

FIRST REGULAR SESSION

SENATE BILL NO. 405

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1809S.011

AN ACT

To repeal sections 208.909, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, RSMo, and to enact in lieu thereof eleven new sections relating to background screening for long-term care providers, with existing penalty provisions and an effective date.

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

Section A. Sections 208.909, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 208.909, 210.900, 210.903, 210.904, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, to read as follows:

208.909. 1. Consumers receiving personal care assistance services shall be responsible for:

- (1) Supervising their personal care attendant;
- (2) Verifying wages to be paid to the personal care attendant;
- (3) Preparing and submitting time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis;
- (4) Promptly notifying the department within ten days of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence;
- (5) Reporting any problems resulting from the quality of services rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department; and

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

15 (6) Providing the vendor with all necessary information to complete
16 required paperwork for establishing the employer identification number.

17 2. Participating vendors shall be responsible for:

18 (1) Collecting time sheets or reviewing reports of delivered services and
19 certifying the accuracy thereof;

20 (2) The Medicaid reimbursement process, including the filing of claims
21 and reporting data to the department as required by rule;

22 (3) Transmitting the individual payment directly to the personal care
23 attendant on behalf of the consumer;

24 (4) Monitoring the performance of the personal care assistance services
25 plan.

26 3. No state or federal financial assistance shall be authorized or expended
27 to pay for services provided to a consumer under sections 208.900 to 208.927, if
28 the primary benefit of the services is to the household unit, or is a household task
29 that the members of the consumer's household may reasonably be expected to
30 share or do for one another when they live in the same household, unless such
31 service is above and beyond typical activities household members may reasonably
32 provide for another household member without a disability.

33 4. No state or federal financial assistance shall be authorized or expended
34 to pay for personal care assistance services provided by a personal care attendant
35 **[who is listed] with a disqualifying finding under section 660.317 and as**
36 **promulgated by rule** on any of the background check lists in the family care
37 safety registry under sections 210.900 to 210.937, **or on a fingerprint-based**
38 **state and federal criminal background check**, unless a good cause waiver
39 is first obtained from the department in accordance with section 660.317.

40 5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a
41 telephone tracking system for the purpose of reporting and verifying the delivery
42 of consumer-directed services as authorized by the department of health and
43 senior services or its designee. Use of such a system prior to July 1, 2015, shall
44 be voluntary. The telephone tracking system shall be used to process payroll for
45 employees and for submitting claims for reimbursement to the MO HealthNet
46 division. At a minimum, the telephone tracking system shall:

47 (a) Record the exact date services are delivered;

48 (b) Record the exact time the services begin and exact time the services
49 end;

50 (c) Verify the telephone number from which the services are registered;

51 (d) Verify that the number from which the call is placed is a telephone
52 number unique to the client;

53 (e) Require a personal identification number unique to each personal care
54 attendant;

55 (f) Be capable of producing reports of services delivered, tasks performed,
56 client identity, beginning and ending times of service and date of service in
57 summary fashion that constitute adequate documentation of service; and

58 (g) Be capable of producing reimbursement requests for consumer
59 approval that assures accuracy and compliance with program expectations for
60 both the consumer and vendor.

61 (2) The department of health and senior services, in collaboration with
62 other appropriate agencies, including centers for independent living, shall
63 establish telephone tracking system pilot projects, implemented in two regions of
64 the state, with one in an urban area and one in a rural area. Each pilot project
65 shall meet the requirements of this section and section 208.918. The department
66 of health and senior services shall, by December 31, 2013, submit a report to the
67 governor and general assembly detailing the outcomes of these pilot projects. The
68 report shall take into consideration the impact of a telephone tracking system on
69 the quality of the services delivered to the consumer and the principles of
70 self-directed care.

71 (3) As new technology becomes available, the department may allow use
72 of a more advanced tracking system, provided that such system is at least as
73 capable of meeting the requirements of this subsection.

74 (4) The department of health and senior services shall promulgate by rule
75 the minimum necessary criteria of the telephone tracking system. Any rule or
76 portion of a rule, as that term is defined in section 536.010, that is created under
77 the authority delegated in this section shall become effective only if it complies
78 with and is subject to all of the provisions of chapter 536 and, if applicable,
79 section 536.028. This section and chapter 536 are nonseverable and if any of the
80 powers vested with the general assembly pursuant to chapter 536 to review, to
81 delay the effective date, or to disapprove and annul a rule are subsequently held
82 unconstitutional, then the grant of rulemaking authority and any rule proposed
83 or adopted after August 28, 2010, shall be invalid and void.

84 6. In the event that a consensus between centers for independent living
85 and representatives from the executive branch cannot be reached, the telephony
86 report issued to the general assembly and governor shall include a minority

87 report which shall detail those elements of substantial dissent from the main
88 report.

89 7. No interested party, including a center for independent living, shall be
90 required to contract with any particular vendor or provider of telephony services
91 nor bear the full cost of the pilot program.

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited
2 as the "Family Care Safety Act".

3 2. As used in sections 210.900 to 210.936, the following terms shall mean:

4 (1) "Child-care provider", any licensed or license-exempt child-care home,
5 any licensed or license-exempt child-care center, child-placing agency, residential
6 care facility for children, group home, foster family group home, foster family
7 home, employment agency that refers a child-care worker to parents or guardians
8 as defined in section 289.005. The term "child-care provider" does not include
9 summer camps or voluntary associations designed primarily for recreational or
10 educational purposes;

11 (2) "Child-care worker", any person who is employed by a child-care
12 provider, or receives state or federal funds, either by direct payment,
13 reimbursement or voucher payment, as remuneration for child-care services;

14 (3) "Department", the department of health and senior services;

15 (4) ["Elder-care provider", any operator licensed pursuant to chapter 198
16 or any person, corporation, or association who provides in-home services under
17 contract with the division of aging, or any employer of nurses or nursing
18 assistants of home health agencies licensed pursuant to sections 197.400 to
19 197.477, or any nursing assistants employed by a hospice pursuant to sections
20 197.250 to 197.280, or that portion of a hospital for which subdivision (3) of
21 subsection 1 of section 198.012 applies;

22 (5) "Elder-care worker", any person who is employed by an elder-care
23 provider, or who receives state or federal funds, either by direct payment,
24 reimbursement or voucher payment, as remuneration for elder-care services;

25 (6)] "Employer", any child-care provider, elder-care provider, or
26 personal-care provider as defined in this section;

27 **(5) "Long-term care provider", any person, corporation, or**
28 **association who:**

29 **(a) Is licensed as an operator under chapter 198;**

30 **(b) Provides-in-home services under section 660.250, or consumer**
31 **directed services under section 208.900;**

32 (c) Employs nurses or nursing assistants for temporary or
33 intermittent placement in health care facilities;

34 (d) Is licensed or certified under chapter 197;

35 (e) Is a public or private facility, day program, residential
36 facility, or specialized service operated, funded, or licensed by the
37 department of mental health; or

38 (f) Is a licensed adult day-care provider;

39 (6) "Long-term care worker", any person who is employed by a
40 long-term care provider, or who receives state or federal funds, either
41 by direct payment reimbursement, or voucher payment, as
42 remuneration for long-term care services;

43 (7) "Mental health provider", any mental retardation facility or group
44 home as defined in section 633.005;

45 (8) "Mental health worker", any person employed by a mental health
46 provider to provide personal care services and supports;

47 (9) "Patrol", the Missouri state highway patrol;

48 (10) "Personal-care attendant" or "personal-care worker", a person who
49 performs routine services or supports necessary for a person with a physical or
50 mental disability to enter and maintain employment or to live independently;

51 (11) "Personal-care provider", any person, corporation, or association who
52 provides personal-care services or supports under contract with the department
53 of mental health, the division of aging, the department of health and senior
54 services or the department of elementary and secondary education;

55 (12) "Related child care", child care provided only to a child or children
56 by such child's or children's grandparents, great-grandparents, aunts or uncles,
57 or siblings living in a residence separate from the child or children;

58 (13) "Related [elder] long-term care", care provided only to an elder by
59 an adult child, a spouse, a grandchild, a great-grandchild [or a], sibling, **parent,**
60 **grandparent, aunt, or uncle** of such **disabled or** elder **adult.**

210.903. 1. To protect children, the elderly, the disabled, including the
2 developmentally disabled individuals in this state, and to promote family and
3 community safety by providing information concerning family caregivers, there
4 is hereby established within the department of health and senior services a
5 "Family Care Safety Registry and Access Line" which shall be available by
6 January 1, 2001.

7 2. The family care safety registry shall contain information on child-care

8 workers', [elder-care] **long-term care** workers', mental health workers', and
9 personal-care workers' background and on child-care, [elder-care] **long-term**
10 **care**, mental health, and personal-care providers through:

11 (1) The patrol's criminal record check system pursuant to section 43.540,
12 including state and national information, to the extent possible;

13 (2) Probable cause findings of abuse and neglect prior to August 28, 2004,
14 or findings of abuse and neglect by a preponderance of the evidence after August
15 28, 2004, pursuant to sections 210.109 to 210.183 and, as of January 1, 2003,
16 financial exploitation of the elderly or disabled, pursuant to section 570.145;

17 (3) The [division of aging's] **department's** employee disqualification list
18 pursuant to section 660.315;

19 (4) [As of January 1, 2003,] The department of mental health's employee
20 disqualification registry;

21 (5) Foster parent licensure denials, revocations and involuntary
22 suspensions pursuant to section 210.496;

23 (6) Child-care facility license denials, revocations and suspensions
24 pursuant to sections 210.201 to 210.259;

25 (7) [Residential living facility and nursing home license denials,
26 revocations, suspensions and probationary status pursuant to chapter 198; and

27 (8) As of January 1, 2004,] A check of the patrol's Missouri uniform law
28 enforcement system (MULES) for sexual offender registrations pursuant to
29 section 589.400;

30 (8) **As of September 30, 2012, a check of the National Sex**
31 **Offender Public Website, accessible through the highway patrol;**

32 (9) **As of September 30, 2012, a check of the certified nurse**
33 **assistant registry and the nursing home administrator disciplinary**
34 **action data maintained by the division of regulation and licensure**
35 **within the department of health and senior services;**

36 (10) **As of September 30, 2012, a check of medical and osteopathic**
37 **physician, physician assistant, and nursing license data maintained by**
38 **the department of insurance, financial institutions and professional**
39 **registration;**

40 (11) **As of September 30, 2012, a check of educator certification**
41 **data maintained by the department of elementary and secondary**
42 **education.**

43 **3. The department shall operate as the single state agency which**

44 shall coordinate the background screening process under section
45 660.317 and the employment eligibility determination process under
46 section 210.904.

210.904. 1. In order to protect the elderly, disabled, and
2 developmentally disabled individuals in this state, there is hereby
3 established within the department of health and senior services a
4 background screening and employment eligibility determination
5 process, which shall apply to long-term care workers as defined in
6 section 210.900 and as provided in section 660.317.

7 2. The department shall make an employment eligibility
8 determination based on the results of:

9 (1) Prior to the date of hire:

10 (a) Review of the prospective employee's application for self-
11 disclosure of criminal history and other pertinent background
12 information under section 660.317 and as promulgated by rule. The
13 applicant shall not be eligible for employment if disqualifying findings
14 are disclosed; and

15 (b) Completion of the family care safety registry background
16 screening as provided in section 210.903. The applicant shall not be
17 eligible for employment if disqualifying findings are revealed under
18 section 660.317 or as promulgated by rule;

19 (2) Submission to a state and federal fingerprint-based criminal
20 record check within thirty days of hire as a provisional employee, and
21 prior to having direct access to patients, residents, in-home services
22 clients, or consumers. The applicant shall not be eligible for
23 employment if disqualifying findings are revealed under section 660.317
24 and as promulgated by rule.

25 3. Completion of subdivision (1) of subsection 2 of this section
26 without disqualifying findings shall permit the provider to hire the
27 individual on a provisional basis. The provider shall ensure the
28 provisional employee has no unsupervised direct access to patients or
29 residents, as defined in section 660.317. Provisional employment shall
30 terminate upon discovery of disqualifying findings in the state and
31 federal fingerprint-based criminal record check, or upon failure of the
32 applicant to submit to the state and federal fingerprint-based criminal
33 record check within thirty days of hire as a provisional employee.

34 4. Any provider, as defined in section 660.317, shall make an

35 **annual inquiry to the family care safety registry in order to maintain**
36 **the employee's eligibility for employment, and shall abide by the**
37 **employment eligibility determination as made by the department.**

210.906. 1. Every child-care worker or [elder-care] **long-term care**
2 worker hired on or after January 1, 2001, or personal-care worker hired on or
3 after January 1, 2002, or mental health worker hired on or after January 1, 2009,
4 shall complete a registration form provided by the department. The department
5 shall make such forms available no later than January 1, 2001, and may, by rule,
6 determine the specific content of such form, but every form shall:

7 (1) Request the valid Social Security number of the applicant;

8 (2) Include information on the person's right to appeal the information
9 contained in the registry pursuant to section 210.912;

10 (3) Contain the signed consent of the applicant for the background checks
11 required pursuant to this section; and

12 (4) Contain the signed consent for the release of information contained in
13 the background check for employment purposes only.

14 2. Every child-care worker or [elder-care] **long-term care** worker [hired
15 on or after January 1, 2001, and every], personal-care worker [hired on or after
16 January 1, 2002, and every], **and** mental health worker [hired on or after
17 January 1, 2009,] shall complete a registration form [within fifteen days of]
18 **prior to** the beginning of such person's employment. Any person employed as
19 a child-care, [elder-care] **long-term care**, mental health, or personal-care worker
20 who fails to submit a completed registration form to the department of health and
21 senior services as required by sections 210.900 to 210.936 without good cause, as
22 determined by the department, is guilty of a class B misdemeanor.

23 3. **Every long-term care worker hired on or after September 30,**
24 **2012, shall submit to the background screening and employment**
25 **eligibility determination process under sections 210.904 and 660.317.**

26 4. The costs of the criminal background check may be paid by the
27 individual applicant, or by the provider if the applicant is so employed, or for
28 those applicants receiving public assistance, by the state through the terms of the
29 self-sufficiency pact pursuant to section 208.325. Any moneys remitted to the
30 patrol for the costs of the criminal background check shall be deposited to the
31 credit of the criminal record system fund as required by section 43.530.

32 [4.] 5. Any person licensed pursuant to sections 210.481 to 210.565 shall
33 be automatically registered in the family care safety registry at no additional cost

34 other than the costs required pursuant to sections 210.481 to 210.565.

35 [5.] 6. Any person not required to register pursuant to the provisions of
36 sections 210.900 to 210.936 may also be included in the registry if such person
37 voluntarily applies to the department for registration and meets the requirements
38 of this section and section 210.909, including submitting to the background checks
39 in subsection 1 of section 210.909.

40 [6.] 7. The provisions of sections 210.900 to 210.936 shall not extend to
41 related child care[.]. **The provisions of sections 210.900 to 210.936 shall**
42 **not extend to** related elder care or related personal care **unless such care is**
43 **purchased with public funds.**

210.909. 1. Upon submission of a completed registration form by a
2 child-care worker, [elder-care] **long-term care** worker, mental health worker,
3 or personal-care attendant, the department shall:

4 (1) Determine if a probable cause finding of child abuse or neglect prior
5 to August 28, 2004, or a finding of child abuse or neglect by a preponderance of
6 the evidence after August 28, 2004, involving the applicant has been recorded
7 pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a
8 probable cause finding of financial exploitation of the elderly or disabled pursuant
9 to section 570.145;

10 (2) Determine if the applicant has been refused licensure or has
11 experienced involuntary licensure suspension or revocation pursuant to section
12 210.496;

13 (3) Determine if the applicant has been placed on the employee
14 disqualification list pursuant to section 660.315;

15 (4) [As of January 1, 2003,] Determine if the applicant is listed on the
16 department of mental health's employee disqualification registry;

17 (5) Determine through a request to the patrol pursuant to section 43.540
18 whether the applicant has any criminal history record for a felony or
19 misdemeanor or any offense for which the person has registered pursuant to
20 sections 589.400 to 589.425; and

21 (6) If the background check involves a provider, determine if a facility has
22 been refused licensure or has experienced licensure suspension, revocation or
23 probationary status pursuant to sections 210.201 to 210.259 or chapter 198; and

24 (7) [As of January 1, 2004,] Determine through a request to the patrol if
25 the applicant is a registered sexual offender pursuant to section 589.400 listed
26 in the Missouri uniform law enforcement system (MULES), **and as of**

27 **September 30, 2012, determine if the applicant is a registered sexual**
28 **offender listed on the National Sex Offender Public Website, inasmuch**
29 **as positive identifying data are available;**

30 **(8) As of September 30, 2012, determine if the applicant is listed**
31 **on the certified nurse assistant registry, status of certification, and if**
32 **the applicant has a federal indicator for abuse, neglect, or**
33 **misappropriation of property;**

34 **(9) As of September 30, 2012, determine if the applicant is listed**
35 **on any of the various medical and osteopathic physician, physician**
36 **assistant, and nursing databases, licensure status, disciplinary status,**
37 **or license suspension or revocation;**

38 **(10) As of September 30, 2012, determine if the applicant is listed**
39 **on the educator certification database, certification status, if there is**
40 **disciplinary status, or certification suspension or revocation.**

41 2. Upon completion of the background [check] screening described in
42 subsection 1 of this section, the department shall include information in the
43 registry for each registrant as to whether any convictions, employee
44 disqualification listings, **child abuse and neglect or sexual offender** registry
45 listings, probable cause findings, pleas of guilty or nolo contendere, or license **or**
46 **certification** denial, revocation [or], suspension, **or disciplinary status** have
47 been documented through the records checks authorized pursuant to the
48 provisions of sections 210.900 to 210.936. **With regard to the certified nurse**
49 **assistant registry and physician, physician assistant, nursing, and**
50 **educator certification databases, the department shall also include**
51 **basic licensure or certification data for informational purposes only as**
52 **of September 30, 2012.**

53 3. The department shall notify such registrant in writing of the results of
54 the determination recorded on the registry pursuant to this section.

210.915. The department of corrections, the department of public safety,
2 the department of social services [and], the department of mental health, **the**
3 **department of insurance, financial institutions and professional**
4 **registration, and the department of elementary and secondary**
5 **education** shall collaborate with the department to compare records on
6 child-care, [elder-care] **long-term care**, mental health, and personal-care
7 workers, and the records of persons with criminal convictions and the background
8 checks pursuant to subdivisions (1) to [(8)] **(11)** of subsection 2 of section 210.903,

9 and to enter into any interagency agreements necessary to facilitate the receipt
10 of such information and the ongoing updating of such information. The
11 department shall promulgate rules and regulations concerning such updating,
12 including subsequent background reviews as listed in subsection 1 of section
13 210.909.

210.921. 1. The department shall not provide any registry information
2 pursuant to this section unless the department obtains the name and address of
3 the person calling, and determines that the inquiry is for employment purposes
4 only. For purposes of sections 210.900 to 210.936, "employment purposes"
5 includes direct employer-employee relationships, prospective employer-employee
6 relationships, **direct employer-volunteer relationships, prospective**
7 **employer-volunteer relationships**, and screening and interviewing of persons
8 or facilities by those persons **or agencies** contemplating the placement of an
9 individual in a child-care, [elder-care] **long-term care**, mental health, or
10 personal-care setting. Disclosure of background information concerning a given
11 applicant recorded by the department in the registry shall be limited to:

12 (1) Confirming whether the individual is listed in the registry; and
13 (2) Indicating whether the individual has been listed or named in any of
14 the background checks listed in subsection 2 of section 210.903. If such
15 individual has been so listed, the department of health and senior services shall
16 only disclose the name of the background check in which the individual has been
17 identified. With the exception of any agency licensed or contracted by the state
18 to provide child care, elder care, mental health services, or personal care which
19 shall receive specific information immediately if requested, any specific
20 information related to such background check shall only be disclosed after the
21 department has received a signed request from the person calling, with the
22 person's name, address and reason for requesting the information.

23 2. Any person requesting registry information shall be informed that the
24 registry information provided pursuant to this section consists only of information
25 relative to the state of Missouri and does not include information from other
26 states or information that may be available from other states.

27 3. Any person who uses the information obtained from the registry for any
28 purpose other than that specifically provided for in sections 210.900 to 210.936
29 is guilty of a class B misdemeanor.

30 4. When any registry information is disclosed pursuant to subdivision (2)
31 of subsection 1 of this section, the department shall notify the registrant of the

32 name and address of the person making the inquiry.

33 5. The department of health and senior services staff providing
34 information pursuant to sections 210.900 to 210.936 shall have immunity from
35 any liability, civil or criminal, that otherwise might result by reason of such
36 actions; provided, however, any department of health and senior services staff
37 person who releases registry information in bad faith or with ill intent shall not
38 have immunity from any liability, civil or criminal. Any such person shall have
39 the same immunity with respect to participation in any judicial proceeding
40 resulting from the release of registry information. The department is prohibited
41 from selling the registry or any portion of the registry for any purpose including
42 employment purposes as defined in subsection 1 of this section.

 210.927. The department of health and senior services shall make an
2 annual report, no later than **[July] December** first of each year, to the speaker
3 of the house of representatives and the president pro tem of the senate on the
4 operation of the family care safety registry and toll-free telephone service,
5 including data on the number of information requests received from the public,
6 identification of any barriers encountered in administering the provisions of
7 sections 210.900 to 210.936, recommendations for removing or minimizing the
8 barriers so identified, and any recommendations for improving the delivery of
9 information on child-care, **[elder-care] long-term care**, mental health, and
10 personal-care workers to the public.

 210.933. For any **[elder-care] long-term care** worker listed in the
2 registry or who has submitted the registration form as required by sections
3 210.900 to 210.936, **[an elder-care] a long-term care** provider may access the
4 registry in lieu of the requirements established pursuant to section 660.315 or to
5 subsections 3, 4 and 5 of section 660.317.

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

- 3 (1) Is licensed as an operator pursuant to chapter 198;
- 4 (2) Provides in-home services under contract with the department;
- 5 (3) Employs nurses or nursing assistants for temporary or intermittent
6 placement in health care facilities;
- 7 (4) Is an entity licensed **[pursuant to] or certified under** chapter 197;
- 8 (5) Is a public or private facility, day program, residential facility or
9 specialized service operated, funded or licensed by the department of mental
10 health; or

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

12 2. For the purpose of this section:

13 (1) **"Consumer" has the same meaning as such term is defined in**
14 **section 208.900;**

15 (2) **"Direct access" means any individual in a position with duties**
16 **that involve access to the patient or resident's person, financial,**
17 **medical, or personal records or property, including but not limited to**
18 **the owner, operator, director, partner, member, employee, or**
19 **independent contractor of a provider;**

20 (3) **"In-home services client" has the same meaning as such term**
21 **is defined in section 660.250;**

22 (4) "Patient or resident" has the same meaning as such term is defined
23 in section 43.540.

24 3. (1) Prior to [allowing any person who has been hired as] **hiring a**
25 full-time, part-time or temporary **employee for any** position to have [contact
26 with] **direct access to** any patient [or], resident, **in-home services client or**
27 **consumer, or finding a personal care attendant eligible to have contact**
28 **with a consumer**, the provider shall, or in the case of temporary employees
29 hired through or contracted for an employment agency, the employment agency
30 shall prior to sending a temporary employee to a provider:

31 [(1) Request a criminal background check as provided in section 43.540.
32 Completion of an inquiry to the highway patrol for criminal records that are
33 available for disclosure to a provider for the purpose of conducting an employee
34 criminal records background check shall be deemed to fulfill the provider's duty
35 to conduct employee criminal background checks pursuant to this section; except
36 that, completing the inquiries pursuant to this subsection shall not be construed
37 to exempt a provider from further inquiry pursuant to common law requirements
38 governing due diligence. If an applicant has not resided in this state for five
39 consecutive years prior to the date of his or her application for employment, the
40 provider shall request a nationwide check for the purpose of determining if the
41 applicant has a prior criminal history in other states. The fingerprint cards and
42 any required fees shall be sent to the highway patrol's central repository. The
43 first set of fingerprints shall be used for searching the state repository of criminal
44 history information. If no identification is made, the second set of fingerprints
45 shall be forwarded to the Federal Bureau of Investigation, Identification Division,
46 for the searching of the federal criminal history files. The patrol shall notify the

47 submitting state agency of any criminal history information or lack of criminal
48 history information discovered on the individual. The provisions relating to
49 applicants for employment who have not resided in this state for five consecutive
50 years shall apply only to persons who have no employment history with a licensed
51 Missouri facility during that five-year period. Notwithstanding the provisions of
52 section 610.120, all records related to any criminal history information discovered
53 shall be accessible and available to the provider making the record request; and

54 (2)] (a) Make an inquiry to the department of health and senior services
55 whether the person is listed on the employee disqualification list as provided in
56 section 660.315;

57 (b) Request a family care safety registry background screening
58 and employment eligibility determination, as provided for in sections
59 210.900 to 210.936. Such screening process shall include:

60 a. Disclosure of the applicant's criminal history and other
61 pertinent background information as provided in subsection 6 of this
62 section;

63 b. A family care safety registry background screening;

64 c. A state and federal fingerprint-based criminal background
65 check through the highway patrol, as provided in section 43.540,
66 directed through the department of health and senior services under
67 section 210.904, and as promulgated by rule. Required fees shall be
68 forwarded to the highway patrol, and the results of the criminal record
69 reviews shall be forwarded by the highway patrol to the department of
70 health and senior services, which shall notify the
71 provider. Notwithstanding the provisions of section 610.120, all records
72 related to any criminal history information discovered shall be
73 accessible and available to the provider making the record request;

74 (2) A provider may hire an applicant on a provisional basis as
75 provided in subsection 3 of section 210.904.

76 (3) If an applicant has not resided in this state for five
77 consecutive years prior to the date of his or her application for
78 employment, the provider shall request child abuse and neglect and
79 elder abuse registry information on the applicant from any state in
80 which the applicant has previously resided. Such requirement shall
81 apply only to persons who have no employment history with a Missouri
82 provider, as defined in this section, during such five-year period.

83 4. When the provider requests a criminal background check pursuant to

84 section 43.540, the requesting entity may require that the applicant reimburse
85 the provider for the cost of such record check[. When a provider requests a
86 nationwide criminal background check pursuant to subdivision (1) of subsection
87 3 of this section, the total cost to the provider of any background check required
88 pursuant to this section shall not exceed five dollars which shall be paid to the
89 state. State funding and the obligation of a provider to obtain a nationwide
90 criminal background check shall be subject to the availability of appropriations],
91 **unless the provider receives reimbursement for the fees from another**
92 **source. As provided in section 43.540, the department of health and**
93 **senior services may assess a fee to the provider to cover the cost of**
94 **handling the criminal record review and may establish an account**
95 **solely for the collection and dissemination of fees associated with the**
96 **criminal record reviews.**

97 5. An applicant for a position to have [contact with] **direct access to**
98 **patients [or], residents, in-home services clients, or consumers** of a provider
99 shall:

100 (1) Sign a consent form as required by section 43.540 so the provider may
101 request a criminal records review;

102 (2) Disclose the applicant's criminal history. For the purposes of this
103 subdivision "criminal history" includes any conviction or a plea of guilty **or nolo**
104 **contendere** to a misdemeanor or felony charge **in this state or any other**
105 **state** and shall include any suspended imposition of sentence, any suspended
106 execution of sentence or any period of probation or parole; and

107 (3) Disclose if the applicant is listed on the employee disqualification list
108 as provided in section 660.315; **and**

109 (4) **Disclose the presence of any other findings that may appear**
110 **on the family care safety registry background screening, and complete**
111 **registration with the registry if not previously registered under**
112 **sections 210.900 to 210.936.**

113 6. An applicant who knowingly fails to disclose his or her criminal history
114 **or other disqualifying finding or findings** as required in subsection 5 of this
115 section is guilty of a class A misdemeanor. A provider is guilty of a class A
116 misdemeanor if the provider knowingly hires or retains a person to have [contact
117 with] **direct access to patients [or], residents, in-home services clients, or**
118 **consumers**, and the person has:

119 (1) Been convicted of, pled guilty to or nolo contendere in this state or any

120 other state or has been found guilty of a crime, which if committed in Missouri
121 would be:

122 **(a)** A class A or B felony violation of chapter **195**, 565, 566, **568**, or 569[,
123 or any];

124 **(b)** A violation of subsection 3 of section 198.070 [or section 568.020];

125 **(c)** A felony violation of three or more misdemeanor violations
126 of section **570.030**;

127 **(d)** A violation of section **570.090**;

128 **(e)** A violation of section **570.145**;

129 **(2)** Any relevant state or federal conviction for any offense
130 described in Section 1128(a) of the Social Security Act, 42 U.S.C. Section
131 **1320a-7**, as promulgated by rule;

132 **(3)** Any finding of patient or resident abuse substantiated by a
133 state agency under Section 1819(g)(1)(C) or Section 1919(g)(1)(C) of the
134 Social Security Act, 42 U.S.C. Section 1395i-3(g)(1)(C), 13966r(g)(1)(C);
135 or

136 **(4)** Any disqualifying family care safety registry finding as
137 promulgated by rule.

138 7. [Any in-home services provider agency or home health agency shall be
139 guilty of a class A misdemeanor if such agency knowingly employs a person to
140 provide in-home services or home health services to any in-home services client
141 or home health patient and such person either refuses to register with the family
142 care safety registry or is listed on any of the background check lists in the family
143 care safety registry pursuant to sections 210.900 to 210.937.

144 8. The highway patrol shall examine whether protocols can be developed
145 to allow a provider to request a statewide fingerprint criminal records review
146 check through local law enforcement agencies.

147 9. A provider may use a private investigatory agency rather than the
148 highway patrol to do a criminal history records review check, and alternatively,
149 the applicant pays the private investigatory agency such fees as the provider and
150 such agency shall agree] **Any provider required to deny employment to an
151 applicant or discharge a provisional employee as a result of
152 information obtained through any portion of the background screening
153 and employment eligibility determination process under section 210.904
154 shall not be liable in any action brought by the applicant or provisional
155 employee, or in the case of a provisional employee, shall not be charged**

156 **for unemployment insurance benefits based on wages paid to the**
157 **provisional employee for work prior to the date of discharge under**
158 **section 288.100.**

159 [10.] **8.** Except for the hiring restriction based on the department of
160 health and senior services employee disqualification list established pursuant to
161 section 660.315, the department of health and senior services shall promulgate
162 rules and regulations to waive the hiring restrictions pursuant to this section for
163 good cause. For purposes of this section, "good cause" means the department has
164 made a determination by examining [the employee's prior work history and other]
165 relevant factors, **as established by rule**, that [such employee does not present
166 a risk to the health or safety of residents] **the firing restriction contained in**
167 **subsection 6 of this section is removed.**

168 **9.** The department of health and senior services shall promulgate
169 rules for the purposes of ensuring compliance with this section. Any
170 rule or portion of a rule, as that term is defined in section 536.010, that
171 is created under the authority delegated in this section shall become
172 effective only if it complies with and is subject to all of the provisions
173 of chapter 536 and, if applicable, section 536.028. This section and
174 chapter 536 are nonseverable and if any of the powers vested with the
175 general assembly pursuant to chapter 536 to review, to delay the
176 effective date, or to disapprove and annul a rule are subsequently held
177 unconstitutional, then the grant of rulemaking authority and any rule
178 proposed or adopted after the effective date of this section shall be
179 invalid and void.

Section B. Section A of this act shall become effective September 12, 2012.

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