

FIRST REGULAR SESSION

SENATE BILL NO. 60

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Pre-filed December 1, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0145S.021

AN ACT

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

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

Section A. Sections 660.250, 660.260 and 660.300, RSMo 2000, are repealed and five new sections enacted in lieu thereof, to be known as sections 660.250, 660.252, 660.260, 660.300 and 660.302, to read as follows:

660.250. As used in sections 660.250 to 660.305, the following terms mean:

(1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;

(2) "Court", the circuit court;

(3) "Department", the department of social 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) "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) "In-home services employee", a person employed by an in-home services provider agency;

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

(8) "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) "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) "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) "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) "Noncompliant client" or "noncompliant", an in-home client who is able to make decisions, but unwilling to accept assistance as authorized in the department plan of service necessary to meet his or her essential human needs when such unwillingness creates a likelihood of serious physical harm;

[(12)] **(13)** "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. The department shall establish a proficiency examination which each applicant for in-home services employment must successfully pass before an in-home services provider may hire the applicant. The department shall describe by rule the curriculum for training for the proficiency test and training on identification and prevention of abuse and neglect that will be incorporated into all Medicaid

participation agreements entered into between the department of social services and in-home services provider agencies.

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 immediately 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, or employee of the department of social services or of the department of health or of the department of mental health **or employee or volunteer 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. Any in-home services provider shall report to the department an in-home services client who is at risk of serious physical harm because the client is noncompliant with the department's plan of service.**

2. Upon notification by the in-home services provider of a client suspected to be noncompliant, the department nurse shall attempt to resolve the circumstances with the case manager and shall investigate the allegation when necessary. The nurse shall report to the referring provider about the status of the case within one calendar week. If unable to resolve the situation, the department shall refer the client to the interdisciplinary case management team as established in subsection 3 of this section. The interdisciplinary case management team shall attempt to resolve the

circumstances. If unable, the team shall issue a consensus report about the case and the client shall be identified as noncompliant.

3. The department shall establish ad-hoc interdisciplinary case management teams to assist the department, the client's case manager, and the client's in-home services provider by acting as consultants and by intervening in cases where the team's specialized expertise will supplement the plan of service. The department shall determine membership on the interdisciplinary case management teams on a case by case basis. The teams shall include at a minimum the client's case manager, a department nurse, an in-home services provider nurse, a long-term care specialist, a department of mental health coordinator, pursuant to section 630.045, RSMo, and a member of the client's family. The teams may include a representative of law enforcement, a physician and other local resources. The mental health coordinator, shall, when appropriate, assume the role of co-case manager for the in-home services client. The in-home services provider shall be reimbursed for their participation on the team under the case management program.

4. 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.] **5.** 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.] **6.** 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, 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.] **7.** 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 has been abused or neglected by an in-home services employee may report such information to the department.

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

[6.] **8.** If the investigation indicates possible abuse or neglect of an in-home services client, 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 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 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, for a period not to exceed thirty days.

[7.] **9.** Reports shall be confidential, as provided under section 660.320.

[8.] **10.** Anyone, except any person who has abused or neglected an in-home services client, 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.] **11.** 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.] **12.** No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services 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 any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

[11.] **13.** Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony. **If such person is an in-home services employee and upon a determination of guilt by a court, the supervising in-home services provider may 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. Upon three or more employee violations pursuant to this section, the department may terminate its contract with the in-home services provider. 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.**

[12.] **14.** 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 while employed by an in-home services provider agency. **Any in-home services provider agency which knowingly employs a person who is currently**

listed on the employee disqualification list, pursuant to section 660.315, or the Family Care Safety Registry, pursuant to sections 210.900 to 210.936, RSMo, will be guilty of a class A misdemeanor.

15. The department shall establish a procedure by which all in-home services clients will be categorized based on their care and condition needs after the initial qualification assessment. The department shall determine the criteria for each category by rule, pursuant to chapter 536, RSMo. The department may refer any client to an interdisciplinary case management team, as necessary. The department may authorize the in-home services provider nurse, licensed pursuant to chapter 335, RSMo, to assist the department in the assessment of the client's condition upon initiation of services to determine the care needs of the client and establish a plan of services appropriate to meet the client's needs. After initial assessment of the client, nurse visits shall be authorized twice annually for clients with plans of service that do not include nurse visits as part of the plan for the purpose of assessing the client and the client's services. If the provider nurse believes that the plan of service needs 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 department 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.

17. The department shall establish a quality assurance and supervision process for clients that assures the in-home services provider is reimbursed for any nurse assessment portion of the process.

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.

Unofficial

Bill

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