

HB 628 -- Protection of the Elderly

Co-Sponsors: Sutherland, Willoughby, Jolly, Ransdall, Wright, Jetton, Hanaway, Goodman, Portwood

This bill:

- (1) Extends the certificate of need moratorium on new or additional beds in long-term care facilities from January 1, 2003, to January 1, 2007;
- (2) Extends the expiration date contained in subsection 3 of Section 197.318, RSMo, pertaining to an expenditure minimum amount applied to Section 197.317 from January 1, 2003, to January 1, 2007;
- (3) Requires the Department of Health and Senior Services to provide the most recent home health agency survey information on its web site;
- (4) Requires the department to maintain an employee disqualification list for individuals who knowingly and recklessly abuse eligible adults in hospitals, ambulatory surgical centers, and hospices and eligible adults who receive home health care services;
- (5) Changes the definition of "department" from the Department of Social Services to the Department of Health and Senior Services for purposes of the sections dealing with licensure of long-term care facilities;
- (6) Requires copies of records requested by the department from a facility to be made by facility staff on the day the request is made, prohibits the department from removing or disassembling medical records during an inspection of the facility, and allows the department to request the past five years compliance history from licensure applicants located outside the state;
- (7) Allows satisfactory documentation of a correction of a deficiency contained in a written report in lieu of an on-site revisit of the deficiency;
- (8) Requires residential care facilities, intermediate care facilities, and skilled nursing facilities to post a copy of the most recent inspection report for the facility;
- (9) Requires the department to maintain a hotline log for reports of abuse in long-term care facilities and to attempt to obtain the name of the person making the report;

(10) Makes additions to the grounds upon which the department can revoke a license; allows for revocation of a license when an operator refuses to allow department representatives to inspect a facility for compliance or unreasonably refuses access to employees necessary to carry out the department's duties pursuant to Chapter 198; and allows for revocation of a license if an operator or a principal in the operation of a facility has been convicted of a felony offense concerning the operation of a long-term care facility or health care facility, the management of a long-term care facility, or the provision or receipt of health care;

(11) Lists 12 sanctions, from "plan of correction" through "license revocation," which the department may impose commensurate with the seriousness of the violation;

(12) Increases civil monetary penalties for class I violations to \$1,000-\$10,000; for class II violations to \$250-\$1,000; and for class III violations to \$50-\$250;

(13) Makes the liability incur immediately for a civil monetary penalty for a class I violation, regardless of subsequent correction of the violation. Civil monetary penalties for class II and III violations will be imposed if the violation is not corrected at the time of reinspection;

(14) Redistributes penalties collected as follows: 25% to the Elderly Home-Delivered Meals Trust Fund; 25% to the Nursing Facility Quality Care Fund for care improvement projects within the Office of the State Ombudsman for long-term care residents; and 50% to the Nursing Facility Quality Care Fund for developing a program to assist qualified nursing facilities to improve the quality of service to their residents;

(15) Prohibits the department from imposing a fine for a class II or III violation if it is self-reported and there is no reoccurrence of the violations for 12 months;

(16) Prohibits the transfer of a civil penalty to a new owner;

(17) Expands the list of persons required to report suspected abuse of an individual over the age of 60 or an eligible adult to the department;

(18) Makes the concealment of abuse or neglect resulting in death or serious physical injury by an administrator a class D felony;

(19) Makes a person who abuses or neglects a resident of a nursing facility subject to prosecution for elder abuse;

(20) Defines the requirements for a person to be placed on the employee disqualification list;

(21) Requires facility staff to notify the attending physician, the resident's immediate family, and the local coroner or medical examiner upon the death of any resident prior to transfer to a funeral home;

(22) Requires nursing assistant training to be completed within four months of employment, including 100 hours of supervised, on-the-job training;

(23) Requires the department to establish procedures for the determination and selection of qualified receivers;

(24) Prohibits retaliation against residents or employees for reporting suspected violations;

(25) Adds residential care facilities I and all skilled nursing facilities to those that are to be inspected at least twice a year;

(26) Allows the department to decrease the frequency of inspections to once a year if a facility is found to be in substantial compliance;

(27) Prohibits employees of the department from disclosing the time of an unannounced inspection. Violation is subject to immediate dismissal and is a class A misdemeanor;

(28) Requires patients to be considered Medicaid-eligible until an application is approved or declined if the Division of Family Services is unable to make a determination within 60 days of the submission of a completed application;

(29) Requires salaries for physical, occupational, speech, and inhalation therapy to be included in the patient care expenditure component of the nursing facility Medicaid per diem rate;

(30) Allows the department to reduce a facility's rate if its cost report is found to be fraudulent;

(31) Requires the department to report incidents of alleged elder abuse to the appropriate law enforcement agency in the event that the department is unable to substantiate whether abuse occurred due to a failure of the owner or employees to cooperate with the investigation;

(32) Increases the penalty for financial exploitation of an elderly or disabled person. Currently, financial exploitation of

the elderly is a class A misdemeanor if the value of the property is less than \$250 and a class C felony if the value of the property is \$250 or more. Financial exploitation of the elderly is a class A misdemeanor if the value of the property is less than \$50; a class D felony if the value of the property is between \$50 and \$500; a class C felony if the value of the property is between \$500 and \$1,000; and a class B felony if the value of the property is \$1,000 or more;

(33) Makes the filing of a false report of abuse or neglect a class A misdemeanor and subsequent false reports class D felonies;

(34) Expands the list of persons required to report suspected abuse of in-home services clients to the department;

(35) Allows the department to impose a fine on in-home services providers if they fail to report a known incident of abuse or neglect by an employee to the department;

(36) Makes a person who abuses or neglects an in-home services client subject to prosecution for elder abuse;

(37) Defines the requirements for an in-home services employee to be placed on the employee disqualification list;

(38) Requires the department to provide specific written notice to in-home services provider agencies in cases where contracts are denied, placed on probation, or terminated. The provider will have 30 days to file a complaint requesting a hearing before the Administrative Hearing Commission, where the burden of proof will be on the provider;

(39) Allows the department to issue letters of censure or warning without notice;

(40) Allows the commission to stay the suspension or termination of an in-home services provider's contract. The commission's final decision must be based on the conditions that existed at the time of the action of the department. Any person may seek judicial review of the commission's final decision;

(41) Exempts employers who are required to discharge an employee because that employee was placed on the disqualification list from unemployment insurance benefit charges based on wages paid to that employee;

(42) Requires providers to conduct criminal background checks on new employees prior to allowing them to have contact with residents or patients. If the applicant has resided less than

five consecutive years in this state, a nationwide check must be conducted at the applicant's expense;

(43) Requires the department to provide the Division of Employment Security with copies of investigative reports that led to an employee being placed on the disqualification list, upon request; and

(44) Permits the disclosure of confidential personal records without a court order only to specific state agencies in order to perform their constitutional and statutory duties or to the resident or the resident's legal guardian.