

HCS SS SS SCS SB 556 & 311 -- PROTECTION OF THE ELDERLY

SPONSOR: Kinder (Sutherland)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 10 to 0.

This substitute revises many statutes relating to protection of the elderly, primarily through the regulation of long-term care and other service providers. The substitute also contains many technical changes.

HOME HEALTH AGENCIES

The Department of Health and Senior Services may request out-of-state home health agency applicant data for the last five years. The department must provide the most recent home health agency survey information on its web site and must 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.

NECESSARY PROVIDER HOSPITALS

"Necessary provider hospitals" licensure is repealed.

LONG-TERM CARE

Several sections reflect changes of responsibility from the Department of Social Services to the Department of Health and Senior Services for licensure of long-term care facilities.

The substitute adds procedures and requires the Department of Health and Senior Services to develop rules for identification and on-site review of unlicensed facilities and handling of complaints about unlicensed facilities. The department may request the past five years' compliance history from licensure applicants located outside the state. With satisfactory documentation of correction of a deficiency, an on-site revisit may be waived. Residential care facilities, intermediate care facilities, and skilled nursing facilities must post a copy of the most recent inspection report for the facility. The department must maintain a hotline log for reports of abuse in long-term care facilities and must attempt to obtain the name of the person making the report. Identity of the caller would remain confidential. The substitute makes additions to the grounds upon which the department can revoke a license and allows for revocation of a license when an operator refuses to allow department representatives access to employees or residents under

certain circumstances. If an operator or a principal has been convicted of a felony concerning the operation of a long-term care facility or health care facility or knowingly acted in a way that caused material harm, the license may be revoked. The substitute lists 10 sanctions, from "plan of correction" through "license revocation," which the department may impose commensurate with the seriousness of the violation. The substitute increases the ranges of civil monetary penalties for class I violations to \$1,000 to \$10,000; for class II violations to \$250 to \$1,000; and for class III violations to \$50 to \$250 and increases the cap on civil penalties from \$10,000 to \$25,000. The liability for a civil monetary penalty for a class I violation incurs immediately upon imposition of the penalty for violation, regardless of subsequent correction of the violation. Civil monetary penalties for class II or III violations will be imposed if the violation is not corrected at the time of reinspection. No fine will be imposed for a class II or III violation if it is self-reported and does not recur for 12 months. Civil penalties do not transfer to a new owner. The list of persons required to report suspected abuse of an individual over the age of 60 or an eligible adult to the department is expanded and made consistent with those in the elder abuse statutes and the chapter on health and senior services. Concealment by an administrator of abuse or neglect resulting in death or serious physical injury is a class D felony; a person who abuses or neglects a resident of a facility is subject to criminal prosecution under the elder abuse statutes. Facility staff must attempt to notify the resident's immediate family and contact the attending physician and the local coroner or medical examiner upon the death of any resident prior to transfer to a funeral home. Nursing assistant training must be completed within four months of employment. Standards for a class I violation must be reasonably foreseeable to result in serious harm. Alzheimer's demonstration projects must permit a family member or other caregiver to reside in the facility, within certain safety standards. Grounds for punitive damages should be based on clear and convincing evidence that the health care provider was willful, wanton, or malicious. Procedures for the determination and selection of qualified receivers are established.

#### NURSING HOME DISTRICTS

The substitute prohibits retaliation by a nursing home district against residents or employees for reporting suspected violations.

#### MEDICAID

Medicaid eligibility will be assumed for long-term care until an

application is approved or denied. Medicaid reimbursement for long-term care facilities will be recalculated over a three-year period. This section has an emergency clause.

#### LONG-TERM CARE INSPECTION REQUIREMENTS

Residential care facilities I and all skilled nursing facilities must be inspected at least twice a year. The department may decrease the frequency of inspections to once a year if a facility is found to be in substantial compliance. Department employees are prohibited from disclosing an unannounced inspection. The department must post on its web site the most recent survey of every long-term care facility licensed in the state.

#### UNIFORM DATA PROJECT

A uniform data management pilot program with at least 50 facilities will be implemented, and its results reported to the General Assembly.

#### ELDER ABUSE AND EXPLOITATION

The department must report incidents of alleged elder abuse to the appropriate law enforcement agency when the department is unable to substantiate whether abuse occurred due to a failure of the owner or employees to cooperate with the investigation. The use of force is added to financial exploitation of an elderly or disabled person and the penalty increased.

#### MENTAL HEALTH PATIENT'S RIGHTS

The filing of a false report of abuse or neglect is a class A misdemeanor. Subsequent false reports are class D felonies. The agency responsible for protective services for adults is changed from the Department of Social Services to the Department of Health and Senior Services. Definitions of "home health agency," "home health agency employee," and "home health patient" are added.

#### PROTECTIVE SERVICES FOR ADULTS

Definitions are added for "home health agency," "employee," and "patient"; the definition of "eligible adult" is changed, using disability rather than handicap. Reporting is changed to add abuse and neglect; authority is added for the Department of Health and Senior Services to obtain an order to produce information. Reports received by the department of deteriorating physical conditions will be given to the case manager and department nurse for immediate investigation. Home health

patients are added to certain subsections about abuse and investigations of abuse and neglect reports. The department may impose a fine on in-home services providers if they fail to report a known incident of abuse or neglect. The substitute redefines certain requirements for an in-home services employee to be placed on the employee disqualification list. The department must report information from misappropriation investigations to law enforcement. The department must provide written notice to in-home services provider agencies when contracts are denied, placed on probation, or terminated. The substitute also sets up appeal procedures through the Administrative Hearing Commission, where the burden of proof will be on the provider. Any person may seek judicial review of the commission's final decision. Aggravating circumstances are added to the list of considerations for determining the length of time a person's name appears on the employee disqualification list. Employers are freed from unemployment insurance benefit charges when required to discharge an employee who was placed on the disqualification list. Licensed adult day care providers are required to get background checks. Providers must 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 and has no employment history with a licensed facility in that period, the provider must request a nationwide check. The background check cannot cost the provider more than \$5. The disclosure of confidential personal records without court order may only occur to specific state agencies in order to perform their constitutional and statutory duties or to the eligible adult, the legal guardian, or person designated by the eligible adult.

#### STATE OMBUDSMAN FOR LONG-TERM CARE FACILITY RESIDENTS

Ombudsman coordinators and volunteers are given the authority to report abuse. The regional ombudsman may report uncooperative nursing home administrators to the state ombudsman.

FISCAL NOTE: Estimated Net Cost to General Revenue Fund of Greater than \$19,218,285 in FY 2004, Greater than \$43,469,009 in FY 2005, and Greater than \$73,803,332 in FY 2006. Estimated Net Income to Elderly Home-Delivered Meals Trust Fund of Unknown in FY 2004, FY 2005, and FY 2006. Estimated Net Income to Nursing Facility Quality of Care Fund of Unknown in FY 2004, FY 2005, and FY 2006.

PROPOSERS: Supporters say that the substitute is the culmination of several years of hard effort and compromise. It should give state agencies flexibility to go after bad facilities in ways appropriate to the seriousness of the problem, without

putting too much burden on the operations that are already well run.

Testifying for the bill were Senators Kinder and Dougherty; Lieutenant Governor Maxwell; Department of Health and Senior Services; AARP; Silver-Haired Legislature; Richard Russell; Edna Chavis; Missouri Coalition of Alzheimer's Association Chapters; Office of the Governor; Missouri Association of Homes for the Aging; Sunrise Assisted Living Facility; Lutheran Senior Services; and Missouri Health Care Association.

OPPONENTS: There was no opposition voiced to the committee.

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