

FIRST REGULAR SESSION

HOUSE BILL NO. 544

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SATER.

1562L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 208.909, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, RSMo, and to enact in lieu thereof eleven new sections relating to long-term care background screenings, with existing penalty provisions and an effective date.

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

Section A. Sections 208.909, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 208.909, 210.900, 210.903, 210.904, 210.906, 210.909, 210.915, 210.921, 210.927, 210.933, and 660.317, to read as follows:

208.909. 1. Consumers receiving personal care assistance services shall be responsible for:

- (1) Supervising their personal care attendant;
- (2) Verifying wages to be paid to the personal care attendant;
- (3) Preparing and submitting time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis;
- (4) Promptly notifying the department within ten days of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence;
- (5) Reporting any problems resulting from the quality of services rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department; and

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.

13 (6) Providing the vendor with all necessary information to complete required paperwork
14 for establishing the employer identification number.

15 2. Participating vendors shall be responsible for:

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

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

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

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

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

29 4. No state or federal financial assistance shall be authorized or expended to pay for
30 personal care assistance services provided by a personal care attendant [who is listed] **with a**
31 **disqualifying finding under section 660.317 and as promulgated by rule** on any of the
32 background check lists in the family care safety registry under sections 210.900 to 210.937, **or**
33 **on a fingerprint-based state and federal criminal background check**, unless a good cause
34 waiver is first obtained from the department in accordance with section 660.317.

35 5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a telephone tracking
36 system for the purpose of reporting and verifying the delivery of consumer-directed services as
37 authorized by the department of health and senior services or its designee. Use of such a system
38 prior to July 1, 2015, shall be voluntary. The telephone tracking system shall be used to process
39 payroll for employees and for submitting claims for reimbursement to the MO HealthNet
40 division. At a minimum, the telephone tracking system shall:

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

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

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

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

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

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

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

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

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

63 (4) The department of health and senior services shall promulgate by rule the minimum
64 necessary criteria of the telephone tracking system. Any rule or portion of a rule, as that term
65 is defined in section 536.010, that is created under the authority delegated in this section shall
66 become effective only if it complies with and is subject to all of the provisions of chapter 536
67 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of
68 the powers vested with the general assembly pursuant to chapter 536 to review, to delay the
69 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
70 grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be
71 invalid and void.

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

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

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited as the
2 "Family Care Safety Act".

3 2. As used in sections 210.900 to 210.936, the following terms shall mean:

- 4 (1) "Child-care provider", any licensed or license-exempt child-care home, any licensed
5 or license-exempt child-care center, child-placing agency, residential care facility for children,
6 group home, foster family group home, foster family home, employment agency that refers a
7 child-care worker to parents or guardians as defined in section 289.005. The term "child-care
8 provider" does not include summer camps or voluntary associations designed primarily for
9 recreational or educational purposes;
- 10 (2) "Child-care worker", any person who is employed by a child-care provider, or
11 receives state or federal funds, either by direct payment, reimbursement or voucher payment, as
12 remuneration for child-care services;
- 13 (3) "Department", the department of health and senior services;
- 14 (4) ["Elder-care provider", any operator licensed pursuant to chapter 198 or any person,
15 corporation, or association who provides in-home services under contract with the division of
16 aging, or any employer of nurses or nursing assistants of home health agencies licensed pursuant
17 to sections 197.400 to 197.477, or any nursing assistants employed by a hospice pursuant to
18 sections 197.250 to 197.280, or that portion of a hospital for which subdivision (3) of subsection
19 1 of section 198.012 applies;
- 20 (5) "Elder-care worker", any person who is employed by an elder-care provider, or who
21 receives state or federal funds, either by direct payment, reimbursement or voucher payment, as
22 remuneration for elder-care services;
- 23 (6) "Employer", any child-care provider, elder-care provider, or personal-care provider
24 as defined in this section;
- 25 (5) **"Long-term care provider", any person, corporation, or association who:**
26 **(a) Is licensed as an operator under chapter 198;**
27 **(b) Provides -in-home services under section 660.250, or consumer directed services**
28 **under section 208.900;**
29 **(c) Employs nurses or nursing assistants for temporary or intermittent placement**
30 **in health care facilities;**
31 **(d) Is licensed or certified under chapter 197;**
32 **(e) Is a public or private facility, day program, residential facility, or specialized**
33 **service operated, funded, or licensed by the department of mental health; or**
34 **(f) Is a licensed adult day-care provider;**
- 35 (6) "Long-term care worker", any person who is employed by a long-term care
36 provider, or who receives state or federal funds, either by direct payment reimbursement,
37 or voucher payment, as remuneration for long-term care services;
- 38 (7) "Mental health provider", any mental retardation facility or group home as defined
39 in section 633.005;

40 (8) "Mental health worker", any person employed by a mental health provider to provide
41 personal care services and supports;

42 (9) "Patrol", the Missouri state highway patrol;

43 (10) "Personal-care attendant" or "personal-care worker", a person who performs routine
44 services or supports necessary for a person with a physical or mental disability to enter and
45 maintain employment or to live independently;

46 (11) "Personal-care provider", any person, corporation, or association who provides
47 personal-care services or supports under contract with the department of mental health, the
48 division of aging, the department of health and senior services or the department of elementary
49 and secondary education;

50 (12) "Related child care", child care provided only to a child or children by such child's
51 or children's grandparents, great-grandparents, aunts or uncles, or siblings living in a residence
52 separate from the child or children;

53 (13) "Related [elder] **long-term care**", care provided only to an elder by an adult child,
54 a spouse, a grandchild, a great-grandchild [or a] , sibling, **parent, grandparent, aunt, or uncle**
55 of such **disabled or elder adult**.

210.903. 1. To protect children, the elderly, the disabled, including the developmentally
2 disabled individuals in this state, and to promote family and community safety by providing
3 information concerning family caregivers, there is hereby established within the department of
4 health and senior services a "Family Care Safety Registry and Access Line" which shall be
5 available by January 1, 2001.

6 2. The family care safety registry shall contain information on child-care workers',
7 [elder-care] **long-term care** workers', mental health workers', and personal-care workers'
8 background and on child-care, [elder-care] **long-term care**, mental health, and personal-care
9 providers through:

10 (1) The patrol's criminal record check system pursuant to section 43.540, including state
11 and national information, to the extent possible;

12 (2) Probable cause findings of abuse and neglect prior to August 28, 2004, or findings
13 of abuse and neglect by a preponderance of the evidence after August 28, 2004, pursuant to
14 sections 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of the elderly or
15 disabled, pursuant to section 570.145;

16 (3) The [division of aging's] **department's** employee disqualification list pursuant to
17 section 660.315;

18 (4) [As of January 1, 2003,] The department of mental health's employee disqualification
19 registry;

20 (5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to
21 section 210.496;

22 (6) Child-care facility license denials, revocations and suspensions pursuant to sections
23 210.201 to 210.259;

24 (7) [Residential living facility and nursing home license denials, revocations,
25 suspensions and probationary status pursuant to chapter 198; and

26 (8) As of January 1, 2004,] A check of the patrol's Missouri uniform law enforcement
27 system (MULES) for sexual offender registrations pursuant to section 589.400;

28 **(8) As of September 30, 2012, a check of the National Sex Offender Public Website,
29 accessible through the highway patrol;**

30 **(9) As of September 30, 2012, a check of the certified nurse assistant registry and
31 the nursing home administrator disciplinary action data maintained by the division of
32 regulation and licensure within the department of health and senior services;**

33 **(10) As of September 30, 2012, a check of medical and osteopathic physician,
34 physician assistant, and nursing license data maintained by the department of insurance,
35 financial institutions and professional registration;**

36 **(11) As of September 30, 2012, a check of educator certification data maintained
37 by the department of elementary and secondary education.**

38 **3. The department shall operate as the single state agency which shall coordinate
39 the background screening process under section 660.317 and the employment eligibility
40 determination process under section 210.904.**

**210.904. 1. In order to protect the elderly, disabled, and developmentally disabled
2 individuals in this state, there is hereby established within the department of health and
3 senior services a background screening and employment eligibility determination process,
4 which shall apply to long-term care workers as defined in section 210.900 and as provided
5 in section 660.317.**

**6 2. The department shall make an employment eligibility determination based on
7 the results of:**

8 (1) Prior to the date of hire:

**9 (a) Review of the prospective employee's application for self-disclosure of criminal
10 history and other pertinent background information under section 660.317 and as
11 promulgated by rule. The applicant shall not be eligible for employment if disqualifying
12 findings are disclosed; and**

**13 (b) Completion of the family care safety registry background screening as provided
14 in section 210.903. The applicant shall not be eligible for employment if disqualifying
15 findings are revealed under section 660.317 or as promulgated by rule;**

16 (2) **Submission to a state and federal fingerprint-based criminal record check**
17 **within thirty days of hire as a provisional employee, and prior to having direct access to**
18 **patients, residents, in-home services clients, or consumers. The applicant shall not be**
19 **eligible for employment if disqualifying findings are revealed under section 660.317 and**
20 **as promulgated by rule.**

21 **3. Completion of subdivision (1) of subsection 2 of this section without disqualifying**
22 **findings shall permit the provider to hire the individual on a provisional basis. The**
23 **provider shall ensure the provisional employee has no unsupervised direct access to**
24 **patients or residents, as defined in section 660.317. Provisional employment shall**
25 **terminate upon discovery of disqualifying findings in the state and federal fingerprint-**
26 **based criminal record check, or upon failure of the applicant to submit to the state and**
27 **federal fingerprint-based criminal record check within thirty days of hire as a provisional**
28 **employee.**

29 **4. Any provider, as defined in section 660.317, shall make an annual inquiry to the**
30 **family care safety registry in order to maintain the employee's eligibility for employment,**
31 **and shall abide by the employment eligibility determination as made by the department.**

210.906. 1. Every child-care worker or [elder-care] **long-term care** worker hired on or
2 after January 1, 2001, or personal-care worker hired on or after January 1, 2002, or mental health
3 worker hired on or after January 1, 2009, shall complete a registration form provided by the
4 department. The department shall make such forms available no later than January 1, 2001, and
5 may, by rule, determine the specific content of such form, but every form shall:

6 (1) Request the valid Social Security number of the applicant;

7 (2) Include information on the person's right to appeal the information contained in the
8 registry pursuant to section 210.912;

9 (3) Contain the signed consent of the applicant for the background checks required
10 pursuant to this section; and

11 (4) Contain the signed consent for the release of information contained in the
12 background check for employment purposes only.

13 2. Every child-care worker or [elder-care] **long-term care** worker [hired on or after
14 January 1, 2001, and every] , personal-care worker [hired on or after January 1, 2002, and every]
15 **, and** mental health worker [hired on or after January 1, 2009,] shall complete a registration form
16 [within fifteen days of] **prior to** the beginning of such person's employment. Any person
17 employed as a child-care, [elder-care] **long-term care**, mental health, or personal-care worker
18 who fails to submit a completed registration form to the department of health and senior services
19 as required by sections 210.900 to 210.936 without good cause, as determined by the department,
20 is guilty of a class B misdemeanor.

21 **3. Every long-term care worker hired on or after September 30, 2012, shall submit**
22 **to the background screening and employment eligibility determination process under**
23 **sections 210.904 and 660.317.**

24 **4.** The costs of the criminal background check may be paid by the individual applicant,
25 or by the provider if the applicant is so employed, or for those applicants receiving public
26 assistance, by the state through the terms of the self- sufficiency pact pursuant to section
27 208.325. Any moneys remitted to the patrol for the costs of the criminal background check shall
28 be deposited to the credit of the criminal record system fund as required by section 43.530.

29 [4.] **5.** Any person licensed pursuant to sections 210.481 to 210.565 shall be
30 automatically registered in the family care safety registry at no additional cost other than the
31 costs required pursuant to sections 210.481 to 210.565.

32 [5.] **6.** Any person not required to register pursuant to the provisions of sections 210.900
33 to 210.936 may also be included in the registry if such person voluntarily applies to the
34 department for registration and meets the requirements of this section and section 210.909,
35 including submitting to the background checks in subsection 1 of section 210.909.

36 [6.] **7.** The provisions of sections 210.900 to 210.936 shall not extend to related child
37 care[.]. **The provisions of sections 210.900 to 210.936 shall not extend to** related elder care
38 or related personal care **unless such care is purchased with public funds.**

 210.909. 1. Upon submission of a completed registration form by a child-care worker,
2 [elder-care] **long-term care** worker, mental health worker, or personal-care attendant, the
3 department shall:

4 (1) Determine if a probable cause finding of child abuse or neglect prior to August 28,
5 2004, or a finding of child abuse or neglect by a preponderance of the evidence after August 28,
6 2004, involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and,
7 as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly
8 or disabled pursuant to section 570.145;

9 (2) Determine if the applicant has been refused licensure or has experienced involuntary
10 licensure suspension or revocation pursuant to section 210.496;

11 (3) Determine if the applicant has been placed on the employee disqualification list
12 pursuant to section 660.315;

13 (4) [As of January 1, 2003,] Determine if the applicant is listed on the department of
14 mental health's employee disqualification registry;

15 (5) Determine through a request to the patrol pursuant to section 43.540 whether the
16 applicant has any criminal history record for a felony or misdemeanor or any offense for which
17 the person has registered pursuant to sections 589.400 to 589.425; and

18 (6) If the background check involves a provider, determine if a facility has been refused
19 licensure or has experienced licensure suspension, revocation or probationary status pursuant to
20 sections 210.201 to 210.259 or chapter 198; and

21 (7) [As of January 1, 2004,] Determine through a request to the patrol if the applicant
22 is a registered sexual offender pursuant to section 589.400 listed in the Missouri uniform law
23 enforcement system (MULES), **and as of September 30, 2012, determine if the applicant is**
24 **a registered sexual offender listed on the National Sex Offender Public Website, inasmuch**
25 **as positive identifying data are available;**

26 (8) **As of September 30, 2012, determine if the applicant is listed on the certified**
27 **nurse assistant registry, status of certification, and if the applicant has a federal indicator**
28 **for abuse, neglect, or misappropriation of property;**

29 (9) **As of September 30, 2012, determine if the applicant is listed on any of the**
30 **various medical and osteopathic physician, physician assistant, and nursing databases,**
31 **licensure status, disciplinary status, or license suspension or revocation;**

32 (10) **As of September 30, 2012, determine if the applicant is listed on the educator**
33 **certification database, certification status, if there is disciplinary status, or certification**
34 **suspension or revocation.**

35 2. Upon completion of the background [check] **screening** described in subsection 1 of
36 this section, the department shall include information in the registry for each registrant as to
37 whether any convictions, employee disqualification listings, **child abuse and neglect or sexual**
38 **offender** registry listings, probable cause findings, pleas of guilty or nolo contendere, or license
39 **or certification** denial, revocation [or] , suspension, **or disciplinary status** have been
40 documented through the records checks authorized pursuant to the provisions of sections
41 210.900 to 210.936. **With regard to the certified nurse assistant registry and physician,**
42 **physician assistant, nursing, and educator certification databases, the department shall**
43 **also include basic licensure or certification data for informational purposes only as of**
44 **September 30, 2012.**

45 3. The department shall notify such registrant in writing of the results of the
46 determination recorded on the registry pursuant to this section.

210.915. The department of corrections, the department of public safety, the department
2 of social services [and] , the department of mental health, **the department of insurance,**
3 **financial institutions and professional registration, and the department of elementary and**
4 **secondary education** shall collaborate with the department to compare records on child-care,
5 [elder-care] **long-term care**, mental health, and personal-care workers, and the records of
6 persons with criminal convictions and the background checks pursuant to subdivisions (1) to
7 [(8)] **(11)** of subsection 2 of section 210.903, and to enter into any interagency agreements

8 necessary to facilitate the receipt of such information and the ongoing updating of such
9 information. The department shall promulgate rules and regulations concerning such updating,
10 including subsequent background reviews as listed in subsection 1 of section 210.909.

210.921. 1. The department shall not provide any registry information pursuant to this
2 section unless the department obtains the name and address of the person calling, and determines
3 that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936,
4 "employment purposes" includes direct employer-employee relationships, prospective
5 employer-employee relationships, **direct employer-volunteer relationships, prospective**
6 **employer-volunteer relationships**, and screening and interviewing of persons or facilities by
7 those persons **or agencies** contemplating the placement of an individual in a child-care,
8 [elder-care] **long-term care**, mental health, or personal-care setting. Disclosure of background
9 information concerning a given applicant recorded by the department in the registry shall be
10 limited to:

11 (1) Confirming whether the individual is listed in the registry; and

12 (2) Indicating whether the individual has been listed or named in any of the background
13 checks listed in subsection 2 of section 210.903. If such individual has been so listed, the
14 department of health and senior services shall only disclose the name of the background check
15 in which the individual has been identified. With the exception of any agency licensed or
16 contracted by the state to provide child care, elder care, mental health services, or personal care
17 which shall receive specific information immediately if requested, any specific information
18 related to such background check shall only be disclosed after the department has received a
19 signed request from the person calling, with the person's name, address and reason for requesting
20 the information.

21 2. Any person requesting registry information shall be informed that the registry
22 information provided pursuant to this section consists only of information relative to the state
23 of Missouri and does not include information from other states or information that may be
24 available from other states.

25 3. Any person who uses the information obtained from the registry for any purpose other
26 than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B
27 misdemeanor.

28 4. When any registry information is disclosed pursuant to subdivision (2) of subsection
29 1 of this section, the department shall notify the registrant of the name and address of the person
30 making the inquiry.

31 5. The department of health and senior services staff providing information pursuant to
32 sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that
33 otherwise might result by reason of such actions; provided, however, any department of health

34 and senior services staff person who releases registry information in bad faith or with ill intent
35 shall not have immunity from any liability, civil or criminal. Any such person shall have the
36 same immunity with respect to participation in any judicial proceeding resulting from the release
37 of registry information. The department is prohibited from selling the registry or any portion of
38 the registry for any purpose including employment purposes as defined in subsection 1 of this
39 section.

210.927. The department of health and senior services shall make an annual report, no
2 later than [July] **December** first of each year, to the speaker of the house of representatives and
3 the president pro tem of the senate on the operation of the family care safety registry and toll-free
4 telephone service, including data on the number of information requests received from the
5 public, identification of any barriers encountered in administering the provisions of sections
6 210.900 to 210.936, recommendations for removing or minimizing the barriers so identified, and
7 any recommendations for improving the delivery of information on child-care, [elder-care] **long-**
8 **term care**, mental health, and personal-care workers to the public.

210.933. For any [elder-care] **long-term care** worker listed in the registry or who has
2 submitted the registration form as required by sections 210.900 to 210.936, [an elder-care] **a**
3 **long-term care** provider may access the registry in lieu of the requirements established pursuant
4 to section 660.315 or to subsections 3, 4 and 5 of section 660.317.

660.317. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:
3 (1) Is licensed as an operator pursuant to chapter 198;
4 (2) Provides in-home services under contract with the department;
5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in
6 health care facilities;
7 (4) Is an entity licensed [pursuant to] **or certified under** chapter 197;
8 (5) Is a public or private facility, day program, residential facility or specialized service
9 operated, funded or licensed by the department of mental health; or
10 (6) Is a licensed adult day care provider.

2. For the purpose of this section:
12 (1) **"Consumer" has the same meaning as such term is defined in section 208.900;**
13 (2) **"Direct access" means any individual in a position with duties that involve**
14 **access to the patient or resident's person, financial, medical, or personal records or**
15 **property, including but not limited to the owner, operator, director, partner, member,**
16 **employee, or independent contractor of a provider;**
17 (3) **"In-home services client" has the same meaning as such term is defined in**
18 **section 660.250;**

19 (4) "Patient or resident" has the same meaning as such term is defined in section 43.540.

20 3. (1) Prior to [allowing any person who has been hired as] **hiring** a full-time, part-time
21 or temporary **employee for any** position to have [contact with] **direct access to** any patient [or]
22 , resident, **in-home services client or consumer, or finding a personal care attendant eligible**
23 **to have contact with a consumer**, the provider shall, or in the case of temporary employees
24 hired through or contracted for an employment agency, the employment agency shall prior to
25 sending a temporary employee to a provider:

26 [(1) Request a criminal background check as provided in section 43.540. Completion of
27 an inquiry to the highway patrol for criminal records that are available for disclosure to a
28 provider for the purpose of conducting an employee criminal records background check shall be
29 deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant
30 to this section; except that, completing the inquiries pursuant to this subsection shall not be
31 construed to exempt a provider from further inquiry pursuant to common law requirements
32 governing due diligence. If an applicant has not resided in this state for five consecutive years
33 prior to the date of his or her application for employment, the provider shall request a nationwide
34 check for the purpose of determining if the applicant has a prior criminal history in other states.
35 The fingerprint cards and any required fees shall be sent to the highway patrol's central
36 repository. The first set of fingerprints shall be used for searching the state repository of criminal
37 history information. If no identification is made, the second set of fingerprints shall be
38 forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of
39 the federal criminal history files. The patrol shall notify the submitting state agency of any
40 criminal history information or lack of criminal history information discovered on the individual.
41 The provisions relating to applicants for employment who have not resided in this state for five
42 consecutive years shall apply only to persons who have no employment history with a licensed
43 Missouri facility during that five-year period. Notwithstanding the provisions of section
44 610.120, all records related to any criminal history information discovered shall be accessible
45 and available to the provider making the record request; and

46 (2)] (a) Make an inquiry to the department of health and senior services whether the
47 person is listed on the employee disqualification list as provided in section 660.315;

48 (b) **Request a family care safety registry background screening and employment**
49 **eligibility determination, as provided for in sections 210.900 to 210.936. Such screening**
50 **process shall include:**

51 a. **Disclosure of the applicant's criminal history and other pertinent background**
52 **information as provided in subsection 6 of this section;**

53 b. **A family care safety registry background screening;**

54 c. **A state and federal fingerprint-based criminal background check through the**
55 **highway patrol, as provided in section 43.540, directed through the department of health**
56 **and senior services under section 210.904, and as promulgated by rule. Required fees shall**
57 **be forwarded to the highway patrol, and the results of the criminal record reviews shall**
58 **be forwarded by the highway patrol to the department of health and senior services, which**
59 **shall notify the provider. Notwithstanding the provisions of section 610.120, all records**
60 **related to any criminal history information discovered shall be accessible and available to**
61 **the provider making the record request;**

62 (2) **A provider may hire an applicant on a provisional basis as provided in**
63 **subsection 3 of section 210.904.**

64 (3) **If an applicant has not resided in this state for five consecutive years prior to**
65 **the date of his or her application for employment, the provider shall request child abuse**
66 **and neglect and elder abuse registry information on the applicant from any state in which**
67 **the applicant has previously resided. Such requirement shall apply only to persons who**
68 **have no employment history with a Missouri provider, as defined in this section, during**
69 **such five-year period.**

70 4. When the provider requests a criminal background check pursuant to section 43.540,
71 the requesting entity may require that the applicant reimburse the provider for the cost of such
72 record check[. When a provider requests a nationwide criminal background check pursuant to
73 subdivision (1) of subsection 3 of this section, the total cost to the provider of any background
74 check required pursuant to this section shall not exceed five dollars which shall be paid to the
75 state. State funding and the obligation of a provider to obtain a nationwide criminal background
76 check shall be subject to the availability of appropriations] , **unless the provider receives**
77 **reimbursement for the fees from another source. As provided in section 43.540, the**
78 **department of health and senior services may assess a fee to the provider to cover the cost**
79 **of handling the criminal record review and may establish an account solely for the**
80 **collection and dissemination of fees associated with the criminal record reviews.**

81 5. An applicant for a position to have [contact with] **direct access to patients [or] ,**
82 **residents, in-home services clients, or consumers** of a provider shall:

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

85 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
86 "criminal history" includes any conviction or a plea of guilty **or nolo contendere** to a
87 misdemeanor or felony charge **in this state or any other state** and shall include any suspended
88 imposition of sentence, any suspended execution of sentence or any period of probation or
89 parole; and

90 (3) Disclose if the applicant is listed on the employee disqualification list as provided
91 in section 660.315; **and**

92 (4) **Disclose the presence of any other findings that may appear on the family care**
93 **safety registry background screening, and complete registration with the registry if not**
94 **previously registered under sections 210.900 to 210.936.**

95 6. An applicant who knowingly fails to disclose his or her criminal history **or other**
96 **disqualifying finding or findings** as required in subsection 5 of this section is guilty of a class
97 A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires
98 or retains a person to have [contact with] **direct access to patients [or] , residents, in-home**
99 **services clients, or consumers,** and the person has:

100 (1) Been convicted of, pled guilty to or nolo contendere in this state or any other state
101 or has been found guilty of a crime, which if committed in Missouri would be:

102 (a) A class A or B felony violation of chapter **195, 565, 566, 568,** or 569[, or any] ;

103 (b) A violation of subsection 3 of section 198.070 [or section 568.020] ;

104 (c) **A felony violation of three or more misdemeanor violations of section 570.030;**

105 (d) **A violation of section 570.090;**

106 (e) **A violation of section 570.145;**

107 (2) **Any relevant state or federal conviction for any offense described in Section**
108 **1128(a) of the Social Security Act, 42 U.S.C. Section 1320a-7, as promulgated by rule;**

109 (3) **Any finding of patient or resident abuse substantiated by a state agency under**
110 **Section 1819(g)(1)(C) or Section 1919(g)(1)(C) of the Social Security Act, 42 U.S.C. Section**
111 **1395i-3(g)(1)(C), 13966r(g)(1)(C); or**

112 (4) **Any disqualifying family care safety registry finding as promulgated by rule.**

113 7. [Any in-home services provider agency or home health agency shall be guilty of a
114 class A misdemeanor if such agency knowingly employs a person to provide in-home services
115 or home health services to any in-home services client or home health patient and such person
116 either refuses to register with the family care safety registry or is listed on any of the background
117 check lists in the family care safety registry pursuant to sections 210.900 to 210.937.

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

121 9. A provider may use a private investigatory agency rather than the highway patrol to
122 do a criminal history records review check, and alternatively, the applicant pays the private
123 investigatory agency such fees as the provider and such agency shall agree] **Any provider**
124 **required to deny employment to an applicant or discharge a provisional employee as a**
125 **result of information obtained through any portion of the background screening and**

126 **employment eligibility determination process under section 210.904 shall not be liable in**
127 **any action brought by the applicant or provisional employee, or in the case of a provisional**
128 **employee, shall not be charged for unemployment insurance benefits based on wages paid**
129 **to the provisional employee for work prior to the date of discharge under section 288.100.**

130 [10.] **8.** Except for the hiring restriction based on the department of health and senior
131 services employee disqualification list established pursuant to section 660.315, the department
132 of health and senior services shall promulgate rules and regulations to waive the hiring
133 restrictions pursuant to this section for good cause. For purposes of this section, "good cause"
134 means the department has made a determination by examining [the employee's prior work history
135 and other] relevant factors, **as established by rule**, that [such employee does not present a risk
136 to the health or safety of residents] **the firing restriction contained in subsection 6 of this**
137 **section is removed.**

138 **9.** The department of health and senior services shall promulgate rules for the
139 purposes of ensuring compliance with this section. Any rule or portion of a rule, as that
140 term is defined in section 536.010, that is created under the authority delegated in this
141 section shall become effective only if it complies with and is subject to all of the provisions
142 of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
143 nonseverable and if any of the powers vested with the general assembly pursuant to
144 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
145 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
146 proposed or adopted after the effective date of this section shall be invalid and void.

Section B. Section A of this act shall become effective September 12, 2012.