

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 854
96TH GENERAL ASSEMBLY

5977L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 208.895 and 660.315, RSMo, and to enact in lieu thereof two new sections relating to the employment disqualification list for home care employees.

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

Section A. Sections 208.895 and 660.315, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 208.895 and 660.315, to read as follows:

208.895. 1. Upon **the** receipt of a [properly completed] referral **for service** for MO HealthNet-funded home- and community-based care [containing a nurse assessment] or a physician's order, the department of health and senior services [may] **shall**:

(1) [Review the recommendations regarding services and] Process the referral within fifteen business days;

(2) [Issue a prior-authorization for home and community-based services when information contained in the referral is sufficient to establish eligibility for MO HealthNet-funded long-term care and determine the level of service need as required under state and federal regulations;

(3)] Arrange for the provision of services by [an in-home] **a home- and community-based** provider;

[(4) Reimburse the in-home provider for one nurse visit to conduct an assessment and recommendation for a care plan and, where necessary based on case circumstances, a second nurse visit may be authorized to gather additional information or documentation necessary to constitute a completed referral;

(5) Notify the referring entity upon the authorization of MO HealthNet eligibility and provide MO HealthNet reimbursement for personal care benefits effective the date of the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 assessment or physician's order, and MO HealthNet reimbursement for waiver services effective
19 the date the state reviews and approves the care plan;

20 (6) (3) Notify the referring entity within five business days of receiving the referral if
21 additional information is required to process the referral; [and

22 (7) Inform the provider and contact the individual when information is insufficient or
23 the proposed care plan requires additional evaluation by state staff that is not obtained from the
24 referring entity to schedule an in-home assessment to be conducted by the state staff within thirty
25 days]

26 (4) **Inform the applicant of:**

27 (a) **The full range of available MO HealthNet home- and community-based services,**
28 **including but not limited to adult day care services, home delivered meals, and the benefits**
29 **of self-direction and agency model services;**

30 (b) **The choice of home- and community-based service providers in the applicant's**
31 **area, and that some providers conduct their own assessments but that choosing a provider**
32 **who does not conduct assessments will not delay delivery of services; and**

33 (c) **The option to choose more than one home- and community-based service**
34 **provider to deliver or facilitate the services the applicant is qualified to receive;**

35 (5) **Prioritize the referrals received, giving the highest priority to referrals for high-**
36 **risk individuals, followed by individuals who are alleged to be victims of abuse or neglect**
37 **as a result of an investigation initiated from the elder abuse and neglect hotline, and then**
38 **followed by individuals who have not selected a provider or who have selected a provider**
39 **that does not conduct assessments; and**

40 (6) **Notify the referring entity and the applicant within ten business days of**
41 **receiving the referral if it has not scheduled the assessment.**

42 **2. If the department does not process a referral or physician's order for MO**
43 **HealthNet-funded home- and community-based provider care within fifteen business days**
44 **of receipt by the department, the care plan recommendation of the provider shall become**
45 **effective thereafter.**

46 **3. If the department of health and senior services [may contract for initial home- and**
47 **community-based assessments, including a care plan, through an independent third-party**
48 **assessor. The contract] has not complied with subsection 1 of this section, the department**
49 **shall [include a requirement that:**

50 (1) **Within fifteen days of receipt of a referral for service, the contractor shall have made**
51 **a face-to-face assessment of care need and developed a plan of care; and**

52 (2) **The contractor] notify the referring entity [within five days] or individual of receipt**
53 **of referral if additional information is needed to process the referral. [The contract shall also**

54 include the same requirements for such assessments as of January 1, 2010, related to timeliness
55 of assessments and the beginning of service. The contract shall be bid under chapter 34 and shall
56 not be a risk-based contract.

57 3.] **4.** The two nurse visits authorized by subsection 16 of section 660.300 shall continue
58 to be performed by home- and community-based **service** providers for including, but not limited
59 to, reassessment and level of care recommendations. [These reassessments and care plan
60 changes shall be reviewed and approved by the independent third-party assessor. In the event
61 of dispute over the level of care required, the third-party assessor shall conduct a face-to-face
62 review with the client in question.

63 4. The provisions of this section shall expire August 28, 2013.]

64 **5. At such time that the department approves or modifies the assessment and care**
65 **plan, the latest approved care plan shall become effective.**

66 **6. The department's auditing of home- and community-based service providers**
67 **shall include a review of client service and provider choice and communication of home-**
68 **and community-based service provider service options to individuals seeking MO**
69 **HealthNet services. The department shall also make publicly available a review of its**
70 **process for informing participants of service options within MO HealthNet home- and**
71 **community-based service provider services and information on referrals.**

72 **7. For purposes of this section:**

73 **(1) "Assessment" means a face-to-face review of service options and provider**
74 **choice with an applicant and:**

75 **(a) Is conducted by an assessor trained to perform home- and community-based**
76 **care assessments;**

77 **(b) Uses forms provided by the department;**

78 **(c) Includes unbiased descriptions of each available service within home- and**
79 **community-based services with a clear person-centered explanation of the benefits of each**
80 **home- and community-based service, whether the applicant qualifies for more than one**
81 **service and ability to choose more than one provider to deliver or facilitate services; and**

82 **(d) Informs the applicant, either by the department or the provider conducting the**
83 **assessment, that choosing a provider or multiple providers that do not conduct their own**
84 **assessments will in no way affect the quality of service or the timeliness of the applicant's**
85 **assessment and authorization process;**

86 **(2) A "referral" shall contain basic information adequate for the department to**
87 **contact the client or person needing service. At a minimum, the referral shall contain:**

88 **(a) The stated need for MO HealthNet home- and community-based services;**

89 **(b) The name, date of birth, and Social Security number of the client or person**
90 **needing service, or the client's or person's MO HealthNet number; and**

91 **(c) The physical address and phone number of the client or person needing services.**

92

93 **Additional information which may assist the department may also be submitted.**

94 **8. The department shall:**

95 **(1) Develop an automated electronic assessment care plan tool to be used by**
96 **providers; and**

97 **(2) Make recommendations to the general assembly by January 1, 2013, for the**
98 **implementation of the automated electronic assessment care plan tool.**

99 **9. At the end of the first year of this plan being in effect, the department of health**
100 **and senior services shall prepare a report for the appropriation committee for health,**
101 **mental health and social services or a committee appointed by the speaker to review the**
102 **following:**

103 **(1) How well the department is doing on meeting the fifteen day requirement;**

104 **(2) The process the department used to approve the assessors;**

105 **(3) Financial data on the cost of the program prior to and after enactment of this**
106 **section;**

107 **(4) Any audit information available on assessments performed outside the**
108 **department; and**

109 **(5) Department's staffing policies implemented to meet the fifteen day assessment**
110 **requirement.**

660.315. 1. After an investigation and a determination has been made to place a person's
2 name on the employee disqualification list, that person shall be notified in writing mailed to his
3 or her last known address that:

4 (1) An allegation has been made against the person, the substance of the allegation and
5 that an investigation has been conducted which tends to substantiate the allegation;

6 (2) The person's name will be included in the employee disqualification list of the
7 department;

8 (3) The consequences of being so listed including the length of time to be listed; and

9 (4) The person's rights and the procedure to challenge the allegation.

10 2. If no reply has been received within thirty days of mailing the notice, the department
11 may include the name of such person on its list. The length of time the person's name shall
12 appear on the employee disqualification list shall be determined by the director or the director's
13 designee, based upon the criteria contained in subsection 9 of this section.

14 3. If the person so notified wishes to challenge the allegation, such person may file an
15 application for a hearing with the department. The department shall grant the application within
16 thirty days after receipt by the department and set the matter for hearing, or the department shall
17 notify the applicant that, after review, the allegation has been held to be unfounded and the
18 applicant's name will not be listed.

19 4. If a person's name is included on the employee disqualification list without the
20 department providing notice as required under subsection 1 of this section, such person may file
21 a request with the department for removal of the name or for a hearing. Within thirty days after
22 receipt of the request, the department shall either remove the name from the list or grant a
23 hearing and set a date therefor.

24 5. Any hearing shall be conducted in the county of the person's residence by the director
25 of the department or the director's designee. The provisions of chapter 536 for a contested case
26 except those provisions or amendments which are in conflict with this section shall apply to and
27 govern the proceedings contained in this section and the rights and duties of the parties involved.
28 The person appealing such an action shall be entitled to present evidence, pursuant to the
29 provisions of chapter 536, relevant to the allegations.

30 6. Upon the record made at the hearing, the director of the department or the director's
31 designee shall determine all questions presented and shall determine whether the person shall
32 be listed on the employee disqualification list. The director of the department or the director's
33 designee shall clearly state the reasons for his or her decision and shall include a statement of
34 findings of fact and conclusions of law pertinent to the questions in issue.

35 7. A person aggrieved by the decision following the hearing shall be informed of his or
36 her right to seek judicial review as provided under chapter 536. If the person fails to appeal the
37 director's findings, those findings shall constitute a final determination that the person shall be
38 placed on the employee disqualification list.

39 8. A decision by the director shall be inadmissible in any civil action brought against a
40 facility or the in-home services provider agency and arising out of the facts and circumstances
41 which brought about the employment disqualification proceeding, unless the civil action is
42 brought against the facility or the in-home services provider agency by the department of health
43 and senior services or one of its divisions.

44 9. The length of time the person's name shall appear on the employee disqualification
45 list shall be determined by the director of the department of health and senior services or the
46 director's designee, based upon the following:

47 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;

48 (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the
49 imminent danger to the health, safety or welfare of a resident or in-home services client;

50 (3) The degree of misappropriation of the property or funds, or falsification of any
51 documents for service delivery of an in-home services client;

52 (4) Whether the person has previously been listed on the employee disqualification list;

53 (5) Any mitigating circumstances;

54 (6) Any aggravating circumstances; and

55 (7) Whether alternative sanctions resulting in conditions of continued employment are
56 appropriate in lieu of placing a person's name on the employee disqualification list. Such
57 conditions of employment may include, but are not limited to, additional training and employee
58 counseling. Conditional employment shall terminate upon the expiration of the designated
59 length of time and the person's submitting documentation which fulfills the department of health
60 and senior services' requirements.

61 10. The removal of any person's name from the list under this section shall not prevent
62 the director from keeping records of all acts finally determined to have occurred under this
63 section.

64 11. The department shall provide the list maintained pursuant to this section to other
65 state departments upon request and to any person, corporation, organization, or association who:

66 (1) Is licensed as an operator under chapter 198;

67 (2) Provides in-home services under contract with the department;

68 (3) Employs nurses and nursing assistants for temporary or intermittent placement in
69 health care facilities;

70 (4) Is approved by the department to issue certificates for nursing assistants training;

71 (5) Is an entity licensed under chapter 197; [or]

72 (6) Is a recognized school of nursing, medicine, or other health profession for the
73 purpose of determining whether students scheduled to participate in clinical rotations with
74 entities described in subdivision (1), (2), or (5) of this subsection are included in the employee
75 disqualification list; **or**

76 **(7) Is a consumer reporting agency regulated by the federal Fair Credit Reporting**
77 **Act that conducts employee background checks on behalf of entities listed in subdivisions**
78 **(1), (2), (5), or (6) of this subsection.**

79

80 The department shall inform any person listed above who inquires of the department whether or
81 not a particular name is on the list. The department may require that the request be made in
82 writing. **No person, corporation, organization, or association who is entitled to access the**

83 **employee disqualification list may disclose the information to any person, corporation,**
84 **organization, or association who is not entitled to access the list. Any person, corporation,**
85 **organization, or association who is entitled to access the employee disqualification list who**
86 **discloses the information to any person, corporation, organization, or association who is**
87 **not entitled to access the list shall be guilty of an infraction.**

88 12. No person, corporation, organization, or association who received the employee
89 disqualification list under subdivisions (1) to (5) of subsection 11 of this section shall knowingly
90 employ any person who is on the employee disqualification list. Any person, corporation,
91 organization, or association who received the employee disqualification list under subdivisions
92 (1) to (5) of subsection 11 of this section, or any person responsible for providing health care
93 service, who declines to employ or terminates a person whose name is listed in this section shall
94 be immune from suit by that person or anyone else acting for or in behalf of that person for the
95 failure to employ or for the termination of the person whose name is listed on the employee
96 disqualification list.

97 13. **(1) Any employer [who is] required to [discharge an employee because the employee**
98 **was placed on a disqualification list maintained by the department of health and senior services**
99 **after the date of hire] deny employment to an applicant or discharge an employee,**
100 **provisional or otherwise, as a result of information obtained through any portion of the**
101 **background screening and employment eligibility determination process under section**
102 **210.903, or subsequent, periodic screenings, shall not be liable in any action brought by the**
103 **applicant or employee relating to discharge where the employer is required by law to**
104 **terminate the employee, including but not limited to section 210.913, provisional or**
105 **otherwise, and shall not be charged for unemployment insurance benefits based on wages paid**
106 **to the employee for work prior to the date of discharge, pursuant to section 288.100.**

107 **(2) Notwithstanding subsections 3 and 5 of section 288.090, an employer shall not**
108 **be charged for unemployment insurance benefits based on wages paid to the employee or**
109 **an employer making payments in lieu of contributions for work prior to the date of**
110 **discharge, pursuant to section 288.100, if the employer terminated the employee because**
111 **the employee:**

112 **(a) Has been found guilty of, pled guilty or nolo contendere in this state or any**
113 **other state or has been found guilty of a crime as listed in subsection 6 of section 660.317;**

114 **(b) Was placed on the employee disqualification list under this section, after the**
115 **date of hire;**

116 **(c) Was placed on the employee disqualification registry maintained by the**
117 **department of mental health, after the date of hire;**

118 **(d) Has a disqualifying finding under this section, section 660.317, or is on any of**
119 **the background check lists in the family care safety registry under sections 210.900 to**
120 **210.936; or**

121 **(e) Was denied a good cause waiver as provided for in subsection 10 of section**
122 **660.317.**

123

124 **The benefits paid to the employee shall not be attributable to service in the employ of the**
125 **employer required to discharge an employee under the provisions of this subdivision and**
126 **shall be deemed as such under the unemployment compensation laws of this state.**

127 14. Any person who has been listed on the employee disqualification list may request
128 that the director remove his or her name from the employee disqualification list. The request
129 shall be written and may not be made more than once every twelve months. The request will be
130 granted by the director upon a clear showing, by written submission only, that the person will
131 not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the
132 falsification of any documents of service delivery to an in-home services client. The director
133 may make conditional the removal of a person's name from the list on any terms that the director
134 deems appropriate, and failure to comply with such terms may result in the person's name being
135 relisted. The director's determination of whether to remove the person's name from the list is not
136 subject to appeal.

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