

FIRST REGULAR SESSION

# SENATE BILL NO. 121

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0431S.011

## AN ACT

To amend chapters 42 and 630, RSMo, by adding thereto ten new sections relating to the safe staffing and quality care accountability act.

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

Section A. Chapters 42 and 630, RSMo, are amended by adding thereto ten new sections, to be known as sections 42.150, 42.152, 42.154, 42.156, 42.158, 630.950, 630.952, 630.954, 630.956, and 630.958, to read as follows:

**42.150. 1. Sections 42.150 to 42.158 shall be known and may be cited as the "Safe Staffing and Quality Care Accountability Act for Veterans Homes".**

**2. For purposes of sections 42.150 to 42.158, "all veterans homes" means all veterans homes operated by the Missouri veterans' commission.**

**3. All veterans homes shall adopt minimum staffing ratios to ensure client and worker safety. All veterans homes shall employ sufficient direct care staff, over and above the minimum safety ratios specified in sections 42.150 to 42.158, necessary to provide active treatment as dictated in the clients' individualized habilitation plans, individualized treatment plans, or plans of care, whichever is applicable.**

**42.152. The Missouri veterans' commission shall adopt the following minimum staffing ratios for all veterans homes operated in this state and at no time shall facility management schedule fewer staff than required:**

**(1) On the day and evening shifts, veterans homes shall be staffed at no fewer than one direct care staff for every eight clients;**

**(2) On the night shift, veterans homes shall be staffed at no fewer than one direct care staff for every ten clients;**

**(3) The number of direct care workers shall be increased by the number of clients with one-on-one or two-on-one staffing needs; and**

(4) Line-of-sight clients shall be staffed on a one-on-one basis.

42.154. 1. Direct care staff in all veterans homes with one-on-one or two-on-one clients shall not be assigned any additional duties, including distributing medications, under any circumstances.

2. For purposes of minimum direct care staffing ratios in all veterans homes, only staff with direct care responsibilities will count towards minimum staffing ratio compliance. Licensed practical nurses, registered nurses, developmental assistants III, psychiatric aides III, security aides III, and habilitation specialists shall not count towards fulfilling the minimum staffing ratios.

3. Staff transportation clients shall have adequate direct care escort staff to accompany the clients. A driver shall not be counted as direct care staff for purposes of fulfilling the minimum staffing ratios. The direct care staff-to-client ratio in transport shall be no fewer than that prescribed for the specific client inside the veterans home.

4. If a client residing in a veterans home is hospitalized in a general acute care hospital, the Missouri veterans' commission direct care staff shall not be transferred to such hospitals. Nursing staff at general acute care hospitals shall provide direct care to the client.

5. Veterans home management shall be responsible for any harm to clients resulting from insufficient staffing. Direct care staff shall not be held responsible for adverse events due to violations of sections 42.150 to 42.158.

6. Mandatory overtime shall not be used as a substitute for sufficient staffing.

42.156. 1. Each veterans home shall document and submit to the Missouri veterans' commission on a monthly basis the following information for each ward or unit, day of the week, and shift:

(1) The number of holdover staff;

(2) The number of mandatory overtime hours worked per direct care worker; and

(3) The number of on-call staff that were called in to work.

Such information shall be made available to the public upon request.

2. Direct care staff in all veterans homes shall not be held over more than one shift per pay period and the length of mandatory overtime shall not exceed four hours. Direct care staff may volunteer to work overtime more than once every pay period for a duration of longer than four hours, but in no case shall such overtime shift exceed eight hours.

42.158. 1. Assignment despite objection forms shall be used by direct care staff to document noncompliance with sections 42.150 to 42.158. Such forms shall

be distributed to veterans home supervisors and the Missouri veterans' commission, and shall be subject to public inspection upon request. Such reporting forms shall not contain any information that would violate client confidentiality.

2. Clients, their representatives and guardians, and representatives of direct care workers may submit complaints alleging noncompliance with sections 42.150 to 42.158 to the Missouri veterans' commission. Such complaints shall be subject to public inspection upon request.

3. The executive director of the Missouri veterans' commission shall investigate all complaints of violations of sections 42.150 to 42.158 documented in assignment despite objection forms, or submitted by clients, their representatives or guardians, or direct care worker organizations within two business days. The Missouri veterans' commission shall have immediate access to all veterans home staffing documentation necessary to conduct its investigation.

4. Upon receiving evidence of a violation, the Missouri veterans' commission shall issue a plan of correction within two business days. The commission shall follow up to ensure that the plan of correction is implemented at the veterans home.

5. If the plan of correction is not implemented within two business days of receipt by the veterans home superintendent or chief executive officer, the executive director of the Missouri veterans' commission shall issue a warning to the veterans home superintendent or chief executive officer.

6. If the plan of correction is not implemented within two business days of receipt of warning from the executive director of the Missouri veterans' commission, the veterans home superintendent or chief executive officer shall be suspended without pay until such time as the plan of correction is implemented.

7. Two suspensions for noncompliance with sections 42.150 to 42.158 shall result in termination of the veterans home superintendent or chief executive officer.

8. Any retaliation by veterans home management against a direct care whistleblower or complainant pursuant to sections 42.150 to 42.158 is unlawful and shall result in immediate termination of the veterans home staff involved and the immediate reinstatement of the direct care staff if the complainant was terminated.

9. Any person who sustains personal injuries arising from violations of sections 42.150 to 42.158 shall have a cause of action for damages pursuant to chapter 537, RSMo. For purposes of sections 42.150 to 42.158, the provisions of subsection 2 of section 287.120, RSMo, do not apply.

**630.950. 1. Sections 630.950 to 630.958 shall be known and may be cited as the "Safe Staffing and Quality Care Accountability Act for Mental Health Facilities".**

**2. For purposes of sections 630.950 to 630.958, "all facilities" means those facilities operated by the division of comprehensive psychiatric services and the division of mental retardation and developmental disabilities within the department of mental health.**

**3. All facilities shall adopt minimum staffing ratios to ensure client and worker safety. All facilities shall employ sufficient direct care staff, over and above the minimum safety ratios specified in sections 630.950 to 630.958, necessary to provide active treatment as dictated in the clients' individualized habilitation plans, individualized treatment plans, or plans of care, whichever is applicable.**

**630.952. The department of mental health shall adopt the following minimum staffing ratios for all department facilities and at no time shall facility management schedule fewer staff than required:**

**(1) On the day and evening shifts, facilities shall be staffed at no fewer than one direct care staff for every four clients;**

**(2) On the night shift, facilities shall be staffed at no fewer than one direct care staff for every six clients;**

**(3) In comprehensive psychiatric services facilities, the ratio established in subdivision (1) of this section shall apply to minimum and moderate care clients only;**

**(4) In comprehensive psychiatric services facilities, the number of direct care staff shall be increased to deliver needed services to extensive care clients;**

**(5) Clients with mixed assessments under the comprehensive psychiatric services acuity system shall be placed in the classification that allows treatment of the client's most acute conditions;**

**(6) In each group home serving up to eight persons, two direct care staff shall be on duty at all times. Group homes shall never have only one direct care staff on duty;**

**(7) The number of direct care workers shall be increased by the number of clients with one-on-one or two-on-one staffing needs;**

**(8) Line-of-sight clients shall be staffed on a one-on-one basis; and**

**(9) Forensic staff shall not be assigned more than three level three or lower clients.**

**630.954. 1. Direct care staff in all facilities with one-on-one or two-on-one clients shall not be assigned any additional duties, including distributing medications, under any circumstances.**

2. For purposes of minimum direct care staffing ratios in all facilities, only staff with direct care responsibilities will count towards minimum staffing ratio compliance. Licensed practical nurses, registered nurses, developmental assistants III, psychiatric aides III, security aides III, and habilitation specialists shall not count towards fulfilling the minimum staffing ratios.

3. Staff transportation clients shall have adequate direct care escort staff to accompany the clients. A driver shall not be counted as direct care staff for purposes of fulfilling the minimum staffing ratios. The direct care staff-to-client ratio in transport shall be no fewer than that prescribed for the specific client inside the facility.

4. If a client residing in a department of mental health facility is hospitalized in a general acute care hospital, the department of mental health direct care staff shall not be transferred to such hospital. Nursing staff at general acute care hospitals shall provide direct care to the client.

5. Facility management shall be responsible for any harm to clients resulting from insufficient staffing. Direct care staff shall not be held responsible for adverse events due to violations of sections 630.950 to 630.958.

6. Mandatory overtime shall not be used as a substitute for sufficient staffing.

630.956. 1. Each department of mental health facility shall document and submit to the department of mental health on a monthly basis the following information for each ward or unit, day of the week, and shift:

(1) The number of holdover staff;

(2) The number of mandatory overtime hours worked per direct care worker; and

(3) The number of on-call staff that were called in to work.

Such information shall be made available to the public upon request.

2. Direct care staff in all facilities shall not be held over more than one shift per pay period and the length of mandatory overtime shall not exceed four hours. Direct care staff may volunteer to work overtime more than once every pay period for a duration of longer than four hours, but in no case shall such overtime shift exceed eight hours.

630.958. 1. Assignment despite objection forms shall be used by direct care staff to document noncompliance with sections 630.950 to 630.958. Such forms shall be distributed to facility supervisors and the department of mental health, and shall be subject to public inspection upon request. Such reporting forms shall not contain any information that would violate client confidentiality.

2. Clients, their representatives and guardians, and representatives of direct

care workers may submit complaints alleging noncompliance with sections 630.950 to 630.958 to the department of mental health. Such complaints shall be subject to public inspection upon request.

3. The director of the department of mental health shall investigate all complaints of violations of sections 630.950 to 630.958 documented in assignment despite objection forms, or submitted by clients, their representatives or guardians, or direct care worker organizations within two business days. The department of mental health shall have immediate access to all facility staffing documentation necessary to conduct its investigation.

4. Upon receiving evidence of a violation, the department of mental health shall issue a plan of correction within two business days. The department shall follow up to ensure that the plan of correction is implemented at the facility.

5. If the plan of correction is not implemented within two business days of receipt by the facility superintendent or chief executive officer, the director of the department of mental health shall issue a warning to the facility superintendent or chief executive officer.

6. If the plan of correction is not implemented within two business days of receipt of warning from the director of the department of mental health, the facility superintendent or chief executive officer shall be suspended without pay until such time as the plan of correction is implemented.

7. Two suspensions for noncompliance with sections 630.950 to 630.958 shall result in termination of the facility superintendent or chief executive officer.

8. Any retaliation by facility management against a direct care whistleblower or complainant pursuant to sections 630.950 to 630.958 is unlawful and shall result in immediate termination of the facility staff involved and the immediate reinstatement of the direct care staff if the complainant was terminated.

9. Any person who sustains personal injuries arising from violations of sections 630.950 to 630.958 shall have a cause of action for damages pursuant to chapter 537, RSMo. For purposes of sections 630.950 to 630.958, the provisions of subsection 2 of section 287.120, RSMo, do not apply.