

FIRST REGULAR SESSION

SENATE BILL NO. 339

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS HOWARD AND SIMS.

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S1299.04J

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 198.073, RSMo 1994, and sections 197.318 and 660.050, RSMo Supp. 1998, relating to the division of aging, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Section 198.073, RSMo 1994, and sections 197.318 and 660.050, RSMo Supp. 1998, are repealed and three new sections enacted in lieu thereof, to be known as sections 197.318, 198.073 and 660.050, to read as follows:

197.318. 1. **Pursuant to subdivision (5) of subsection 6 of section 660.050, RSMo, this section will be terminated August 28, 2001.** The provisions of section 197.317 shall not apply to a residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility only where the department of social services has first determined that there presently exists a need for additional beds of that classification because the average occupancy of all licensed and available residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility beds exceeds ninety percent for at least three consecutive calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise appears to qualify for a certificate of need. The department's certification that there is no need for additional beds shall serve as the final determination and decision of the committee. In determining ninety percent occupancy, residential care facility I and II shall be one separate classification and intermediate care and skilled nursing facilities are another separate classification. The provisions of sections 197.300 to 197.366 shall not apply to any of the following:

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

(1) A residential care facility I or residential care facility II which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is licensed by the division of aging by August 1, 1996;

(2) A combined skilled nursing facility and residential care facility I and II located in a tax increment financing district which has received approval by the division of aging of plans for construction of the residential care facility I and II beds by August 1, 1995;

(3) A residential care facility I or residential care facility II which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is located in any county of the first classification without a charter form of government with an assessed valuation of at least one billion dollars but not more than one billion five hundred million dollars;

(4) A residential care facility I or residential care facility II which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is located in a nursing home district which is contiguous to a public hospital district located in a county of the third classification.

2. The Missouri health facilities review committee may, for any facility certified to it by the department[,]:

(1) Consider the predominant ethnic or religious composition of the residents to be served by that facility in considering whether to grant a certificate of need;

(2) Allow a facility to increase its long-term care beds by up to twenty-five percent of its licensed capacity, not to exceed thirty new beds or one hundred percent of the facility's licensed capacity, if such facility has experienced an average occupancy rate of at least ninety percent for at least four of the most recent consecutive calendar quarters;

(3) Allow a facility to transfer, purchase or sell individual long-term care beds on a statewide or as-needed basis. Such transfers shall only be permitted to facilities which experienced an average occupancy rate of ninety percent for at least four of the most recent consecutive calendar quarters.

3. There shall be no expenditure minimum for facilities, beds, or services referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire December 31, 1999.

4. As used in this section, the term "licensed and available" means beds which are actually in place and for which a license has been issued.

5. The provisions of section 197.317 shall not apply to any facility where at least ninety-five percent of the patients require diets meeting the dietary standards defined by section 196.165, RSMo.

6. The committee shall review all letters of intent and applications for long-term care hospital beds meeting the requirements described in 42 C.F.R., section 412.23(e) under its criteria

and standards for long-term care beds.

7. Sections 197.300 to 197.366 shall not be construed to apply to litigation pending in state court on or before April 1, 1996, in which the Missouri health facilities review committee is a defendant in an action concerning the application of sections 197.300 to 197.366 to long-term care hospital beds meeting the requirements described in 42 C.F.R., section 412.23(e).

198.073. 1. **Except as provided in subsection 3 of this section**, a residential care facility II or residential care facility I shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.

2. **Notwithstanding the provisions of subsection 3 of this section**, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a residential care facility II or residential care facility I if approved by a physician.

3. A residential care provider may admit or continue care for those persons who are physically capable of negotiating a normal path to safety using assistive devices or aids when necessary and are mentally incapable of negotiating such a path to safety, if the following requirements are met:

(1) A family member or legal representative of the resident, in consultation with the resident's physician, determines that the provider can meet the needs of the resident. The provider shall document the decision regarding continued placement through written verification by the family member, physician and the provider representative;

(2) The facility shall be in compliance with the division of aging regulations which shall include the most recent life safety codes for existing health care occupancy;

(3) In a multilevel facility, residents who are mentally incapable of negotiating a pathway to safety are housed only on the ground floor, unless the upper level exits comply with the most recent life safety code for existing health care occupancy;

(4) The provider develops and implements policies and procedures to ensure the safety of all residents, including those residents who may wander. The provider shall take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds, but prevent such residents from wandering unattended off of the premises;

(5) The facility shall be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility as required by licensure. All on-duty staff shall, at all times, be awake, dressed and prepared to assist residents in case of emergency;

(6) Every resident mentally incapable of negotiating a pathway to safety in the

facility shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an instrument specified by the division of aging:

(a) Upon admission;

(b) At least semiannually; and

(c) When a significant change has occurred in the resident's condition which may require additional services;

(7) Based on the assessment in subdivision (6) of this subsection, a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan for every resident who is mentally incapable of negotiating a pathway to safety. Such individualized service plan shall be implemented by the facility's staff to meet the specific needs of the resident;

(8) Every provider shall use a personal electronic monitoring device for any resident whose physician recommends the use of such device;

(9) All personnel who provide direct care to residents who are mentally incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training within the first thirty days of employment. At least twelve hours of such training shall be classroom instruction, with six classroom instruction hours and two on-the-job training hours related to the special needs, care and safety of residents with dementia;

(10) All personnel, regardless of whether such personnel provides direct care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at least three hours of in-service training, with at least two such hours relating to the care and safety of residents who are mentally incapable of negotiating a pathway to safety;

(11) Every provider may make available and implement self-care, productive and leisure activity programs for persons with dementia which maximize and encourage the resident's optimal functional ability; and

(12) Every provider shall develop and implement a plan to protect the rights, privacy and safety of all residents and to prevent the financial exploitation of all residents.

4. The provider shall not care for any person unless such provider is able to provide appropriate services for and meet the needs of such person.

5. Nothing in this chapter shall prevent a provider from discharging a resident who is a danger to himself or herself, or to others, or who has not paid required fees, after thirty days notice.

6. The training requirements established in subdivisions (9) and (10) of

subsection 3 of this section shall fully satisfy the training requirements in subdivision (18) of subsection 1 of section 208.152, RSMo.

7. The division of aging may grant exceptions to the requirements of this section to allow for the continuity of care for residents of the facility.

660.050. 1. The "Division of Aging" is hereby created and established as a division of the department of social services. The division shall aid and assist the elderly and low-income handicapped adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The division shall regulate adult long-term care services under the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities. In addition to its duties and responsibilities enumerated under other provisions of law, the division shall serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of this subsection and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;

2. The division director, subject to the supervision of the director of the department of social services, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority under chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for the performance of the duties and responsibilities of the division.

3. With regard to informational functions, the division shall:

(1) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;

(2) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the division;

(3) Maintain a clearinghouse for information related to the needs and interests of elderly persons, including information on the Missouri care options program.

4. With regard to planning functions, the division shall:

(1) Develop performance-based goals and outline strategic outcomes to enable the state to more flexibly meet the complex needs of its growing elderly population. The division shall solicit input from consumers, providers, advocates, families, state and local agencies, legislators, the governor's advisory council on aging, and the commission on the special health, psychological and social needs of older minority individuals on how best to plan for the needs of the elderly over the next ten years. State plans should consider the plans of area agencies on aging, current

statewide priorities, and state and federal government requirements. The division shall focus on plans to ensure that efficiency, quality of care and a continuum of options are part of the state's long-term care delivery system;

(2) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities to meet the needs of elderly and handicapped persons. State plans should be evaluated annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

(3) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;

(4) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs.

5. With regard to training functions, the division shall:

(1) Provide technical assistance, planning and training to local area agencies on aging;

(2) Establish a curriculum for certified nurses aides, certified medical technicians, and long-term care aides and certify training providers for the purpose of recruiting and training staff. These training providers shall include, but are not limited to long-term care providers, colleges and universities, and vocational and technical schools;

(3) Advocate for the long-term care industry by:

(a) Encouraging employment in the long-term care industry;

(b) Emphasizing staff retention by increasing the rate of job satisfaction for the staff of such facilities; and

(c) Lowering staff turnover to minimize the costs associated with training personnel.

6. With regard to long-term care, the division shall:

(1) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

(2) Conduct a medical review and certify long-term care facilities for participation in the Title XIX program;

(3) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the

liaison between the Social Security Administration and the department of social services concerning Supplemental Security Income beneficiaries;

(4) Develop a methodology to augment the certificate of need process through an annual needs assessment for long-term care facilities and programs which will determine the need for a variety of services, as defined in section 197.318, RSMo, maintaining flexibility within specific geographic areas. This assessment will be independent from the Health Facilities Review Committee and, upon completion, will be provided to the Health Facilities Review Committee through August 28, 2001, and will be provided annually to long-term care providers. Pursuant to section 197.318, RSMo, the division may license both long-term care facilities and services from August 28, 1999 to August 28, 2001;

(5) Beginning August 28, 1999, the certificate of need process will be phased out over a period of two years, ending on August 28, 2001. The revisor of statutes shall remove all references regarding certificate of need for long-term care facilities. During the two year phasing out period, health care providers may apply for additional beds that are consistent with their facility's current level of care or that will be in addition to their facility's level of care. Any application made during this phasing out period will be subject to approval by the certificate of need program, unless the additional beds requested are located in a stand-alone Alzheimer's treatment unit that meets the licensing requirements of the division of aging with regard to health, safety and staffing. After August 28, 2001, the certificate of need process will expire and long-term health care providers will be required to apply to the division of aging for licensure of services. The department of social services shall promulgate rules and regulations to establish the criteria for and procedures by which this shall be accomplished. Such rules and regulations shall include, at a minimum, the health, safety, staffing and training requirements deemed necessary for each level of service licensed under chapter 198, RSMo;

(6) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;

(7) Provide consultation to long-term care providers in all areas governed by state and federal regulations;

(8) Investigate any grievance filed with the division of aging against a long-term care provider, regardless of classification or seriousness of such grievance. Within thirty days of receipt of such complaint, the division shall provide written notification of the investigation to complainants. The division shall provide the results of such investigation to all parties to the complaint and, if requested, to any of the facility's residents, or their family members;

(9) Each provider shall prominently display information on the facility's most recent state inspection at or near such facility's main entrance in an easy to see and easy to understand manner, with simple instructions on how to obtain a copy of the full investigative report;

(10) Select independent monitors to perform state investigations of long-term care facilities. Providers of such facilities shall not participate in or attempt to influence the selection of such monitor. The division shall ensure that any monitor selected has no conflict of interest, and has no direct or indirect connection to the provider or its parent corporation;

(11) Inspect all facilities in which services are licensed by the division at least twice each year. Such inspections shall be conducted without the prior notification of the provider; and at times of the day, on dates, and at intervals which do not permit providers to inappropriately anticipate such inspections. The division of aging will adopt a process to prioritize inspections to those agencies which in the previous year, were not in compliance of state investigations;

(12) Require any person hired by the department of social services after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, to complete at least one hundred hours of basic orientation regarding the inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of social services shall by rule describe the curriculum and structure of such continuing education;

(13) Monitor the process, pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills;

(14) Serve as liaison between the department of social services and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;

(15) Allow providers licensed for long-term care services to contract with qualified licensed professionals for geriatric assessment programs (GAPS). These professionals shall assist families and older adults to identify their functional status, their care needs, available services in the community and sources of financial assistance in paying for the services. The director of the division of aging shall promulgate regulations pertaining to such geriatric assessment programs.

7. With regard to licensure functions, the division shall be responsible for the

licensing of those services necessary to provide twenty-four hour accommodation, board, personal care, health care, and nursing care pursuant to sections 198.015, 198.018 and 198.022, RSMo. The division of aging shall license skilled nursing services, intermediate care services, residential care services, and adult day care with consideration of the physical or mental limitations that exist for patients. Providers licensed for long-term care services may establish adult day care programs to be operated in non-operational portions of the facility in compliance with regulations promulgated by the director of the division of aging.

8. With regard to funding, the division shall:

(1) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division or to the state for the benefit of elderly persons in this state;

(2) Provide area agencies on aging with assistance in applying for federal, state, and private grants and identifying new funding sources;

(3) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures.

9. With regard to programs, the division shall:

(1) Provide transportation services, home delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income handicapped adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

(2) Coordinate and operate the Missouri care options program which informs individuals of the variety of care options available to them when they may need long-term care; and

(3) Encourage providers to expand services to the elderly. In areas where senior centers do not exist, the area agency on aging, council on aging and the division of aging shall work with long-term care providers to provide services for the elderly.

10. The division may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, demographic changes in the elderly population, or the elderly are not receiving appropriate services within available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of social services and the governor. In the event that the division withdraws the area agency on aging designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency on

aging until a new area agency on aging is designated.

11. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in sections 198.070 and 198.090, RSMo, and sections 660.050, 660.250 and 660.300 to 660.320. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 198.070 to 198.090 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, 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 the effective date of this section shall be invalid and void;

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2. In addition to its duties and responsibilities enumerated under other provisions of law, the division shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

(2) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;

(3) Provide technical assistance, planning and training to local area agencies on aging;

(4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

(5) Serve as liaison between the department of social services and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;

(6) Conduct medical review (inspections of care) activities such as utilization reviews, independent professional reviews, and periodic medical reviews to determine medical and social needs for the purpose of eligibility for Title XIX, and for level of care

determination;

(7) Certify long-term care facilities for participation in the Title XIX program;

(8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the liaison between the Social Security Administration and the department of social services concerning Supplemental Security Income beneficiaries;

(9) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;

(10) Provide consultation to long-term care facilities in all areas governed by state and federal regulations;

(11) Serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of subsection 1 of this section and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;

(12) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities for elderly and handicapped persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

(13) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division or to the state for the benefit of elderly persons in this state;

(14) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;

(15) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the division;

(16) After consultation with the governor's advisory council on aging, make recommendations for legislative action to the governor and to the general assembly;

(17) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs;

(18) Maintain a clearinghouse for information related to the needs and interests of elderly persons, including information on the Missouri care options program;

(19) Provide area agencies on aging with assistance in applying for federal, state,

and private grants and identifying new funding sources;

(20) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures;

(21) Provide transportation services, home delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income handicapped adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

(22) Monitor the process pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills.

3. The division director, subject to the supervision of the director of the department of social services, shall be the chief administrative officer of the division and shall exercise for the division the powers and duties of an appointing authority under chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for the performance of the duties and responsibilities of the division.

4. The division may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of social services and the governor. In the event that the division withdraws the area agency on aging designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency on aging until a new area agency on aging is designated.

5. Any person hired by the department of social services after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of social services shall by rule describe the curriculum and structure of such continuing education.

6. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in sections 198.070 and 198.090, RSMo, and

sections 660.050, 660.250 and 660.300 to 660.320. No rule or portion of a rule promulgated under the authority of this chapter and sections 198.070 and 198.090, RSMo, shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

7. Missouri care options is a program, operated and coordinated by the division of aging, which informs individuals of the variety of care options available to them when they may need long-term care.]

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