

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 595

AN ACT

To repeal sections 208.909, 208.918, and 208.924, RSMo, and to enact in lieu thereof four new sections relating to personal care assistance services.

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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Section A. Sections 208.909, 208.918, and 208.924, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 208.909, 208.918, 208.924, and 208.935, to read as follows: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]

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

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

(8) Report to the department significant changes in their health and ability to self-direct care.

2. Participating vendors shall be responsible for:

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

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

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

(4) Monitoring the performance of the personal care assistance services plan. Such monitoring shall occur during the annual face-to-face home visit under section 208.918. The vendor shall document whether services are being provided to the consumer as set forth in the plan of care. If the attendant was not providing services as set forth in the plan of care, the vendor shall notify the department and the department may suspend services to the consumer; and

(5) Report to the department significant changes in the consumer's health or ability to self-direct care.

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

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

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

- (a) Record the exact date services are delivered;
- (b) Record the exact time the services begin and exact time the services end;
- (c) Verify the telephone number from which the services are registered;
- (d) Verify that the number from which the call is placed is a telephone number unique to the client;
- (e) Require a personal identification number unique to each personal care attendant;
- (f) Be capable of producing reports of services delivered, tasks performed, client identity, beginning and ending times of service and date of service in summary fashion that constitute adequate documentation of service; and
- (g) Be capable of producing reimbursement requests for consumer approval that assures accuracy and compliance with program expectations for both the consumer and vendor.

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

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

[(4)] (3) The department of health and senior services shall promulgate by rule the minimum necessary criteria of the telephone tracking system. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2010, shall be invalid and void.

[6. In the event that a consensus between centers for independent living and representatives from the executive branch cannot be reached, the telephony report issued to the general assembly and governor shall include a minority report which shall detail those elements of substantial dissent from the main report.

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

208.918. 1. In order to qualify for an agreement with the

department, the vendor shall have a philosophy that promotes the consumer's ability to live independently in the most integrated setting or the maximum community inclusion of persons with physical disabilities, and shall demonstrate the ability to provide, directly or through contract, the following services:

(1) Orientation of consumers concerning the responsibilities of being an employer[, ] and supervision of personal care attendants including the preparation and verification of time sheets. Such orientation shall include notifying customers that falsification of attendant visit verification records shall be considered fraud and shall be reported to the department. Such orientation shall take place in the presence of the personal care attendant, to the fullest extent possible;

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

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

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

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

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

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

section and shall:

(1) Demonstrate sound fiscal management as evidenced on accurate quarterly financial reports and an annual financial statement audit [submitted to the department] performed by a certified public accountant if the vendor's annual gross revenue is two hundred thousand dollars or more or, if the vendor's annual gross revenue is less than two hundred thousand dollars, an annual financial statement audit or annual financial statement review performed by a certified public accountant. Such reports, audits, and reviews shall be completed and made available upon request to the department; [and]

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

(3) Implement a quality assurance and supervision process that ensures program compliance and accuracy of records, including, but not limited to:

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

(b) The vendor shall perform ongoing monitoring of the provision of services in the plan of care and shall assess the quality of care being delivered. Such monitoring shall include at least one annual face-to-face visit and may include electronic monitoring, telephone checks, written case notes, or other department-approved methods. The ongoing monitoring shall not preclude the vendor's responsibility of ongoing diligence of case

management activity oversight;

(4) Comply with all provisions of sections 208.900 to 208.927, and the regulations promulgated thereunder; and

(5) Maintain a business location which shall comply with any and all applicable city, county, state, and federal requirements.

3. No state or federal funds shall be authorized or expended to pay for personal care assistance services under sections 208.900 to 208.927 if any direct employee of the consumer-directed services vendor conducts the face-to-face home visit of a consumer for whom such employee is also the personal care attendant, unless such person provides services solely on a temporary basis on no more than three days in a thirty-day period.

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

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

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

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

(4) The consumer or member of the consumer's household

threatens or abuses the personal care attendant or vendor to the point where their welfare is in jeopardy and corrective action has failed;

(5) The maintenance needs of a consumer are unable to continue to be met because the plan of care hours exceed availability; and

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

2. The personal care attendant shall report to the department if he or she witnesses significant deterioration of the health of the consumer or if he or she has a belief that the consumer is no longer capable of self-directed care.

208.935. Subject to appropriations, the department of health and senior services shall develop, or contract with a state agency or third party to develop an interactive assessment tool, which may include mobile as well as centralized functionality, for utilization when implementing the assessment and authorization process for MO HealthNet home and community-based services authorized by the division of senior and disability services.