

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1350
99TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Children, March 8, 2018, with recommendation that the Senate Committee Substitute do pass.

4530S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 192.2495 and 208.909, RSMo, and to enact in lieu thereof two new sections relating to background check requirements for certain in-home service providers, with penalty provisions.

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

Section A. Sections 192.2495 and 208.909, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 192.2495 and 208.909, to read as follows:

192.2495. 1. For the purposes of this section, the term "provider" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198;
- (2) Provides in-home services under contract with the department of social services or its divisions;
- (3) Employs health care providers as defined in section 376.1350 for temporary or intermittent placement in health care facilities;
- (4) Is an entity licensed pursuant to chapter 197;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health; or
- (6) Is a licensed adult day care provider.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540.

3. Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the

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

17 provider shall, or in the case of temporary employees hired through or contracted
18 for an employment agency, the employment agency shall prior to sending a
19 temporary employee to a provider:

20 (1) Request a criminal background check as provided in section
21 43.540. Completion of an inquiry to the highway patrol for criminal records that
22 are available for disclosure to a provider for the purpose of conducting an
23 employee criminal records background check shall be deemed to fulfill the
24 provider's duty to conduct employee criminal background checks pursuant to this
25 section; except that, completing the inquiries pursuant to this subsection shall not
26 be construed to exempt a provider from further inquiry pursuant to common law
27 requirements governing due diligence. If an applicant has not resided in this
28 state for five consecutive years prior to the date of his or her application for
29 employment, the provider shall request a nationwide check for the purpose of
30 determining if the applicant has a prior criminal history in other states. The
31 fingerprint cards and any required fees shall be sent to the highway patrol's
32 central repository. The first set of fingerprints shall be used for searching the
33 state repository of criminal history information. If no identification is made, the
34 second set of fingerprints shall be forwarded to the Federal Bureau of
35 Investigation, Identification Division, for the searching of the federal criminal
36 history files. The patrol shall notify the submitting state agency of any criminal
37 history information or lack of criminal history information discovered on the
38 individual. The provisions relating to applicants for employment who have not
39 resided in this state for five consecutive years shall apply only to persons who
40 have no employment history with a licensed Missouri facility during that
41 five-year period. Notwithstanding the provisions of section 610.120, all records
42 related to any criminal history information discovered shall be accessible and
43 available to the provider making the record request; and

44 (2) Make an inquiry to the department of health and senior services
45 whether the person is listed on the employee disqualification list as provided in
46 section 192.2490.

47 4. When the provider requests a criminal background check pursuant to
48 section 43.540, the requesting entity may require that the applicant reimburse
49 the provider for the cost of such record check. When a provider requests a
50 nationwide criminal background check pursuant to subdivision (1) of subsection
51 3 of this section, the total cost to the provider of any background check required
52 pursuant to this section shall not exceed five dollars which shall be paid to the

53 state. State funding and the obligation of a provider to obtain a nationwide
54 criminal background check shall be subject to the availability of appropriations.

55 5. An applicant for a position to have contact with patients or residents
56 of a provider shall:

57 (1) Sign a consent form as required by section 43.540 so the provider may
58 request a criminal records review;

59 (2) Disclose the applicant's criminal history. For the purposes of this
60 subdivision "criminal history" includes any conviction or a plea of guilty to a
61 misdemeanor or felony charge and shall include any suspended imposition of
62 sentence, any suspended execution of sentence or any period of probation or
63 parole;

64 (3) Disclose if the applicant is listed on the employee disqualification list
65 as provided in section 192.2490; and

66 (4) Disclose if the applicant is listed on any of the background checks in
67 the family care safety registry established under section 210.903. A provider not
68 otherwise prohibited from employing an individual listed on such background
69 checks may deny employment to an individual listed on any of the background
70 checks in such registry.

71 6. An applicant who knowingly fails to disclose his or her criminal history
72 as required in subsection 5 of this section is guilty of a class A misdemeanor. A
73 provider is guilty of a class A misdemeanor if the provider knowingly hires or
74 retains a person to have contact with patients or residents and the person has
75 been found guilty in this state or any other state or has been found guilty of a
76 crime, which if committed in Missouri would be a class A or B felony violation of
77 chapter 565, 566 or 569, or any violation of subsection 3 of section 198.070 or
78 section 568.020.

79 7. Any in-home services provider agency or home health agency shall be
80 guilty of a class A misdemeanor if such agency knowingly employs a person to
81 provide in-home services or home health services to any in-home services client
82 or home health patient and such person either refuses to register with the family
83 care safety registry or [is listed on any of the background check lists in the family
84 care safety registry pursuant to sections 210.900 to 210.937] **if such person:**

85 (1) **Has any of the disqualifying factors listed in subsection 6 of**
86 **this section;**

87 (2) **Has been found guilty of or pleaded guilty or nolo contendere**
88 **to any felony offense under chapter 195 or 579;**

89 **(3) Has been found guilty of or pleaded guilty or nolo contendere**
90 **to any felony offense under section 568.045, 568.050, 568.060, 568.175,**
91 **570.023, 570.025, 570.030, 570.040 as it existed prior to January 1, 2017,**
92 **570.090, 570.145, 570.223, 575.230, or 576.080;**

93 **(4) Has been found guilty of or pleaded guilty or nolo contendere**
94 **to a violation of section 577.010 or 577.012 and who is alleged and found**
95 **by the court to be an aggravated or chronic offender under section**
96 **577.023;**

97 **(5) Has been found guilty of or pleaded guilty or nolo contendere**
98 **to any offense requiring registration under section 589.400;**

99 **(6) Is listed on the department of health and senior services**
100 **employee disqualification list under section 192.2490;**

101 **(7) Is listed on the department of mental health employee**
102 **disqualification registry under section 630.170; or**

103 **(8) Has a finding on the child abuse and neglect registry under**
104 **sections 210.109 to 210.183.**

105 8. The highway patrol shall examine whether protocols can be developed
106 to allow a provider to request a statewide fingerprint criminal records review
107 check through local law enforcement agencies.

108 9. A provider may use a private investigatory agency rather than the
109 highway patrol to do a criminal history records review check, and alternatively,
110 the applicant pays the private investigatory agency such fees as the provider and
111 such agency shall agree.

112 10. Except for the hiring restriction based on the department of health
113 and senior services employee disqualification list established pursuant to section
114 192.2490, the department of health and senior services shall promulgate rules
115 and regulations to waive the hiring restrictions pursuant to this section for good
116 cause. For purposes of this section, "good cause" means the department has made
117 a determination by examining the employee's prior work history and other
118 relevant factors that such employee does not present a risk to the health or safety
119 of residents.

 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.

17 2. Participating vendors shall be responsible for:

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

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

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

24 (4) Monitoring the performance of the personal care assistance services
25 plan.

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

33 4. No state or federal financial assistance shall be authorized or expended
34 to pay for personal care assistance services provided by a personal care attendant
35 who [is listed on any of the background check lists in the family care safety
36 registry under sections 210.900 to 210.937] **has not undergone the**
37 **background screening process under section 192.2495. If the personal**
38 **care attendant has a disqualifying finding under section 192.2495, no**
39 **state or federal assistance shall be made**, unless a good cause waiver is first
40 obtained from the department in accordance with section 192.2495.

41 5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a

42 telephone tracking system for the purpose of reporting and verifying the delivery
43 of consumer-directed services as authorized by the department of health and
44 senior services or its designee. Use of such a system prior to July 1, 2015, shall
45 be voluntary. The telephone tracking system shall be used to process payroll for
46 employees and for submitting claims for reimbursement to the MO HealthNet
47 division. At a minimum, the telephone tracking system shall:

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

49 (b) Record the exact time the services begin and exact time the services
50 end;

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

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

54 (e) Require a personal identification number unique to each personal care
55 attendant;

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

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

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

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

75 (4) The department of health and senior services shall promulgate by rule
76 the minimum necessary criteria of the telephone tracking system. Any rule or
77 portion of a rule, as that term is defined in section 536.010, that is created under

78 the authority delegated in this section shall become effective only if it complies
79 with and is subject to all of the provisions of chapter 536 and, if applicable,
80 section 536.028. This section and chapter 536 are nonseverable and if any of the
81 powers vested with the general assembly pursuant to chapter 536 to review, to
82 delay the effective date, or to disapprove and annul a rule are subsequently held
83 unconstitutional, then the grant of rulemaking authority and any rule proposed
84 or adopted after August 28, 2010, shall be invalid and void.

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

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

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