

House _____ Amendment NO. _____

Offered By _____

1 AMEND Senate Committee Substitute for Senate Bill No. 178, Page 2, Section 56.700, Line 49, by
2 inserting after all of said line the following:

3
4 "208.895. 1. Upon the receipt of a [properly completed] referral for service for MO
5 HealthNet-funded home- and community-based care [containing a nurse assessment] or a physician's
6 order, the department of health and senior services [may] shall:

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

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

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

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

18 (5) Notify the referring entity upon the authorization of MO HealthNet eligibility and
19 provide MO HealthNet reimbursement for personal care benefits effective the date of the assessment
20 or physician's order, and MO HealthNet reimbursement for waiver services effective the date the
21 state reviews and approves the care plan;

22 (6)] (3) Notify the referring entity within five business days of receiving the referral if
23 additional information is required to process the referral; [and

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

27 (4) Inform the applicant of:

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

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

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

36 (5) Prioritize the referrals received, giving the highest priority to referrals for high-risk
37 individuals, followed by individuals who are alleged to be victims of abuse or neglect as a result of

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1 an investigation initiated from the elder abuse and neglect hotline, and then followed by individuals
 2 who have not selected a provider or who have selected a provider that does not conduct assessments;
 3 and

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

6 2. If the department of health and senior services [may contract for initial home- and
 7 community-based assessments, including a care plan, through an independent third-party assessor.
 8 The contract] has not complied with subsection 1 of this section, a provider has the option of
 9 completing an assessment and care plan recommendation. At such time that the department
 10 approves or modifies the assessment and care plan, the care plan shall become effective; such
 11 approval or modification shall occur within five business days after receipt of the assessment and
 12 care plan from the provider. If such approval, modification, or denial by the department does not
 13 occur within five business days, the provider's care plan shall be approved and payment shall begin
 14 no later than five business days after receipt of the assessment and care plan from the provider. The
 15 department shall [include a requirement that:

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

18 (2) The contractor] notify the referring entity [within five days] or individual of receipt of
 19 referral if additional information is needed to process the referral. [The contract shall also include the
 20 same requirements for such assessments as of January 1, 2010, related to timeliness of assessments
 21 and the beginning of service. The contract shall be bid under chapter 34 and shall not be a risk-based
 22 contract.]

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

29 4. [The provisions of this section shall expire August 28, 2013] At such time that the
 30 department approves or modifies the assessment and care plan, the latest approved care plan shall
 31 become effective.

32 5. The department's auditing of home- and community-based service providers shall include
 33 a review of the client plan of care and provider assessments, and choice and communication of
 34 home- and community-based service provider service options to individuals seeking MO HealthNet
 35 services. Such auditing shall be conducted utilizing a statistically valid sample. The department
 36 shall also make publicly available a review of its process for informing participants of service
 37 options within MO HealthNet home- and community-based service provider services and
 38 information on referrals.

39 6. For purposes of this section:

40 (1) "Assessment" means a face-to-face determination that a MO HealthNet participant is
 41 eligible for home- and community-based services and:

42 (a) Is conducted by an assessor trained to perform home- and community-based care
 43 assessments;

44 (b) Uses forms provided by the department;

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

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

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

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

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

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

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

7. The department shall:

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

(2) Make recommendations to the general assembly by January 1, 2014, for the implementation of the automated electronic assessment care plan tool.

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

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

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

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

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

(5) The department's staffing policies implemented to meet the fifteen-day assessment requirement.

208.960. Health care professionals licensed under chapter 331 shall be reimbursed under the MO HealthNet program for providing services currently covered under section 208.152 and within the scope of practice under section 331.010."; and

Further amend said bill, Page 4, Section 630.175, Line 64, by inserting after all of said line the following:

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

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

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

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

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

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

3. If the person so notified wishes to challenge the allegation, such person may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the

1 applicant's name will not be listed.

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

7 5. Any hearing shall be conducted in the county of the person's residence by the director of
8 the department or the director's designee. The provisions of chapter 536 for a contested case except
9 those provisions or amendments which are in conflict with this section shall apply to and govern the
10 proceedings contained in this section and the rights and duties of the parties involved. The person
11 appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter
12 536, relevant to the allegations.

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

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

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

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

- 30 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
31 (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the
32 imminent danger to the health, safety or welfare of a resident or in-home services client;
33 (3) The degree of misappropriation of the property or funds, or falsification of any
34 documents for service delivery of an in-home services client;
35 (4) Whether the person has previously been listed on the employee disqualification list;
36 (5) Any mitigating circumstances;
37 (6) Any aggravating circumstances; and
38 (7) Whether alternative sanctions resulting in conditions of continued employment are
39 appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions
40 of employment may include, but are not limited to, additional training and employee counseling.
41 Conditional employment shall terminate upon the expiration of the designated length of time and the
42 person's submitting documentation which fulfills the department of health and senior services'
43 requirements.

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

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

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

- 1 (2) Provides in-home services under contract with the department;
 2 (3) Employs nurses and nursing assistants for temporary or intermittent placement in health
 3 care facilities;
 4 (4) Is approved by the department to issue certificates for nursing assistants training;
 5 (5) Is an entity licensed under chapter 197;
 6 (6) Is a recognized school of nursing, medicine, or other health profession for the purpose of
 7 determining whether students scheduled to participate in clinical rotations with entities described in
 8 subdivision (1), (2), or (5) of this subsection are included in the employee disqualification list; or
 9 (7) Is a consumer reporting agency regulated by the federal Fair Credit Reporting Act that
 10 conducts employee background checks on behalf of entities listed in subdivisions (1), (2), (5), or (6)
 11 of this subsection. Such a consumer reporting agency shall conduct the employee disqualification
 12 list check only upon the initiative or request of an entity described in subdivisions (1), (2), (5), or (6)
 13 of this subsection when the entity is fulfilling its duties required under this section. The information
 14 shall be disclosed only to the requesting entity.

15 The department shall inform any person listed above who inquires of the department whether or not
 16 a particular name is on the list. The department may require that the request be made in writing. No
 17 person, corporation, organization, or association who is entitled to access the employee
 18 disqualification list may disclose the information to any person, corporation, organization, or
 19 association who is not entitled to access the list. Any person, corporation, organization, or
 20 association who is entitled to access the employee disqualification list who discloses the information
 21 to any person, corporation, organization, or association who is not entitled to access the list shall be
 22 guilty of an infraction.

23 12. No person, corporation, organization, or association who received the employee
 24 disqualification list under subdivisions (1) to (7) of subsection 11 of this section shall knowingly
 25 employ any person who is on the employee disqualification list. Any person, corporation,
 26 organization, or association who received the employee disqualification list under subdivisions (1) to
 27 (7) of subsection 11 of this section, or any person responsible for providing health care service, who
 28 declines to employ or terminates a person whose name is listed in this section shall be immune from
 29 suit by that person or anyone else acting for or in behalf of that person for the failure to employ or
 30 for the termination of the person whose name is listed on the employee disqualification list.

31 13. Any employer [who is] or vendor as defined in sections 197.250, 197.400, 198.006,
 32 208.900, or 660.250 required to [discharge an employee because the employee was placed on a
 33 disqualification list maintained by the department of health and senior services after the date of hire]
 34 deny employment to an applicant or to discharge an employee, provisional or otherwise, as a result
 35 of information obtained through any portion of the background screening and employment eligibility
 36 determination process under section 210.903, or subsequent, periodic screenings, shall not be liable
 37 in any action brought by the applicant or employee relating to discharge where the employer is
 38 required by law to terminate the employee, provisional or otherwise, and shall not be charged for
 39 unemployment insurance benefits based on wages paid to the employee for work prior to the date of
 40 discharge, pursuant to section 288.100[.], if the employer terminated the employee because the
 41 employee: (1) Has been found guilty, pled guilty or nolo contendere in this state or any other
 42 state of a crime as listed in subsection 6 of section 660.317;

43 (2) Was placed on the employee disqualification list under this section after the date of hire;
 44 (3) Was placed on the employee disqualification registry maintained by the department of
 45 mental health after the date of hire;

46 (4) Has a disqualifying finding under this section, section 660.317, or is on any of the
 47 background check lists in the family care safety registry under sections 210.900 to 210.936; or

48 (5) Was denied a good cause waiver as provided for in subsection 10 of section 660.317.

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

5 14. Any person who has been listed on the employee disqualification list may request that
6 the director remove his or her name from the employee disqualification list. The request shall be
7 written and may not be made more than once every twelve months. The request will be granted by
8 the director upon a clear showing, by written submission only, that the person will not commit
9 additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any
10 documents of service delivery to an in-home services client. The director may make conditional the
11 removal of a person's name from the list on any terms that the director deems appropriate, and failure
12 to comply with such terms may result in the person's name being relisted. The director's
13 determination of whether to remove the person's name from the list is not subject to appeal."; and
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15 Further amend said bill by amending the title, enacting clause, and intersectional references
16 accordingly.
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