GOVERNOR OF MISSOURI

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TO THE SECRETARY OF THE SENATE
98th GENERAL ASSEMBLY
SECOND REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you Senate Concurrent Resolution No. 46 entitled:

> An act by concurrent resolution and pursuant to Article IV, Section 8, to disapprove the final order of rulemaking for the proposed rule 19 CSR 15-8.410 Personal Care Attendant Wage Range.

I disapprove of Senate Concurrent Resolution No. 46. My reasons for disapproval are as follows:

Senate Concurrent Resolution No. 46 is an attempt to frustrate implementation of the Quality Home Care Act ("the Act"), RSMo Sections 208.850 to 208.871, which Missouri voters approved by a margin of 75% to 25% in November 2008. The purpose of the Act was to address the growing need for quality home care services by creating a mechanism to increase the wages, benefits, and training for personal care attendants. By disapproving this rule, the General Assembly defies the will of voters and denies these personal care attendants a much-deserved increase in their wages.

The Act created a bargaining process to address wages for "personal care attendants." "Personal care attendants" provide personal care assistance and similar services for physically disabled persons who are participants in the state-administered Consumer-Directed Services program. To effectuate the newly-created bargaining process, the Act created the Missouri Quality Home Care Council ("the Council") and authorized the personal care attendants to designate an exclusive bargaining representative. Under the Act, the Council engages in collective bargaining with the exclusive bargaining representative and recommends a wage rate for personal care attendants to the General Assembly. Although personal care attendants are ordinarily considered employees of the consumers for whom they provide services, the Act deems them employees of the Council for purposes of collective bargaining.

Following the overwhelming voter approval of the Act, the Council was created and personal care attendants formed and designated the Missouri Home Care Union as their exclusive bargaining representative ("the Bargaining Representative"). The Council and the Bargaining Representative engaged in negotiations, and the Council ultimately adopted a recommendation that Consumers be able to set their personal care attendant's wage between $8.50 and $10.15

per hour. This wage rate increase was recommended to the General Assembly, as required by the Act, through promulgation of Rule 19 CSR 15-8.410 by the Department of Health and Senior Services, which administers the Consumer-Directed Services program. Senate Concurrent Resolution No. 46 seeks to disapprove this rule.

Rather than directly attacking the wage increase for personal care attendants, the General Assembly camouflages its dislike by raising misplaced procedural objections to the rule. And, notably, the General Assembly has offered no alternative to rulemaking to implement the recommended wage increase. Contrary to what Senate Concurrent Resolution No. 46 says, the Department of Health and Senior Services has general statutory authority to promulgate the rule. Further, Section 208.903.2, RSMo, requires the Department of Health and Senior Services to establish the statewide rate for personal care attendant services of which payment to personal care attendants is a component. In addition, the Act very specifically requires the State to "cooperate in the implementation of any agreements reached by the council and any representative of personal care attendants." Section 208.862.5, RSMo. The State, through the Department, cooperated in the implementation of the agreement by promulgating the rule. At every step, the State has adhered to the process in the voter-approved Act: The establishment of the Council, the designation of the Bargaining Representative, and a negotiation between the two that ultimately resulted in a wage rate for personal care attendants. The rule is the means by which to implement the agreement, the Department had the authority to do so, and the General Assembly offers no alternative to rulemaking.

Senate Concurrent Resolution No. 46 would deny a bargained-for wage increase for personal care attendants. The absence of any suggested alternative to promulgating a rule suggests that the true motivation for this misguided resolution is simply to prevent personal care attendants from receiving competitive wages. But for Senate Concurrent Resolution No. 46, these workers would receive a pay increase.

In sum, Senate Concurrent Resolution No. 46 is wrong on the law and is a pretext for denying a wage increase to personal care attendants. With it, the General Assembly seeks to ignore the will of voters and to punish personal care attendants, neither of which will receive my approval.

In accordance with the above stated reasons for my disapproval, I am returning Senate Concurrent Resolution No. 46 without my approval.

Respectfully submitted,

Jeremiah W. (Jay) Nixon
Governor