

FIRST REGULAR SESSION

SENATE BILL NO. 362

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time February 7, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1799S.011

AN ACT

To repeal sections 208.909, 208.918, and 208.924, RSMo, and to enact in lieu thereof four new sections relating to in-home services.

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

Section A. Sections 208.909, 208.918, and 208.924, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 208.896,
3 208.909, 208.918, and 208.924, to read as follows:

**208.896. 1. To ensure the availability of comprehensive and cost-
2 effective choices for MO HealthNet participants who have been
3 diagnosed with Alzheimer's disease or related disorders, as defined in
4 section 172.800, to live at home in the community of their choice and to
5 receive support from the caregivers of their choice, the department of
6 social services shall apply to the U.S. Secretary of Health and Human
7 Services for a structured family caregiver waiver under Section 1915(c)
8 of the federal Social Security Act. Federal approval of the waiver shall
9 be necessary to implement the provisions of this section. Structured
10 family caregiving shall be considered an agency-directed model, and no
11 financial management services shall be required.**

12 **2. The structured family caregiver waiver shall include:**

13 **(1) A choice for participants of qualified and credentialed
14 caregivers, including family caregivers;**

15 **(2) A choice for participants of community settings in which they
16 receive structured family caregiving. A caregiver may provide
17 structured family caregiving services in the caregiver's home or the
18 participant's home, but the caregiver shall reside full time in the same**

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

19 home as the participant;

20 (3) A requirement that caregivers under this section shall be
21 added to the family care safety registry and comply with the provisions
22 of sections 210.900 to 210.936;

23 (4) A requirement that all caregivers and organizations serving
24 as structured family caregiving agencies shall be subject to the
25 provisions of section 660.023;

26 (5) A cap of three hundred participants to receive structured
27 family caregiving;

28 (6) A requirement that all organizations serving as structured
29 family caregiving agencies shall be considered in-home service
30 provider agencies and shall be accountable for documentation of
31 services delivered, meeting the requirements set forth for these
32 provider agencies, qualification and requalification of caregivers and
33 homes, caregiver training, providing a case manager or registered
34 nurse to create a service plan tailored to each participant's needs,
35 professional staff support for eligible people, ongoing monitoring and
36 support through monthly home visits, deployment of electronic daily
37 notes, and remote consultation with families;

38 (7) Caregivers shall be accountable for providing for the
39 participant's personal care needs. This shall include, but shall not be
40 limited to, laundry, housekeeping, shopping, transportation, and
41 assistance with activities of daily living;

42 (8) A daily payment rate for services that is adequate to pay
43 stipends to caregivers and pay provider agencies for the cost of
44 providing professional staff support as required under this section and
45 administrative functions required of in-home services provider
46 agencies. The payment to the provider agency shall not exceed thirty-
47 five percent of the daily reimbursement rate; and

48 (9) Daily payment rates for structured family caregiving services
49 shall be tier-based on medical necessity criteria determined by the
50 department. The maximum daily payment rate for structured family
51 caregiving services shall not exceed seventy-five percent of the daily
52 nursing home cost cap established by the state each year.

53 3. (1) Within ninety days of August 28, 2019, the department of
54 social services shall, if necessary to implement the provisions of this
55 section, apply to the U.S. Secretary of Health and Human Services for

56 a structured family caregiver waiver. The department of social services
57 shall request an effective date before July 2, 2020, and shall, by such
58 date, take all administrative actions necessary to ensure timely and
59 equitable availability of structured family caregiving services for home-
60 and community-based care participants.

61 (2) Upon receipt of an approved waiver under subdivision (1) of
62 this subsection, the department of health and senior services shall
63 promulgate rules to implement the provisions of this section. Any rule
64 or portion of a rule, as that term is defined in section 536.010 that is
65 created under the authority delegated in this section shall become
66 effective only if it complies with and is subject to all of the provisions
67 of chapter 536, and, if applicable, section 536.028. This section and
68 chapter 536 are nonseverable and if any of the powers vested with the
69 general assembly pursuant to chapter 536, to review, to delay the
70 effective date, or to disapprove and annul a rule are subsequently held
71 unconstitutional, then the grant of rulemaking authority and any rule
72 proposed or adopted after August 28, 2019, shall be invalid and void.

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

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

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

17 (7) Allowing the vendor to comply with its quality assurance and
18 supervision process, which shall include, but not be limited to, biannual
19 face-to-face home visits and monthly case management activities.

20 2. Participating vendors shall be responsible for:

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

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

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

27 (4) Monitoring the performance of the personal care assistance services
28 plan. **Such monitoring shall occur during the biannual face-to-face**
29 **home visits under section 208.918. The vendor shall document whether**
30 **the attendant was present and if services are being provided to the**
31 **consumer as set forth in the plan of care.**

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

39 4. No state or federal financial assistance shall be authorized or expended
40 to pay for personal care assistance services provided by a personal care attendant
41 who has not undergone the background screening process under section 192.2495.
42 If the personal care attendant has a disqualifying finding under section 192.2495,
43 no state or federal assistance shall be made, unless a good cause waiver is first
44 obtained from the department in accordance with section 192.2495.

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

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

53 (b) Record the exact time the services begin and exact time the services
54 end;

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

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

58 (e) Require a personal identification number unique to each personal care
59 attendant;

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

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

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

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

79 [(4)] (3) The department of health and senior services shall promulgate
80 by rule the minimum necessary criteria of the telephone tracking system. Any
81 rule or portion of a rule, as that term is defined in section 536.010, that is created
82 under the authority delegated in this section shall become effective only if it
83 complies with and is subject to all of the provisions of chapter 536 and, if
84 applicable, section 536.028. This section and chapter 536 are nonseverable and
85 if any of the powers vested with the general assembly pursuant to chapter 536 to
86 review, to delay the effective date, or to disapprove and annul a rule are
87 subsequently held unconstitutional, then the grant of rulemaking authority and
88 any rule proposed or adopted after August 28, 2010, shall be invalid and void.

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

92 report which shall detail those elements of substantial dissent from the main
93 report.

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

208.918. 1. In order to qualify for an agreement with the department, the
2 vendor shall have a philosophy that promotes the consumer's ability to live
3 independently in the most integrated setting or the maximum community
4 inclusion of persons with physical disabilities, and shall demonstrate the ability
5 to provide, directly or through contract, the following services:

6 (1) Orientation of consumers concerning the responsibilities of being an
7 employer[,] **and** supervision of personal care attendants including the
8 preparation and verification of time sheets. **Such orientation shall include**
9 **notifying consumers that falsification of personal care attendant time**
10 **sheets shall be considered fraud and shall be reported to the**
11 **department;**

12 (2) Training for consumers about the recruitment and training of personal
13 care attendants;

14 (3) Maintenance of a list of persons eligible to be a personal care
15 attendant;

16 (4) Processing of inquiries and problems received from consumers and
17 personal care attendants;

18 (5) Ensuring the personal care attendants are registered with the family
19 care safety registry as provided in sections 210.900 to [210.937] **210.936**; and

20 (6) The capacity to provide fiscal conduit services through a telephone
21 tracking system by the date required under section 208.909.

22 2. In order to maintain its agreement with the department, a vendor shall
23 comply with the provisions of subsection 1 of this section and shall:

24 (1) Demonstrate sound fiscal management as evidenced on accurate
25 quarterly financial reports [and annual audit] submitted to the department; [and]

26 (2) **Attest that adequate documentation for all information is**
27 **provided on reports, and billing records have sufficient documentation**
28 **to support the amounts claimed;**

29 (3) Demonstrate a positive impact on consumer outcomes regarding the
30 provision of personal care assistance services as evidenced on accurate quarterly
31 and annual service reports submitted to the department;

32 [(3)] (4) Implement a quality assurance and supervision process that
33 ensures program compliance and accuracy of records:

34 (a) **The department of health and senior services shall**
35 **promulgate by rule a consumer-directed services division provider**
36 **certification manager course; and**

37 (b) **The vendor shall perform with the consumer at least biannual**
38 **face-to-face home visits to provide ongoing monitoring of the provision**
39 **of services in the plan of care and assess the quality of care being**
40 **delivered. The biannual face-to-face home visits do not preclude the**
41 **vendor's responsibility from its ongoing diligence of case management**
42 **oversight; [and**

43 (4)] (5) Comply with all provisions of sections 208.900 to 208.927, and the
44 regulations promulgated thereunder; **and**

45 (6) **Maintain a proper business location, the criteria for which**
46 **shall be defined by the department of health and senior services by**
47 **rule.**

48 3. **No state or federal funds shall be authorized or expended if**
49 **the owner, primary operator, certified manager, or any direct employee**
50 **of the consumer-directed services vendor is also the personal care**
51 **attendant.**

 208.924. A consumer's personal care assistance services may be
2 discontinued under circumstances such as the following:

3 (1) The department learns of circumstances that require closure of a
4 consumer's case, including one or more of the following: death, admission into a
5 long-term care facility, no longer needing service, or inability of the consumer to
6 consumer-direct personal care assistance service;

7 (2) The consumer has falsified records; **provided false information of**
8 **his or her condition, functional capacity, or level of care needs; or**
9 committed fraud;

10 (3) The consumer is noncompliant with the plan of care. Noncompliance
11 requires persistent actions by the consumer which negate the services provided
12 in the plan of care;

13 (4) The consumer or member of the consumer's household threatens or
14 abuses the personal care attendant or vendor to the point where their welfare is
15 in jeopardy and corrective action has failed;

16 (5) The maintenance needs of a consumer are unable to continue to be met

17 because the plan of care hours exceed availability; and

18 (6) The personal care attendant is not providing services as set forth in
19 the personal care assistance services plan and attempts to remedy the situation
20 have been unsuccessful.

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