

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 60

## 91ST GENERAL ASSEMBLY

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Reported from the Committee on Aging, Families and Mental Health, March 8, 2001, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

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### AN ACT

To repeal sections 660.050, 660.058, 660.250, 660.260 and 660.300, RSMo 2000, relating to in-home care for the elderly, and to enact in lieu thereof seven new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 660.050, 660.058, 660.250, 660.260 and 660.300, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 9.160, 660.050, 660.250, 660.252, 660.260, 660.300 and 660.302, to read as follows:

**9.160. The governor shall annually issue a proclamation setting apart the first Tuesday of March as "Alzheimer's Awareness Day", and recommending to the people of the state that the day be appropriately observed through activities which will increase awareness of Alzheimer's disease and related dementias.**

660.050. 1. The "Division of Aging" is hereby created and established as a division of the department of social services. 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] pursuant to** 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] pursuant to** other provisions of law, the division shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service

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

program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

(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 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 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] **and provide up-to-date information and technical assistance** related to the needs and interests of elderly persons **and persons with Alzheimer's disease or related dementias**, including information on the Missouri care options program, **dementia-specific training materials and dementia-specific trainers. Such dementia-specific information and technical assistance shall be maintained and provided in consultation with agencies, organizations and/or institutions of higher learning with expertise in dementia care;**

(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, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority [under] **pursuant to** 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 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 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 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.

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.

**8. The division shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services, adult daycare programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias, hospice programs and the division of aging. Such training shall be incorporated into new employee orientation and on-going in-service curricula for all employees involved in the care of persons with dementia, including, at a minimum, the following:**

**(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;**

**(2) For other employees who do not provide direct care for, but may have contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.**

**As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia-specific training.**

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 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 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 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 social 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. If the provider agency serves patients with Alzheimer's disease or related dementia, the agency shall include as part of the initial aide requirement training on care of Alzheimer's patients. The department shall describe by rule the curriculum for the training.**

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) 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, medical examiner, social worker, psychologist, minister,

**funeral director, embalmer, Christian Science practitioner, peace 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, or employee of the department of social services or of the department of health 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. 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 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 did not report the abuse by said employee to the department, then the supervising in-home services provider shall 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 is currently listed on the employee disqualification list, pursuant to section 660.315, or 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 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 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 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.**

**660.302. 1. The department of social 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 aging and law enforcement agencies shall require training and cross-training of personnel regarding the proper handling of cases involving elder abuse. The division of aging, 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, 2001, 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.]

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