

SECOND REGULAR SESSION

# HOUSE BILL NO. 1350

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SMITH (163).

4530H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 192.2495 and 208.909, RSMo, and to enact in lieu thereof two new sections relating to background check requirements for certain in-home service providers, with a penalty provision.

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

Section A. Sections 192.2495 and 208.909, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 192.2495 and 208.909, to read as follows:

192.2495. 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 of social services or  
5 its divisions;

6 (3) Employs health care providers as defined in section 376.1350 for temporary or  
7 intermittent placement in health care facilities;

8 (4) Is an entity licensed pursuant to chapter 197;

9 (5) Is a public or private facility, day program, residential facility or specialized service  
10 operated, funded or licensed by the department of mental health; or

11 (6) Is a licensed adult day care provider.

12 2. For the purpose of this section "patient or resident" has the same meaning as such term  
13 is defined in section 43.540.

14 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary  
15 position to have contact with any patient or resident the provider shall, or in the case of

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.

16 temporary employees hired through or contracted for an employment agency, the employment  
17 agency shall prior to sending a temporary employee to a provider:

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

38 (2) Make an inquiry to the department of health and senior services whether the person  
39 is listed on the employee disqualification list as provided in section 192.2490.

40 4. When the provider requests a criminal background check pursuant to section 43.540,  
41 the requesting entity may require that the applicant reimburse the provider for the cost of such  
42 record check. When a provider requests a nationwide criminal background check pursuant to  
43 subdivision (1) of subsection 3 of this section, the total cost to the provider of any background  
44 check required pursuant to this section shall not exceed five dollars which shall be paid to the  
45 state. State funding and the obligation of a provider to obtain a nationwide criminal background  
46 check shall be subject to the availability of appropriations.

47 5. An applicant for a position to have contact with patients or residents of a provider  
48 shall:

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

51 (2) Disclose the applicant's criminal history. For the purposes of this subdivision  
52 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge  
53 and shall include any suspended imposition of sentence, any suspended execution of sentence  
54 or any period of probation or parole;

55 (3) Disclose if the applicant is listed on the employee disqualification list as provided  
56 in section 192.2490; and

57 (4) Disclose if the applicant is listed on any of the background checks in the family care  
58 safety registry established under section 210.903. A provider not otherwise prohibited from  
59 employing an individual listed on such background checks may deny employment to an  
60 individual listed on any of the background checks in such registry.

61 6. An applicant who knowingly fails to disclose his or her criminal history as required  
62 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class  
63 A misdemeanor if the provider knowingly hires or retains a person to have contact with patients  
64 or residents and the person has been found guilty in this state or any other state or has been found  
65 guilty of a crime, which if committed in Missouri would be a class A or B felony violation of  
66 chapter 565, 566 or 569, or any violation of subsection 3 of section 198.070 or section 568.020.

67 7. Any in-home services provider agency or home health agency shall be guilty of a class  
68 A misdemeanor if such agency knowingly employs a person to provide in-home services or home  
69 health services to any in-home services client or home health patient and such person either  
70 refuses to register with the family care safety registry or ~~is listed on any of the background check~~  
71 ~~lists in the family care safety registry pursuant to sections 210.900 to 210.937] if such person:~~

72 (1) **Has any of the disqualifying factors listed in subsection 6 of this section;**

73 (2) **Has been found guilty of or pleaded guilty or nolo contendere to any felony**  
74 **offense under chapter 195;**

75 (3) **Has been found guilty of or pleaded guilty or nolo contendere to any felony**  
76 **offense under section 568.020, 568.045, 568.050, 568.060, 568.175, 570.030, 570.040,**  
77 **570.090, 570.145, 570.223, 575.230, or 576.080;**

78 (4) **Has been found guilty of or pleaded guilty or nolo contendere to a violation of**  
79 **section 577.010 or 577.012 and who is alleged and found by the court to be an aggravated**  
80 **or chronic offender under section 577.023;**

81 (5) **Has been found guilty of or pleaded guilty or nolo contendere to any offense**  
82 **requiring registration under section 589.400;**

83 (6) **Is listed on the department of health and senior services employee**  
84 **disqualification list;**

85 (7) **Is listed on the department of mental health disqualification registry; or**

86           **(8) Has a finding on the child abuse and neglect registry under sections 210.109 to**  
87 **210.183.**

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

91           9. A provider may use a private investigatory agency rather than the highway patrol to  
92 do a criminal history records review check, and alternatively, the applicant pays the private  
93 investigatory agency such fees as the provider and such agency shall agree.

94           10. Except for the hiring restriction based on the department of health and senior services  
95 employee disqualification list established pursuant to section 192.2490, the department of health  
96 and senior services shall promulgate rules and regulations to waive the hiring restrictions  
97 pursuant to this section for good cause. For purposes of this section, "good cause" means the  
98 department has made a determination by examining the employee's prior work history and other  
99 relevant factors that such employee does not present a risk to the health or safety of residents.

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

- 3           (1) Supervising their personal care attendant;
- 4           (2) Verifying wages to be paid to the personal care attendant;
- 5           (3) Preparing and submitting time sheets, signed by both the consumer and personal care  
6 attendant, to the vendor on a biweekly basis;
- 7           (4) Promptly notifying the department within ten days of any changes in circumstances  
8 affecting the personal care assistance services plan or in the consumer's place of residence;
- 9           (5) Reporting any problems resulting from the quality of services rendered by the  
10 personal care attendant to the vendor. If the consumer is unable to resolve any problems  
11 resulting from the quality of service rendered by the personal care attendant with the vendor, the  
12 consumer shall report the situation to the department; and
- 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 on any of~~  
31 ~~the background check lists in the family care safety registry under sections 210.900 to 210.937]~~  
32 **has not undergone the background screening process under section 192.2495. If the**  
33 **personal care attendant has a disqualifying finding under section 192.2495, no state or**  
34 **federal assistance can be made**, unless a good cause waiver is first obtained from the  
35 department in accordance with section 192.2495.

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

- 42           (a) Record the exact date services are delivered;
- 43           (b) Record the exact time the services begin and exact time the services end;
- 44           (c) Verify the telephone number from which the services are registered;
- 45           (d) Verify that the number from which the call is placed is a telephone number unique  
46 to the client;
- 47           (e) Require a personal identification number unique to each personal care attendant;
- 48           (f) Be capable of producing reports of services delivered, tasks performed, client identity,  
49 beginning and ending times of service and date of service in summary fashion that constitute  
50 adequate documentation of service; and
- 51           (g) Be capable of producing reimbursement requests for consumer approval that assures  
52 accuracy and compliance with program expectations for both the consumer and vendor.

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

59 take into consideration the impact of a telephone tracking system on the quality of the services  
60 delivered to the consumer and the principles of self-directed care.

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

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

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

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

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