

FIRST REGULAR SESSION

SENATE BILL NO. 515

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 25, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2351S.011

AN ACT

To repeal section 192.2475 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session, and section 192.2475 as enacted by house revision bill no. 1299, ninety-seventh general assembly, second regular session, RSMo, and to enact in lieu thereof one new section relating to reporting abuse or neglect of in-home services clients, with existing penalty provisions.

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

Section A. Section 192.2475 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session, and section 192.2475 as enacted by house revision bill no. 1299, ninety-seventh general assembly, second regular session, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 192.2475, to read as follows:

192.2475. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; **emergency medical technician**; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; **firefighter; first responder**; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or social

13 worker has reasonable cause to believe that an in-home services client has been
14 abused or neglected, as a result of in-home services, he or she shall immediately
15 report or cause a report to be made to the department. If the report is made by
16 a physician of the in-home services client, the department shall maintain contact
17 with the physician regarding the progress of the investigation.

18 2. When a report of deteriorating physical condition resulting in possible
19 abuse or neglect of an in-home services client is received by the department, the
20 client's case manager and the department nurse shall be notified. The client's
21 case manager shall investigate and immediately report the results of the
22 investigation to the department nurse. The department may authorize the
23 in-home services provider nurse to assist the case manager with the investigation.

24 3. If requested, local area agencies on aging shall provide volunteer
25 training to those persons listed in subsection 1 of this section regarding the
26 detection and report of abuse and neglect pursuant to this section.

27 4. Any person required in subsection 1 of this section to report or cause
28 a report to be made to the department who fails to do so within a reasonable time
29 after the act of abuse or neglect is guilty of a class A misdemeanor.

30 5. The report shall contain the names and addresses of the in-home
31 services provider agency, the in-home services employee, the in-home services
32 client, the home health agency, the home health agency employee, information
33 regarding the nature of the abuse or neglect, the name of the complainant, and
34 any other information which might be helpful in an investigation.

35 6. In addition to those persons required to report under subsection 1 of
36 this section, any other person having reasonable cause to believe that an in-home
37 services client or home health patient has been abused or neglected by an
38 in-home services employee or home health agency employee may report such
39 information to the department.

40 7. If the investigation indicates possible abuse or neglect of an in-home
41 services client or home health patient, the investigator shall refer the complaint
42 together with his or her report to the department director or his or her designee
43 for appropriate action. If, during the investigation or at its completion, the
44 department has reasonable cause to believe that immediate action is necessary
45 to protect the in-home services client or home health patient from abuse or
46 neglect, the department or the local prosecuting attorney may, or the attorney
47 general upon request of the department shall, file a petition for temporary care
48 and protection of the in-home services client or home health patient in a circuit

49 court of competent jurisdiction. The circuit court in which the petition is filed
50 shall have equitable jurisdiction to issue an ex parte order granting the
51 department authority for the temporary care and protection of the in-home
52 services client or home health patient, for a period not to exceed thirty days.

53 8. Reports shall be confidential, as provided under section 192.2500.

54 9. Anyone, except any person who has abused or neglected an in-home
55 services client or home health patient, who makes a report pursuant to this
56 section or who testifies in any administrative or judicial proceeding arising from
57 the report shall be immune from any civil or criminal liability for making such
58 a report or for testifying except for liability for perjury, unless such person acted
59 negligently, recklessly, in bad faith, or with malicious purpose.

60 10. Within five working days after a report required to be made under this
61 section is received, the person making the report shall be notified in writing of
62 its receipt and of the initiation of the investigation.

63 11. No person who directs or exercises any authority in an in-home
64 services provider agency or home health agency shall harass, dismiss or retaliate
65 against an in-home services client or home health patient, or an in-home services
66 employee or a home health agency employee because he or she or any member of
67 his or her family has made a report of any violation or suspected violation of
68 laws, standards or regulations applying to the in-home services provider agency
69 or home health agency or any in-home services employee or home health agency
70 employee which he or she has reasonable cause to believe has been committed or
71 has occurred.

72 12. Any person who abuses or neglects an in-home services client or home
73 health patient is subject to criminal prosecution under section 565.184. If such
74 person is an in-home services employee and has been found guilty by a court, and
75 if the supervising in-home services provider willfully and knowingly failed to
76 report known abuse by such employee to the department, the supervising in-home
77 services provider may be subject to administrative penalties of one thousand
78 dollars per violation to be collected by the department and the money received
79 therefor shall be paid to the director of revenue and deposited in the state
80 treasury to the credit of the general revenue fund. Any in-home services provider
81 which has had administrative penalties imposed by the department or which has
82 had its contract terminated may seek an administrative review of the
83 department's action pursuant to chapter 621. Any decision of the administrative
84 hearing commission may be appealed to the circuit court in the county where the

85 violation occurred for a trial de novo. For purposes of this subsection, the term
86 "violation" means a determination of guilt by a court.

87 13. The department shall establish a quality assurance and supervision
88 process for clients that requires an in-home services provider agency to conduct
89 random visits to verify compliance with program standards and verify the
90 accuracy of records kept by an in-home services employee.

91 14. The department shall maintain the employee disqualification list and
92 place on the employee disqualification list the names of any persons who have
93 been finally determined by the department, pursuant to section 192.2490, to have
94 recklessly, knowingly or purposely abused or neglected an in-home services client
95 or home health patient while employed by an in-home services provider agency
96 or home health agency. For purposes of this section only, "knowingly" and
97 "recklessly" shall have the meanings that are ascribed to them in this section. A
98 person acts "knowingly" with respect to the person's conduct when a reasonable
99 person should be aware of the result caused by his or her conduct. A person acts
100 "recklessly" when the person consciously disregards a substantial and
101 unjustifiable risk that the person's conduct will result in serious physical injury
102 and such disregard constitutes a gross deviation from the standard of care that
103 a reasonable person would exercise in the situation.

104 15. At the time a client has been assessed to determine the level of care
105 as required by rule and is eligible for in-home services, the department shall
106 conduct a "Safe at Home Evaluation" to determine the client's physical, mental,
107 and environmental capacity. The department shall develop the safe at home
108 evaluation tool by rule in accordance with chapter 536. The purpose of the safe
109 at home evaluation is to assure that each client has the appropriate level of
110 services and professionals involved in the client's care. The plan of service or
111 care for each in-home services client shall be authorized by a nurse. The
112 department may authorize the licensed in-home services nurse, in lieu of the
113 department nurse, to conduct the assessment of the client's condition and to
114 establish a plan of services or care. The department may use the expertise,
115 services, or programs of other departments and agencies on a case-by-case basis
116 to establish the plan of service or care. The department may, as indicated by the
117 safe at home evaluation, refer any client to a mental health professional, as
118 defined in 9 CSR 30-4.030, for evaluation and treatment as necessary.

119 16. Authorized nurse visits shall occur at least twice annually to assess
120 the client and the client's plan of services. The provider nurse shall report the

121 results of his or her visits to the client's case manager. If the provider nurse
122 believes that the plan of service requires alteration, the department shall be
123 notified and the department shall make a client evaluation. All authorized nurse
124 visits shall be reimbursed to the in-home services provider. All authorized nurse
125 visits shall be reimbursed outside of the nursing home cap for in-home services
126 clients whose services have reached one hundred percent of the average statewide
127 charge for care and treatment in an intermediate care facility, provided that the
128 services have been preauthorized by the department.

129 17. All in-home services clients shall be advised of their rights by the
130 department or the department's designee at the initial evaluation. The rights
131 shall include, but not be limited to, the right to call the department for any
132 reason, including dissatisfaction with the provider or services. The department
133 may contract for services relating to receiving such complaints. The department
134 shall establish a process to receive such nonabuse and neglect calls other than the
135 elder abuse and neglect hotline.

136 18. Subject to appropriations, all nurse visits authorized in sections
137 192.2400 to 192.2475 shall be reimbursed to the in-home services provider agency.

192.2475. 1. When any adult day care worker; chiropractor; Christian
2 Science practitioner; coroner; dentist; embalmer; **emergency medical**
3 **technician**; employee of the departments of social services, mental health, or
4 health and senior services; employee of a local area agency on aging or an
5 organized area agency on aging program; **firefighter; first responder**; funeral
6 director; home health agency or home health agency employee; hospital and clinic
7 personnel engaged in examination, care, or treatment of persons; in-home services
8 owner, provider, operator, or employee; law enforcement officer; long-term care
9 facility administrator or employee; medical examiner; medical resident or intern;
10 mental health professional; minister; nurse; nurse practitioner; optometrist; other
11 health practitioner; peace officer; pharmacist; physical therapist; physician;
12 physician's assistant; podiatrist; probation or parole officer; psychologist; or social
13 worker has reasonable cause to believe that an in-home services client has been
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29 after the act of abuse or neglect is guilty of a class A misdemeanor.

30 5. The report shall contain the names and addresses of the in-home
31 services provider agency, the in-home services employee, the in-home services
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47 general upon request of the department shall, file a petition for temporary care
48 and protection of the in-home services client or home health patient in a circuit
49 court of competent jurisdiction. The circuit court in which the petition is filed
50 shall have equitable jurisdiction to issue an ex parte order granting the
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73 health patient is subject to criminal prosecution under section 565.180, 565.182,
74 or 565.184. If such person is an in-home services employee and has been found
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76 knowingly failed to report known abuse by such employee to the department, the
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