

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 237,  
2 Page 1, Section A, Line 2, by inserting immediately after said section and line the following:

3  
4 "192.2495. 1. For the purposes of this section, the term "provider" means any person,  
5 corporation or association who:

6 (1) Is licensed as an operator pursuant to chapter 198;

7 (2) Provides in-home services under contract with the department of social services or its  
8 divisions;

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

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

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

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

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

17 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary  
18 position to have contact with any patient or resident the provider shall, or in the case of temporary  
19 employees hired through or contracted for an employment agency, the employment agency shall  
20 prior to sending a temporary employee to a provider:

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

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1 employment history with a licensed Missouri facility during that five-year period. Notwithstanding  
 2 the provisions of section 610.120, all records related to any criminal history information discovered  
 3 shall be accessible and available to the provider making the record request; and

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

6 4. When the provider requests a criminal background check pursuant to section 43.540, the  
 7 requesting entity may require that the applicant reimburse the provider for the cost of such record  
 8 check. When a provider requests a nationwide criminal background check pursuant to subdivision  
 9 (1) of subsection 3 of this section, the total cost to the provider of any background check required  
 10 pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding  
 11 and the obligation of a provider to obtain a nationwide criminal background check shall be subject  
 12 to the availability of appropriations.

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

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

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

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

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

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

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

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

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

40 (3) Has been found guilty of or pleaded guilty or nolo contendere to any felony offense  
 41 under section 568.020, 568.045, 568.050, 568.060, 568.175, 570.030, 570.040, 570.090, 570.145,  
 42 570.223, 575.230, or 576.080;

43 (4) Has been found guilty of or pleaded guilty or nolo contendere to a violation of section  
 44 577.010 or 577.012 and who is alleged and found by the court to be an aggravated or chronic  
 45 offender under section 577.023;

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

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

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

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

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

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

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

15       208.909. 1. Consumers receiving personal care assistance services shall be responsible for:

16       (1) Supervising their personal care attendant;

17       (2) Verifying wages to be paid to the personal care attendant;

18       (3) Preparing and submitting time sheets, signed by both the consumer and personal care  
19 attendant, to the vendor on a biweekly basis;

20       (4) Promptly notifying the department within ten days of any changes in circumstances  
21 affecting the personal care assistance services plan or in the consumer's place of residence;

22       (5) Reporting any problems resulting from the quality of services rendered by the personal  
23 care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the  
24 quality of service rendered by the personal care attendant with the vendor, the consumer shall report  
25 the situation to the department; and

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

28       2. Participating vendors shall be responsible for:

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

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

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

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

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

42       4. No state or federal financial assistance shall be authorized or expended to pay for  
43 personal care assistance services provided by a personal care attendant who ~~[is listed on any of the~~  
44 ~~background check lists in the family care safety registry under sections 210.900 to 210.937]~~ has not  
45 undergone the background screening process under section 192.2495. If the personal care attendant  
46 has a disqualifying finding under section 192.2495, no state or federal assistance can be made,  
47 unless a good cause waiver is first obtained from the department in accordance with section  
48 192.2495.

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

- 7           (a) Record the exact date services are delivered;
- 8           (b) Record the exact time the services begin and exact time the services end;
- 9           (c) Verify the telephone number from which the services are registered;
- 10          (d) Verify that the number from which the call is placed is a telephone number unique to the  
 11 client;
- 12          (e) Require a personal identification number unique to each personal care attendant;
- 13          (f) Be capable of producing reports of services delivered, tasks performed, client identity,  
 14 beginning and ending times of service and date of service in summary fashion that constitute  
 15 adequate documentation of service; and

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

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

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

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

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

41          7. No interested party, including a center for independent living, shall be required to  
 42 contract with any particular vendor or provider of telephony services nor bear the full cost of the  
 43 pilot program."; and

44  
 45 Further amend said bill by amending the title, enacting clause, and intersectional references  
 46 accordingly.