

SECOND REGULAR SESSION

SENATE BILL NO. 947

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time February 2, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

42731L.021

AN ACT

To repeal sections 197.405, 197.410, 197.415, 197.420, 197.425, 197.430, 197.435, 197.440, 197.450, 197.455, 197.460, 197.470 and 197.477, RSMo 1994, and sections 197.400 and 197.445, RSMo Supp. 1999, relating to the department of health and licensure of home care companies, and to enact in lieu thereof sixteen new sections relating to the same subject.

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

Section A. Sections 197.405, 197.410, 197.415, 197.420, 197.425, 197.430, 197.435, 197.440, 197.450, 197.455, 197.460, 197.470 and 197.477, RSMo 1994, and sections 197.400 and 197.445, RSMo Supp. 1999, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 197.400, 197.405, 197.410, 197.415, 197.420, 197.422, 197.425, 197.430, 197.435, 197.440, 197.445, 197.450, 197.455, 197.460, 197.470 and 197.477, to read as follows:

197.400. As used in sections 197.400 to [197.475] **197.477**, unless the context otherwise requires, the following terms mean:

(1) **"Branch office", a location or site from which an organization provides services within a portion of the total geographic area served by the parent company. A branch office is part of a company and is located sufficiently close to it to share administration, supervision and services in a manner that renders it unnecessary for the branch to independently meet the requirements of a home care company;**

(2) **"Client residence", a temporary or permanent domicile of a person receiving home health services, professional services or paraprofessional services;**

(3) **"Council", the home [health services] care advisory council created by sections 197.400 to [197.475] 197.477;**

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

[(2)] (4) "Deficiency", a statement of a deficit practice;

(5) "Department", the department of health;

(6) "Home care company", any public or private organization or part of an organization that is staffed or equipped to provide home health services, professional services or paraprofessional services;

[(3)] (7) "Home health [agency] category", a category of home care company which is a public [agency] or private organization or [a subdivision or subunit of an agency or organization that provides two or more home health services at the residence of a patient according to a physician's written and signed plan of treatment] part of an organization that provides home health services and is eligible to be certified as a Medicare provider of home health services, as defined in Title XVIII of the Social Security Act;

[(4)] (8) "Home health services", any [of the following items and services provided at the residence of the patient on a part-time or intermittent basis: nursing, physical therapy, speech therapy, occupational therapy, home health aid, or medical social service] services provided at the residence of a client which, at a minimum, meet the standards established pursuant to 42 C.F.R. 484, Medicare Conditions of Participation: Home Health Agencies;

[(5) "Part-time or intermittent basis", the providing of home health services in an interrupted interval sequence on the average of not to exceed three hours in any twenty-four-hour period;

(6) "Patient's residence", the actual place of residence of the person receiving home health services, including institutional residences as well as individual dwelling units;

(7)] (9) "Paraprofessional home care category", a category of home care company which is any public or private organization or part of an organization that provides paraprofessional services;

(10) "Paraprofessional services", services provided at the residence of a client by an unlicensed caregiver that are unskilled in nature, may require a physician order, plan of care or service plan, and may include certain limited nursing services as described in state regulation;

(11) "Physician", a person licensed by the state board of registration for the healing arts pursuant to the provisions of chapter 334, RSMo, to practice in this state as a physician and surgeon;

[(8)] (12) "Plan of [treatment] care", a [plan reviewed and signed as often as medically necessary by a physician or podiatrist, not to exceed sixty days in duration, prescribing items and services for an individual patient's condition] written plan for home health services and professional services based on a client's diagnosis and an assessment of his or her immediate and long-range needs and resources. A plan of care is established in consultation with a home care team that may include a physician, podiatrist, staff

members of the company, a client and members of the client's family;

[(9)] **(13) "Podiatrist", a person licensed by the state board of podiatry pursuant to the provisions of chapter 330, RSMo, to practice in this state as a podiatrist;**

[(10) "Subunit" or "subdivision", any organizational unit of a larger organization which can be clearly defined as a separate entity within the larger structure, which can meet all of the requirements of sections 197.400 to 197.475 independent of the larger organization, which can be held accountable for the care of patients it is serving, and which provides to all patients care and services meeting the standards and requirements of sections 197.400 to 197.475]

(14) "Professional home care category", a category of home care company which is any public or private organization or part of an organization that provides professional services;

(15) "Professional services", services, other than home health services, provided at the residence of a client by a health care professional who is considered by the state as being qualified to provide such services. Such services are provided on a per visit, hourly or shift basis and may require a plan of care, service plan or an order signed by a physician, podiatrist or other practitioner as allowed by state law;

(16) "Sanction", binding force to a law that secures obedience as a penalty for breaking it;

(17) "Service plan", a written plan for paraprofessional services developed and agreed upon by a client and provider that includes a description of services to be provided and a schedule or frequency of such services;

(18) "Supervision", authoritative guidance given by a qualified person, including initial direction and periodic direction or indirect monitoring of services;

(19) "Survey inspection", monitoring by the department for compliance with state regulations related to sections 197.400 to 197.477, including investigation of complaints.

197.405. **1. [No home health agency, including Medicare and Medicaid providers, shall provide two or more of the home health services covered by subdivision (4) of section 197.400 or shall hold itself out as providing such home health services or as a home health agency] No public or private organization or part of an organization shall hold itself out as a home care company or as providing home health services, professional services or paraprofessional services unless it is licensed and registered in accordance with the provisions of sections 197.400 to [197.475] 197.477.**

2. No person shall establish, conduct or maintain a home care company in this state without maintaining a business location within the state and a valid license issued by the department. A branch office of a licensed home care company shall not require separate licensing.

3. No person shall interfere with or prevent any authorized representative of the department or the attorney general from enforcing the provisions of sections 197.400

to 197.477.

197.410. [1. Persons desiring to receive a license to operate a home health agency in the state of Missouri shall file a written application with the department of health on a form prescribed by the director of the department.

2. The application shall be accompanied by a six hundred-dollar license fee] **A license shall be renewed annually upon approval by the department if the following conditions are met:**

(1) An application for renewal is completed on forms provided by the department, filed with the department and accompanied by the required nonrefundable license fee;

(2) The company is in compliance with the requirements in sections 197.400 to 197.477, as evidenced by a survey inspection by the department which shall occur prior to initial licensure, once a year for the first three years and at least once every thirty-six months thereafter;

(3) Each initial application for a home care company shall be filed on forms provided by the department and accompanied by the required nonrefundable license fee. Such application must be approved by the department prior to initiating client care.

197.415. 1. [The department shall review the applications and shall issue a license to applicants who have complied with the requirements of sections 197.400 to 197.475 and have received approval of the department.

2. A license shall be renewed annually upon approval of the department when the following conditions have been met:

(1) The application for renewal is accompanied by a six-hundred-dollar license fee;

(2) The home health agency is in compliance with the requirements established pursuant to the provisions of sections 197.400 to 197.475 as evidenced by a survey inspection by the department which shall occur at least every thirty-six months for agencies that have been in operation thirty-six consecutive months from initial inspection. The frequency of inspections for agencies in operation at least thirty-six consecutive months from the initial inspection shall be determined by such factors as number of complaints received and changes in management, supervision or ownership. The frequency of each survey inspection for any agency in operation less than thirty-six consecutive months from the initial inspection shall occur and be conducted at least every twelve months;

(3) The application is accompanied by a statement of any changes in the information previously filed with the department pursuant to section 197.410.

3. Each license shall be issued only for the home health agency listed in the application. Licenses shall be posted in a conspicuous place in the main offices of the licensed

home health agency.

4.] If the application review is not completed prior to the expiration of a license and the company is not at fault for the failure to complete the application review process, the department may issue a temporary operating permit of sufficient duration to allow for state review of the home care company's relicensure application.

2. Each license shall be issued only for the home care company listed on the application. Such license shall be:

(1) Posted in a conspicuous place in the office of the licensed home care company; or

(2) Made available for review upon request.

3. Any license issued shall state the licensure category for which the license is issued, the name of the home care company to whom it is issued, the expiration date, and any additional information or special limitations that the department may require by rule.

4. No license shall be transferred from one location to another. If a home care company is relocating, the company shall notify the department in writing thirty days prior to the intended relocation. The department may provide written notification to the home care company amending the current license to reflect the new location.

5. In lieu of any survey required by sections 197.400 to [197.475] 197.477, the department may accept in whole or in part written reports of the survey of any state or federal agency, or of any professional accrediting agency, if such survey:

(1) Is comparable in scope and method to the department's surveys; and

(2) [Is conducted within one year of initial application or within thirty-six months for the renewal of the home health license as required by subdivision (2) of subsection 2 of this section] Meets all required time frames; and

(3) Is provided to the department with sufficient documentation to assure that the home care company is in compliance with the requirements in sections 197.400 to 197.477.

197.420. **1.** A license shall not be transferable or assignable. When a home [health agency] **care company** is sold or ownership or management is transferred, or the corporate legal organization status is [substantially] changed, the license of the [agency] **company** shall be voided and a new license obtained. Application for a new license shall be made to the department in writing[, at least ninety days] prior to the effective date of the sale, transfer, or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by [a license fee of six hundred dollars. The department may issue a temporary operating permit for the continuation of the operation of the home health agency for a period of not more than ninety days pending the survey inspection and the final disposition of the application. The department shall require all

licensed home health agencies to submit statistical reports. The content, format, and frequency of such reports shall be determined by the department with council approval] **the required nonrefundable license fee.**

2. The department may issue a temporary operating permit of sufficient duration to allow the department to evaluate an application for a license submitted as a result of a change in ownership.

197.422. The department shall require all licensed home care companies to submit statistical reports. The content, format and frequency of such reports shall be established by the department in conjunction with the home care advisory council.

197.425. In addition to the survey inspection required for licensing or license renewal, the department may [make other survey inspections] **conduct other inspections, surveys or complaint investigations** during normal business hours. Each home [health agency] **care company** shall allow the department or its authorized representatives to enter upon its premises during normal business hours for the purpose of conducting the [survey inspection] **inspection, survey or investigation.**

197.430. After completion of each department [survey] **inspection**, a written [report] **statement** of the findings with respect to compliance or noncompliance with the provisions of sections 197.400 to [197.475] **197.477** and the standards established hereunder as well as a list of deficiencies found shall be prepared. A copy of the [report] **statement** and the list of deficiencies found shall be served upon the home [health agency] **care company** within fifteen business days following the [survey] inspection. The list of deficiencies shall specifically state the statute or rule which the home [health agency] **care company** is alleged to have violated. If the home [health agency] **care company** acknowledges the deficiencies found by the [survey] inspection, the home [health agency] shall inform the department of the time necessary for compliance and] **care company** shall file a plan of correction with the department **within thirty days of the inspection completion date.** If the [home health agency] **company** does not acknowledge the deficiencies, it [may request a resurvey] **shall request a reinspection** by the department. If, after the [resurvey] **reinspection**, the home [health agency] **care company** still does not agree with the findings of the department, it may seek a review of the findings of the department by the administrative hearing commission **in accordance with chapter 621, RSMo. In case of immediate client jeopardy, immediate sanctions may be imposed.**

197.435. **1.** Any person wishing to make a complaint against a home [health agency licensed under] **care company licensed pursuant to** the provisions of sections 197.400 to [197.475] **197.477** may file the complaint **orally or** in writing with the department setting forth the details and facts supporting the complaint. [If the department determines the charges are sufficient to warrant a hearing to determine whether the license of the home health agency should be suspended or revoked, the department shall fix a time and place for a hearing and require the

home health agency to appear and defend against the complaint. A copy of the complaint shall be given to the home health agency at the time it is notified of the hearing. The notice of the hearing shall be given at least twenty days prior to the date of the hearing. The hearing shall be conducted by the administrative hearing commission in accordance with the provisions of chapter 621, RSMo.] **The department shall investigate all complaints and prepare a written statement of the investigative findings with respect to compliance or noncompliance with sections 197.400 to 197.477 and the standards established hereunder, as well as a list of deficiencies found which shall be served upon the home care company within fifteen business days following such investigation. The list of deficiencies shall specifically state the statute or rule which the home care company is alleged to have violated. If the company acknowledges the deficiencies found by the inspection, the company shall file a plan of correction with the department within thirty days of the inspection completion date. If the company does not agree with the findings of the investigation the company may seek a review of such findings by the administrative hearing commission in accordance with chapter 621, RSMo. In cases of immediate client jeopardy, immediate sanctions may be imposed.**

2. Each employee of a home care company shall be responsible for reporting any evidence of abuse, neglect or exploitation of any client served by the home care company in accordance with state law.

197.440. 1. The department shall refuse to issue or shall suspend or shall revoke the license of any home [health agency] **care company** for failure to comply with any provision of sections 197.400 to [197.475] **197.477** or with any rule or standard of the department adopted [under] **pursuant to** the provisions of sections 197.400 to [197.475] **197.477** or for obtaining the license by means of fraud, misrepresentation[,] or concealment of material facts.

2. Any home [health agency] **care company** which has **had sanctions imposed**, been refused a license or which has had its license revoked or suspended by the department may seek a review of the department's action by the administrative hearing commission **in accordance with chapter 621, RSMo. A sanction shall be designed to minimize the time between identification of a problem and imposition of such sanction and shall provide for the imposition of incrementally more severe sanctions for repeated or uncorrected problems.**

3. A home care company shall not reapply for licensure for a six-month period following a final action by the department pursuant to this section.

4. A license shall not be issued or renewed if the operator, owner or any principle in the operation of the home care company has been convicted of any offense concerning the operation of a home care company or any offense that is reasonably related to the qualifications, functions or duties of a home care company. Notwithstanding any other provision of law to the contrary, the department

shall have access to records involving an operator, owner or any principle in the operation of a home care company applying for or renewing a license pursuant to this chapter, where the applicant has been adjudicated and found guilty or entered a plea of guilty or nolo contendere in a prosecution pursuant to the laws of any state or of the United States for any offense reasonably related to the qualifications, functions or duties of any person who operates or owns a home care company licensed pursuant to sections 197.400 to 197.477. The department may deny, suspend or revoke the license of any home care company whose operators, owners or any principles in the operation of the company have been convicted of such an offense.

5. The department shall promulgate rules to waive the restrictions pursuant to subsection 4 of this section for good cause. For purposes of this section, "good cause" means a determination by the department after examining the prior work history and other relevant factors that such operators, owners or principles do not present a risk to the health or safety of clients.

197.445. 1. **The department shall administer the provisions of sections 197.400 to 197.477.** The department may adopt reasonable rules and standards necessary to carry out the provisions of sections 197.400 to 197.477. [The rules and standards adopted shall not be less than the standards established by the federal government for home health agencies under Title XVIII of the Federal Social Security Act. The reasonable rules and standards shall be initially promulgated within one year of September 28, 1983] **In promulgating regulations for the licensure of home care companies, the department shall establish licensure procedures for a home care category, professional home care category and paraprofessional home care category, with separate and distinct regulations for each of the three licensure categories. All rules shall be initially promulgated within one year of the effective date of this section.**

2. The rules and standards adopted by the department pursuant to the provisions of sections 197.400 to 197.477 shall apply to all health services covered by sections 197.400 to 197.477 rendered to any patient being served by a home [health agency] **care company** regardless of source of payment for the service, patient's condition, or place of residence[, at which the home health services are ordered by the physician or podiatrist]. No rule or portion of a rule promulgated pursuant to the authority of sections 197.400 to 197.477 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

3. **All agencies of the state or any of its political subdivisions shall assist and cooperate with the department as necessary to carry out the department's responsibility pursuant to sections 197.400 to 197.477.**

197.450. 1. There is hereby created the "Home [Health Services] **Care** Advisory Council", which shall guide, advise and make recommendations to the department relating to the rules and standards adopted and the implementation and administration of sections 197.400 to [197.475]

197.477.

2. Members of the council shall be residents of this state. The council shall consist of members who shall serve for a term of three years. No member may serve more than two successive full terms. **[One member] Two members** of the council shall be **[a representative] representatives** of the department, and **one** such member shall serve as chairman of the council. **[Three members] One member** shall be **[citizens] a citizen** selected from the state at large and shall have no connection with any home **[health agency. Five] care company. Six** members shall be representatives of **[home health agencies and one of these five members shall** be selected from each of the following types of home health agencies:

- (1) Public sponsored home health agencies;
- (2) Institutional sponsored home health agencies;
- (3) Voluntary nonprofit home health agencies;
- (4) Private nonprofit home health agencies; and

(5) For profit home health agencies] **each of the three home care licensure categories. Each category shall have at least one representative on the council.**

3. All members of the council shall be appointed by the director of the department. The term of office of each member shall be for three years or until his **or her** successor is appointed; except that, of the members first appointed, three shall be selected for one year, three shall be selected for two years, and three shall be selected for three years. Before a member's term expires, the director of the department shall appoint a successor to assume his **or her** duties on the expiration of his **or her** predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

4. The council shall meet not less than **[quarterly] twice** each year, **in person or by telecommunication**, at a place, day and hour determined by the **[council] department**. The council may also meet at such other times and places as may be designated by the chairman, or upon the request of the majority of the other members of the council.

5. Members of the council shall receive no compensation for their services, but shall be reimbursed, out of funds appropriated to the department for that purpose, for their actual and necessary expenses incurred in the performance of their duties.

197.455. The department may file an action in the circuit court for the county in which **[any home health agency alleged to be violating the provisions of sections 197.400 to 197.475 resides or may be found] the home care company is located** for an injunction to restrain the home **[health agency] care company** from continuing the violation **or sections 197.400 to 197.477.**

197.460. 1. The provisions of sections 197.400 to **[197.475] 197.477** shall not apply to **[individuals who personally provide one or more home health services if such persons are not under the direct control and doing work for and employed by a home health agency.**

2. The provisions of sections 197.400 to 197.475 shall not apply to any person or organization conducting a home health agency by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church or religious denomination or sect.

3. The provisions of sections 197.400 to 197.475 shall not apply to any person or other entity which provides services pursuant to subdivision (18) of subsection 1 of section 208.152, RSMo, or provides in-home services pursuant to subdivision (21) of subsection 2 of section 660.050, RSMo] **the following:**

(1) Any person who is a single self-employed caregiver who provides one or more of the services defined in sections 197.400 to 197.477, when such services are not provided as an employee, or under agreement or contract with a home care company;

(2) Any person or other entity operating a home care company by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church or religious denomination or sect;

(3) Any person or entity that provides services pursuant to subdivision (18) of subsection 1 of section 208.152, RSMo, or provides in-home services pursuant to subdivision (21) of subsection 2 of section 660.050, RSMo;

(4) Any person or entity licensed by the state to provide care, treatment, habilitation and rehabilitation exclusively to patients who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as defined in section 630.005, RSMo;

(5) Any person or entity licensed by the state to provide home health, paraprofessional or professional services to patients or clients of the division of vocational rehabilitation in the department of elementary and secondary education;

(6) The services of a provider or program that are regulated by a state regulatory program, other than those administered pursuant to this chapter, may be exempt from licensure pursuant to this chapter if the department determines the other program's regulatory standards are substantially the same or exceed the requirements of this chapter. To be exempted pursuant to this subdivision, a provider or program shall request that the department review the standards under which the provider or program is regulated. The department may require the provider or program to provide any information necessary to determine the comparability of the regulations.

2. Nothing in this section shall prohibit any person or entity from applying for a license pursuant to sections 197.400 to 197.477.

197.470. **1.** [All reports or documents collected by the department, or findings and

decisions made by the department, under the provisions of sections 197.400 to 197.475, unless declared to be a confidential record under any other provision of law, shall be available to public inspection upon written request.] **Reports of inspections shall be accessible to the public for examination and copying provided that such reports are disclosed in a manner that does not identify any particular client. Records and reports shall only be released after the completion of the final report pursuant to rules promulgated by the department, and shall include the standards by which the inspections were conducted, whether such standards were met, and if such standards were not met, in what manner they were not met, and clearly indicating the corrective actions the home care company is taking to resolve the problems indicated in such inspections and reports.** The material requested shall be made available within thirty days after receipt of the request. The department may charge a reasonable fee for the copying of any material.

2. This section shall not be construed to authorize the release of records, reports or other information that may be held in department files which are subject to other specific state or federal laws concerning their disclosure.

197.477. [Upon the completion of the final report of an inspection or evaluation of a health facility or agency or any part thereof pursuant to sections 190.235 to 190.249, RSMo, sections 197.010 to 197.120, sections 197.200 to 197.240, or sections 197.400 to 197.475, including any amendments thereto which may hereinafter be enacted by the general assembly or rule or regulation promulgated pursuant thereto, the department of health may disclose to the public reports of the inspections or evaluations showing the standards by which the inspections or evaluations were conducted, whether such standards were met, and, if such standards were not met, in what manner they were not met and how the facility proposed to correct or did correct the deficiencies. All other information whatsoever, including information and reports submitted to the department of health by governmental agencies and recognized accrediting organizations in whole or in part for licensure purposes pursuant to sections 190.235 to 190.249, RSMo, sections 197.010 to 197.120, sections 197.200 to 197.240, or sections 197.400 to 197.475, collected during such inspections or evaluations or information which is derived as a result of such inspections or evaluations shall be confidential and shall be disclosed only to the person or organization which is the subject of the inspection or evaluation or a representative thereof.] **Nothing contained in sections 197.400 to 197.477 shall permit the public disclosure by the department of confidential medical, personal or financial records of any client who is receiving service from any home care company, except when disclosed in a manner which does not identify any client or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to other administrative or law enforcement agencies acting within the scope of their statutory authority; except that, no person shall have access to any complaints or an**

investigation in progress until such time as the investigation has been completed.

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