that an in-home services client has been abused or neglected, as a
9 result of in-home services, he **or she** shall immediately report or cause a report to be made to the
10 department. **If the report is made by a physician of the in-home services client, then the**
11 **department shall maintain contact with the physician regarding the progress of the**
12 **investigation.**

13 **2. When a report of suspected abuse or neglect of an in-home services client is**
14 **received by the department, the client's case manager and the department nurse shall be**
15 **notified. The client's case manager shall investigate and immediately report the results of**
16 **the investigation to the department nurse. The department may authorize the in-home**
17 **services provider nurse to assist the case manager with the investigation.**

18 **3. Local area agencies on aging shall provide volunteer training, if requested, to**

19 **those persons listed in subsection 1 of this section regarding the detection and report of**
20 **abuse and neglect, pursuant to this section.**

21 [2.] **4.** Any person required in subsection 1 of this section to report or cause a report to
22 be made to the department who fails to do so within a reasonable time after the act of abuse or
23 neglect is guilty of a class A misdemeanor.

24 [3.] **5.** The report shall contain the names and addresses of the in-home services provider
25 agency, the in-home services employee, the in-home services client, **the home health agency,**
26 **the home health agency employee,** information regarding the nature of the abuse or neglect, the
27 name of the complainant, and any other information which might be helpful in an investigation.

28 [4.] **6.** In addition to those persons required to report under subsection 1 of this section,
29 any other person having reasonable cause to believe that an in-home services client **or home**
30 **health patient** has been abused or neglected by an in-home services employee **or home health**
31 **agency employee** may report such information to the department.

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

34 [6.] **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 removal is necessary to protect the in-home services client **or home health patient** from abuse
39 or 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 [7.] **8.** Reports shall be confidential, as provided under section 660.320.

46 [8.] **9.** Anyone, except any person who has abused or neglected an in-home services
47 client **or home health patient,** who makes a report pursuant to this section or who testifies in
48 any administrative or judicial proceeding arising from the report shall be immune from any civil
49 or criminal liability for making such a report or for testifying except for liability for perjury,
50 unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

51 [9.] **10.** Within five working days after a report required to be made under this section
52 is received, the person making the report shall be notified in writing of its receipt and of the
53 initiation of the investigation.

54 [10.] **11.** No person who directs or exercises any authority in an in-home services

55 provider agency **or home health agency** shall harass, dismiss or retaliate against an in-home
56 services client **or home health patient**, or an in-home services employee **or a home health**
57 **agency employee** because he or any member of his **or her** family has made a report of any
58 violation or suspected violation of laws, standards or regulations applying to the in-home
59 services provider agency **or home health agency** or any in-home services employee **or home**
60 **health agency employee** which he has reasonable cause to believe has been committed or has
61 occurred.

62 [11.] **12.** Any person who knowingly abuses or neglects an in-home services client **or**
63 **home health patient** shall be guilty of a class D felony. **If such person is an in-home services**
64 **employee and has been determined guilty by a court, and if the supervising in-home**
65 **services provider willfully and knowingly failed to report known abuse by such employee**
66 **to the department, the supervising in-home services provider may be subject to**
67 **administrative penalties of one thousand dollars per violation to be collected by the**
68 **department and the money received therefor shall be paid to the director of revenue and**
69 **deposited in the state treasury to the credit of the general revenue fund. Any in-home**
70 **services provider which has had administrative penalties imposed by the department or**
71 **which has had its contract terminated may seek an administrative review of the**
72 **department's action pursuant to chapter 621, RSMo. Any decision of the administrative**
73 **hearing commission may be appealed to the circuit court in the county where the violation**
74 **occurred for a trial de novo. For purposes of this subsection, the term "violation" shall**
75 **mean a determination of guilt by a court. The department shall establish a quality**
76 **assurance and supervision process for clients. The process shall require an in-home**
77 **services provider agency to conduct random visits to verify compliance with program**
78 **standards and verify the accuracy of records kept by an in-home services employee.**

79 [12.] **13.** The department shall maintain the employee disqualification list and place on
80 the employee disqualification list the names of any persons who have been finally determined
81 by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely
82 abused or neglected an in-home services client **or home health patient** while employed by an
83 in-home services provider agency[.] **or home health agency. Any in-home services provider**
84 **agency or home health agency which knowingly employs a person who is currently listed**
85 **on the employee disqualification list, pursuant to section 660.315, or who refuses to register**
86 **with the family care safety registry or who is listed on any of the background check lists**
87 **in the family care safety registry, pursuant to sections 210.900 to 210.936, RSMo, is guilty**
88 **of a class A misdemeanor.**

89 **14.** At the time a client is assessed to determine the level of care as required by rule
90 **and is eligible for in-home services, the department shall conduct a "Safe at Home**

91 Evaluation" to determine the client's physical, mental, and environmental capacity, and
92 the personal safety of the client. The department shall develop the safe at home evaluation
93 tool by rule in accordance with chapter 536, RSMo. The purpose of the safe at home
94 evaluation is to assure that each client has the appropriate level of services and
95 professionals involved in the client's care. The plan of service or care for each in-home
96 services client shall be authorized by a nurse. The department may authorize the in-home
97 services nurse, licensed pursuant to chapter 335, RSMo, in lieu of the department nurse
98 to conduct the assessment of the client's condition and to establish a plan of services or
99 care. The department may use the expertise, services or programs of other departments
100 and agencies on a case-by-case basis to establish the plan of service or care. The
101 department may, as indicated by the safe at home evaluation, refer any client to a mental
102 health professional, as defined in 9 CSR 30-4.030, for evaluation and treatment as
103 necessary.

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

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

118 17. All nurse visits authorized in sections 660.250 to 660.300 shall be reimbursed
119 to the in-home services provider agency.

660.302. 1. The department shall investigate incidents and reports of elder abuse
2 using the procedures established in sections 660.250 to 660.295 and shall promptly refer
3 all suspected cases of elder abuse to the appropriate law enforcement agency and
4 prosecutor and shall determine whether protective services are required pursuant to
5 sections 660.250 to 660.295.

6 2. The department and law enforcement agencies shall require training and cross-
7 training of personnel regarding the proper handling of cases involving elder abuse. The

8 department in cooperation with law enforcement agencies, shall, by rule, develop a
9 checklist for department and law enforcement personnel to follow when investigating
10 possible elder abuse.

11 **3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
12 **that is created under the authority delegated in this section shall become effective only if**
13 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
14 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
15 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
16 **to review, to delay the effective date or to disapprove and annul a rule are subsequently**
17 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
18 **adopted after August 28, 2002, shall be invalid and void.**

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; [or]

7 **(4) Employs persons who provide personal care assistance services. For purposes**
8 **of this section, provider does not include the individual receiving personal care assistance**
9 **or any member of such individual's immediate family;**

10 **(5) Is an entity licensed pursuant to chapter 197, RSMo; or**

11 **[(5)] (6) Is a public or private facility, day program, residential facility or specialized**
12 **service operated, funded or licensed by the department of mental health.**

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

15 3. Beginning August 28, 1997, not later than two working days of hiring any person for
16 a full-time, part-time or temporary position to have contact with any patient or resident the
17 provider shall, or in the case of temporary employees hired through an employment agency, the
18 employment agency shall prior to sending a temporary employee to a provider:

19 (1) Request a criminal background check as provided in section 43.540, RSMo.
20 Completion of an inquiry to the highway patrol for criminal records that are available for
21 disclosure to a provider for the purpose of conducting an employee criminal records background
22 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
23 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
24 shall not be construed to exempt a provider from further inquiry pursuant to common law
25 requirements governing due diligence; and

26 (2) Make an inquiry to the department of social services, whether the person is listed on
27 the employee disqualification list as provided in section 660.315.

28 4. When the provider requests a criminal background check pursuant to section 43.530,
29 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
30 of such record check.

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

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

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

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

41 6. An applicant who knowingly fails to disclose his criminal history as required in
42 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
43 A misdemeanor if the provider knowingly hires a person to have contact with patients or
44 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or
45 any other state or has been found guilty of a crime, which if committed in Missouri would be a
46 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection
47 3 of section 198.070, RSMo, or section 568.020, RSMo. **Any second or subsequent violation**
48 **of this section is a class D felony.**

49 7. The highway patrol shall examine whether protocols can be developed to allow a
50 provider to request a statewide fingerprint criminal records review check through local law
51 enforcement agencies.

52 8. A provider may use a private investigatory agency rather than the highway patrol to
53 do a criminal history records review check, and alternatively, the applicant pays the private
54 investigatory agency such fees as the provider and such agency shall agree.

55 9. The department of social services shall promulgate rules and regulations to waive the
56 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
57 cause" means the department has made a determination by examining the employee's prior work
58 history and other relevant factors that such employee does not present a risk to the health or
59 safety of residents.

Section 1. 1. By July 1, 2003, the department shall establish a telephone check-in
2 **pilot project. Such pilot project shall require that a telephone check-in system be**

3 established for in-home services employees, as defined in section 660.250, RSMo, to
4 accurately document the actual time that such employees spend in clients' homes by
5 requiring such employees to clock in and out of the client's home by telephone. Such
6 system shall also require in-home services employees to thoroughly document the specific
7 services delivered to clients.

8 **2. The department may promulgate rules to implement the provisions of this**
9 **section. No rule or portion of a rule promulgated under the authority of this section shall**
10 **become effective unless it has been promulgated pursuant to chapter 536, RSMo.**

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

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

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